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## SCHEDULES

### SCHEDULE 1 **U.K.**

Section 170.

#### COPYRIGHT: TRANSITIONAL PROVISIONS AND SAVINGS

##### Modifications etc. (not altering text)

- C1 Sch. 1 applied (with modifications) by S.I. 1989/1293, **art. 4(4)(5)(6)**
- C2 Sch. 1 applied (with modifications)(4.5.1993) by S.I. 1993/942, arts. 2(3), 5, **Sch. 4** (with art. 6)
- C3 Sch. 1 applied (4.5.1993) by S.I. 1993/942, arts.4, 5, **Sch. 4** (with art. 6)
- C4 Sch. 1 applied (with modifications) (22.7.1999) by S.I. 1999/1751, arts. 2(3), 3, 4(3)-(5), 6, **Sch. 5** (subject to arts. 5, 7) (as amended (22.4.2003) by S.I. 2003/774, **arts. 2-5**)
- C5 Sch. 1 extended in part (with modifications) by [The Copyright \(Bermuda\) Order 2003 \(S.I. 2003/1517\)](#), **art. 2, Sch.** (the amendment coming into force in accordance with art. 1 of the amending S.I.)
- C6 Sch. 1 extended in part (with modifications) by [The Copyright \(Gibraltar\) Order 2005 \(S.I. 2005/853\)](#), **art. 2, Sch.** (the amendment coming into force in accordance with art. 1 of the amending S.I.)

##### *Introductory*

- 1 (1) In this Schedule—
  - “the 1911 Act” means the <sup>M1</sup>Copyright Act 1911,
  - “the 1956 Act” means the <sup>M2</sup>Copyright Act 1956, and
  - “the new copyright provisions” means the provisions of this Act relating to copyright, that is, Part I (including this Schedule) and Schedules 3, 7 and 8 so far as they make amendments or repeals consequential on the provisions of Part I.
- (2) References in this Schedule to “commencement”, without more, are to the date on which the new copyright provisions come into force.
- (3) References in this Schedule to “existing works” are to works made before commencement; and for this purpose a work of which the making extended over a period shall be taken to have been made when its making was completed.

##### Marginal Citations

- M1** 1911 c. 46.
- M2** 1956 c. 74.

- 2 (1) In relation to the 1956 Act, references in this Schedule to a work include any work or other subject-matter within the meaning of that Act.
- (2) In relation to the 1911 Act—
  - (a) references in this Schedule to copyright include the right conferred by section 24 of that Act in substitution for a right subsisting immediately before the commencement of that Act;

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- (b) references in this Schedule to copyright in a sound recording are to the copyright under that Act in records embodying the recording; and
- (c) references in this Schedule to copyright in a film are to any copyright under that Act in the film (so far as it constituted a dramatic work for the purposes of that Act) or in photographs forming part of the film.

*General principles: continuity of the law*

- 3 The new copyright provisions apply in relation to things existing at commencement as they apply in relation to things coming into existence after commencement, subject to any express provision to the contrary.
- 4 (1) The provisions of this paragraph have effect for securing the continuity of the law so far as the new copyright provisions re-enact (with or without modification) earlier provisions.
- (2) A reference in an enactment, instrument or other document to copyright, or to a work or other subject-matter in which copyright subsists, which apart from this Act would be construed as referring to copyright under the 1956 Act shall be construed, so far as may be required for continuing its effect, as being, or as the case may require, including, a reference to copyright under this Act or to works in which copyright subsists under this Act.
- (3) Anything done (including subordinate legislation made), or having effect as done, under or for the purposes of a provision repealed by this Act has effect as if done under or for the purposes of the corresponding provision of the new copyright provisions.
- (4) References (expressed or implied) in this Act or any other enactment, instrument or document to any of the new copyright provisions shall, so far as the context permits, be construed as including, in relation to times, circumstances and purposes before commencement, a reference to corresponding earlier provisions.
- (5) A reference (express or implied) in an enactment, instrument or other document to a provision repealed by this Act shall be construed, so far as may be required for continuing its effect, as a reference to the corresponding provision of this Act.
- (6) The provisions of this paragraph have effect subject to any specific transitional provision or saving and to any express amendment made by this Act.

*Subsistence of copyright*

- 5 (1) Copyright subsists in an existing work after commencement only if copyright subsisted in it immediately before commencement.
- (2) Sub-paragraph (1) does not prevent an existing work qualifying for copyright protection after commencement—
  - (a) under section 155 (qualification by virtue of first publication), or
  - (b) by virtue of an Order under section 159 (application of Part I to countries to which it does not extend).
- 6 (1) Copyright shall not subsist by virtue of this Act in an artistic work made before 1st June 1957 which at the time when the work was made constituted a design capable of registration under the <sup>M3</sup>Registered Designs Act 1949 or under the enactments

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repealed by that Act, and was used, or intended to be used, as a model or pattern to be multiplied by an industrial process.

- (2) For this purpose a design shall be deemed to be used as a model or pattern to be multiplied by any industrial process—
- (a) when the design is reproduced or is intended to be reproduced on more than 50 single articles, unless all the articles in which the design is reproduced or is intended to be reproduced together form only a single set of articles as defined in section 44(1) of the Registered Designs Act 1949, or
  - (b) when the design is to be applied to—
    - (i) printed paper hangings,
    - (ii) carpets, floor cloths or oil cloths, manufactured or sold in lengths or pieces,
    - (iii) textile piece goods, or textile goods manufactured or sold in lengths or pieces, or
    - (iv) lace, not made by hand.

#### Marginal Citations

M3 1949 c. 88.

- 7 (1) No copyright subsists in a film, as such, made before 1st June 1957.
- (2) Where a film made before that date was an original dramatic work within the meaning of the 1911 Act, the new copyright provisions have effect in relation to the film as if it was an original dramatic work within the meaning of Part I.
- (3) The new copyright provisions have effect in relation to photographs forming part of a film made before 1st June 1957 as they have effect in relation to photographs not forming part of a film.
- 8 (1) A film sound-track to which section 13(9) of the 1956 Act applied before commencement (film to be taken to include sounds in associated sound-track) shall be treated for the purposes of the new copyright provisions not as part of the film, but as a sound recording.
- (2) However—
- (a) copyright subsists in the sound recording only if copyright subsisted in the film immediately before commencement, and it continues to subsist until copyright in the film expires;
  - (b) the author and first owner of copyright in the film shall be treated as having been author and first owner of the copyright in the sound recording; and
  - (c) anything done before commencement under or in relation to the copyright in the film continues to have effect in relation to the sound recording as in relation to the film.
- 9 No copyright subsists in—
- (a) a broadcast made before 1st June 1957, or
  - (b) a cable programme included in a cable programme service before 1st January 1985;

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and any such broadcast or cable programme shall be disregarded for the purposes of [F1section 14(5)] (duration of copyright in repeats).

#### Textual Amendments

**F1** Words in Sch. 1 para. 9 substituted (1.1.1996) by S.I. 1995/3297, reg. 7(2) (with Pt. III)

#### *Authorship of work*

- 10 The question who was the author of an existing work shall be determined in accordance with the new copyright provisions for the purposes of the rights conferred by Chapter IV of Part I (moral rights), and for all other purposes shall be determined in accordance with the law in force at the time the work was made.

#### *First ownership of copyright*

- 11 (1) The question who was first owner of copyright in an existing work shall be determined in accordance with the law in force at the time the work was made.
- (2) Where before commencement a person commissioned the making of a work in circumstances falling within—
- (a) section 4(3) of the 1956 Act or paragraph (a) of the proviso to section 5(1) of the 1911 Act (photographs, portraits and engravings), or
  - (b) the proviso to section 12(4) of the 1956 Act (sound recordings),
- those provisions apply to determine first ownership of copyright in any work made in pursuance of the commission after commencement.

#### *Duration of copyright in existing works*

- 12 (1) The following provisions have effect with respect to the duration of copyright in existing works.
- The question which provision applies to a work shall be determined by reference to the facts immediately before commencement; and expressions used in this paragraph which were defined for the purposes of the 1956 Act have the same meaning as in that Act.
- (2) Copyright in the following descriptions of work continues to subsist until the date on which it would have expired under the 1956 Act—
- (a) literary, dramatic or musical works in relation to which the period of 50 years mentioned in the proviso to section 2(3) of the 1956 Act (duration of copyright in works made available to the public after the death of the author) has begun to run;
  - (b) engravings in relation to which the period of 50 years mentioned in the proviso to section 3(4) of the 1956 Act (duration of copyright in works published after the death of the author) has begun to run;
  - (c) published photographs and photographs taken before 1st June 1957;
  - (d) published sound recordings and sound recordings made before 1st June 1957;

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- (e) published films and films falling within section 13(3)(a) of the 1956 Act (films registered under former enactments relating to registration of films).
- (3) Copyright in anonymous or pseudonymous literary, dramatic, musical or artistic works (other than photographs) continues to subsist—
- (a) if the work is published, until the date on which it would have expired in accordance with the 1956 Act, and
  - (b) if the work is unpublished, until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force or, if during that period the work is first made available to the public within the meaning of section 12(2) (duration of copyright in works of unknown authorship), the date on which copyright expires in accordance with that provision;
- unless, in any case, the identity of the author becomes known before that date, in which case section 12(1) applies (general rule: life of the author plus 50 years).
- (4) Copyright in the following descriptions of work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force—
- (a) literary, dramatic and musical works of which the author has died and in relation to which none of the acts mentioned in paragraphs (a) to (e) of the proviso to section 2(3) of the 1956 Act has been done;
  - (b) unpublished engravings of which the author has died;
  - (c) unpublished photographs taken on or after 1st June 1957.
- (5) Copyright in the following descriptions of work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force—
- (a) unpublished sound recordings made on or after 1st June 1957;
  - (b) films not falling within sub-paragraph (2)(e) above,
- unless the recording or film is published before the end of that period in which case copyright in it shall continue until the end of the period of 50 years from the end of the calendar year in which the recording or film is published.
- (6) Copyright in any other description of existing work continues to subsist until the date on which copyright in that description of work expires in accordance with sections 12 to 15 of this Act.
- (7) The above provisions do not apply to works subject to Crown or Parliamentary copyright (see paragraphs 41 to 43 below).

*Perpetual copyright under the Copyright Act 1775*

- 13 (1) The rights conferred on universities and colleges by the <sup>M4</sup>Copyright Act 1775 shall continue to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force and shall then expire.
- (2) The provisions of the following Chapters of Part I—
- Chapter III (acts permitted in relation to copyright works),
  - Chapter VI (remedies for infringement),
  - Chapter VII (provisions with respect to copyright licensing), and
  - Chapter VIII (the Copyright Tribunal),

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apply in relation to those rights as they apply in relation to copyright under this Act.

#### Marginal Citations

M4 1775 c. 53.

#### *Acts infringing copyright*

- 14 (1) The provisions of Chapters II and III of Part I as to the acts constituting an infringement of copyright apply only in relation to acts done after commencement; the provisions of the 1956 Act continue to apply in relation to acts done before commencement.
- (2) So much of section 18(2) as extends the restricted act of issuing copies to the public to include the rental to the public of copies of sound recordings, films or computer programs does not apply in relation to a copy of a sound recording, film or computer program acquired by any person before commencement for the purpose of renting it to the public.
- (3) For the purposes of section 27 (meaning of “infringing copy”) the question whether the making of an article constituted an infringement of copyright, or would have done if the article had been made in the United Kingdom, shall be determined—
- (a) in relation to an article made on or after 1st June 1957 and before commencement, by reference to the 1956 Act, and
  - (b) in relation to an article made before 1st June 1957, by reference to the 1911 Act.
- (4) For the purposes of the application of sections 31(2), 51(2) and 62(3) (subsequent exploitation of things whose making was, by virtue of an earlier provision of the section, not an infringement of copyright) to things made before commencement, it shall be assumed that the new copyright provisions were in force at all material times.
- (5) Section 55 (articles for producing material in a particular typeface) applies where articles have been marketed as mentioned in subsection (1) before commencement with the substitution for the period mentioned in subsection (3) of the period of 25 years from the end of the calendar year in which the new copyright provisions come into force.
- (6) Section 56 (transfer of copies, adaptations, &c. of work in electronic form) does not apply in relation to a copy purchased before commencement.
- (7) In section 65 (reconstruction of buildings) the reference to the owner of the copyright in the drawings or plans is, in relation to buildings constructed before commencement, to the person who at the time of the construction was the owner of the copyright in the drawings or plans under the 1956 Act, the 1911 Act or any enactment repealed by the 1911 Act.
- 15 (1) Section 57 (anonymous or pseudonymous works: acts permitted on assumptions as to expiry of copyright or death of author) has effect in relation to existing works subject to the following provisions.
- (2) Subsection (1)(b)(i) (assumption as to expiry of copyright) does not apply in relation to—

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- (a) photographs, or
- (b) the rights mentioned in paragraph 13 above (rights conferred by the <sup>M5</sup>Copyright Act 1775).

(3) Subsection (1)(b)(ii) (assumption as to death of author) applies only—

- (a) where paragraph 12(3)(b) above applies (unpublished anonymous or pseudonymous works), after the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force, or
- (b) where paragraph 12(6) above applies (cases in which the duration of copyright is the same under the new copyright provisions as under the previous law).

**Marginal Citations**

**M5** 1775 c. 53.

16 The following provisions of section 7 of the 1956 Act continue to apply in relation to existing works—

- (a) subsection (6) (copying of unpublished works from manuscript or copy in library, museum or other institution);
- (b) subsection (7) (publication of work containing material to which subsection (6) applies), except paragraph (a) (duty to give notice of intended publication);
- (c) subsection (8) (subsequent broadcasting, performance, &c. of material published in accordance with subsection (7));

and subsection (9)(d) (illustrations) continues to apply for the purposes of those provisions.

17 Where in the case of a dramatic or musical work made before 1st July 1912, the right conferred by the 1911 Act did not include the sole right to perform the work in public, the acts restricted by the copyright shall be treated as not including—

- (a) performing the work in public,
- (b) broadcasting the work or including it in a cable programme service, or
- (c) doing any of the above in relation to an adaptation of the work;

and where the right conferred by the 1911 Act consisted only of the sole right to perform the work in public, the acts restricted by the copyright shall be treated as consisting only of those acts.

18 Where a work made before 1st July 1912 consists of an essay, article or portion forming part of and first published in a review, magazine or other periodical or work of a like nature, the copyright is subject to any right of publishing the essay, article, or portion in a separate form to which the author was entitled at the commencement of the 1911 Act, or would if that Act had not been passed, have become entitled under section 18 of the <sup>M6</sup>Copyright Act 1842.

**Marginal Citations**

**M6** 1842 c. 45.

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### Designs

- 19 (1) Section 51 (exclusion of copyright protection in relation to works recorded or embodied in design document or models) does not apply for ten years after commencement in relation to a design recorded or embodied in a design document or model before commencement.
- (2) During those ten years the following provisions of Part III (design right) apply to any relevant copyright as in relation to design right—
- (a) sections 237 to 239 (availability of licences of right), and
  - (b) sections 247 and 248 (application to comptroller to settle terms of licence of right).
- (3) In section 237 as it applies by virtue of this paragraph, for the reference in subsection (1) to the last five years of the design right term there shall be substituted a reference to the last five years of the period of ten years referred to in sub-paragraph (1) above, or to so much of those last five years during which copyright subsists.
- (4) In section 239 as it applies by virtue of this paragraph, for the reference in subsection (1)(b) to section 230 there shall be substituted a reference to section 99.
- (5) Where a licence of right is available by virtue of this paragraph, a person to whom a licence was granted before commencement may apply to the comptroller for an order adjusting the terms of that licence.
- (6) The provisions of sections 249 and 250 (appeals and rules) apply in relation to proceedings brought under or by virtue of this paragraph as to proceedings under Part III.
- (7) A licence granted by virtue of this paragraph shall relate only to acts which would be permitted by section 51 if the design document or model had been made after commencement.
- (8) Section 100 (right to seize infringing copies, &c.) does not apply during the period of ten years referred to in sub-paragraph (1) in relation to anything to which it would not apply if the design in question had been first recorded or embodied in a design document or model after commencement.
- (9) Nothing in this paragraph affects the operation of any rule of law preventing or restricting the enforcement of copyright in relation to a design.

#### Modifications etc. (not altering text)

- C7** Sch. 1 para. 19(1) excluded by S.I. 1989/1100, art. 10(2)
- C8** Sch. 1 para. 19(2) modified by S.I. 1989/1100, art. 10(3)
- C9** Sch. 1 para. 19(3) excluded by S.I. 1989/1100, art. 10(3)

- 20 (1) Where section 10 of the 1956 Act (effect of industrial application of design corresponding to artistic work) applied in relation to an artistic work at any time before commencement, section 52(2) of this Act applies with the substitution for the period of 25 years mentioned there of the relevant period of 15 years as defined in section 10(3) of the 1956 Act.
- (2) Except as provided in sub-paragraph (1), section 52 applies only where articles are marketed as mentioned in subsection (1)(b) after commencement.



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### *Abolition of statutory recording licence*

- 21 Section 8 of the 1956 Act (statutory licence to copy records sold by retail) continues to apply where notice under subsection (1)(b) of that section was given before the repeal of that section by this Act, but only in respect of the making of records—
- (a) within one year of the repeal coming into force, and
  - (b) up to the number stated in the notice as intended to be sold.

### *Moral rights*

- 22 (1) No act done before commencement is actionable by virtue of any provision of Chapter IV of Part I (moral rights).
- (2) Section 43 of the 1956 Act (false attribution of authorship) continues to apply in relation to acts done before commencement.
- 23 (1) The following provisions have effect with respect to the rights conferred by—
- (a) section 77 (right to be identified as author or director), and
  - (b) section 80 (right to object to derogatory treatment of work).
- (2) The rights do not apply—
- (a) in relation to a literary, dramatic, musical and artistic work of which the author died before commencement; or
  - (b) in relation to a film made before commencement.
- (3) The rights in relation to an existing literary, dramatic, musical or artistic work do not apply—
- (a) where copyright first vested in the author, to anything which by virtue of an assignment of copyright made or licence granted before commencement may be done without infringing copyright;
  - (b) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.
- (4) The rights do not apply to anything done in relation to a record made in pursuance of section 8 of the 1956 Act (statutory recording licence).
- 24 The right conferred by section 85 (right to privacy of certain photographs and films) does not apply to photographs taken or films made before commencement.

### *Assignments and licences*

- 25 (1) Any document made or event occurring before commencement which had any operation—
- (a) affecting the ownership of the copyright in an existing work, or
  - (b) creating, transferring or terminating an interest, right or licence in respect of the copyright in an existing work,
- has the corresponding operation in relation to copyright in the work under this Act.
- (2) Expressions used in such a document shall be construed in accordance with their effect immediately before commencement.
- 26 (1) Section 91(1) of this Act (assignment of future copyright: statutory vesting of legal interest on copyright coming into existence) does not apply in relation to an agreement made before 1st June 1957.

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- (2) The repeal by this Act of section 37(2) of the 1956 Act (assignment of future copyright: devolution of right where assignee dies before copyright comes into existence) does not affect the operation of that provision in relation to an agreement made before commencement.
- 27 (1) Where the author of a literary, dramatic, musical or artistic work was the first owner of the copyright in it, no assignment of the copyright and no grant of any interest in it, made by him (otherwise than by will) after the passing of the 1911 Act and before 1st June 1957, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of 25 years from the death of the author.
- (2) The reversionary interest in the copyright expectant on the termination of that period may after commencement be assigned by the author during his life but in the absence of any assignment shall, on his death, devolve on his legal personal representatives as part of his estate.
- (3) Nothing in this paragraph affects—
- (a) an assignment of the reversionary interest by a person to whom it has been assigned,
  - (b) an assignment of the reversionary interest after the death of the author by his personal representatives or any person becoming entitled to it, or
  - (c) any assignment of the copyright after the reversionary interest has fallen in.
- (4) Nothing in this paragraph applies to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.
- (5) In sub-paragraph (4) “collective work” means—
- (a) any encyclopaedia, dictionary, yearbook, or similar work;
  - (b) a newspaper, review, magazine, or similar periodical; and
  - (c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.
- 28 (1) This paragraph applies where copyright subsists in a literary, dramatic, musical or artistic work made before 1st July 1912 in relation to which the author, before the commencement of the 1911 Act, made such an assignment or grant as was mentioned in paragraph (a) of the proviso to section 24(1) of that Act (assignment or grant of copyright or performing right for full term of the right under the previous law).
- (2) If before commencement any event has occurred or notice has been given which by virtue of paragraph 38 of Schedule 7 to the 1956 Act had any operation in relation to copyright in the work under that Act, the event or notice has the corresponding operation in relation to copyright under this Act.
- (3) Any right which immediately before commencement would by virtue of paragraph 38(3) of that Schedule have been exercisable in relation to the work, or copyright in it, is exercisable in relation to the work or copyright in it under this Act.
- (4) If in accordance with paragraph 38(4) of that Schedule copyright would, on a date after the commencement of the 1956 Act, have reverted to the author or his personal representatives and that date falls after the commencement of the new copyright provisions—
- (a) the copyright in the work shall revert to the author or his personal representatives, as the case may be, and

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- (b) any interest of any other person in the copyright which subsists on that date by virtue of any document made before the commencement of the 1911 Act shall thereupon determine.
- 29 Section 92(2) of this Act (rights of exclusive licensee against successors in title of person granting licence) does not apply in relation to an exclusive licence granted before commencement.

#### *Bequests*

- 30 (1) Section 93 of this Act (copyright to pass under will with original document or other material thing embodying unpublished work)—
- (a) does not apply where the testator died before 1st June 1957, and
- (b) where the testator died on or after that date and before commencement, applies only in relation to an original document embodying a work.
- (2) In the case of an author who died before 1st June 1957, the ownership after his death of a manuscript of his, where such ownership has been acquired under a testamentary disposition made by him and the manuscript is of a work which has not been published or performed in public, is prima facie proof of the copyright being with the owner of the manuscript.

#### *Remedies for infringement*

- 31 (1) Sections 96 and 97 of this Act (remedies for infringement) apply only in relation to an infringement of copyright committed after commencement; section 17 of the 1956 Act continues to apply in relation to infringements committed before commencement.
- (2) Sections 99 and 100 of this Act (delivery up or seizure of infringing copies, &c.) apply to infringing copies and other articles made before or after commencement; section 18 of the 1956 Act, and section 7 of the 1911 Act, (conversion damages, &c.), do not apply after commencement except for the purposes of proceedings begun before commencement.
- (3) Sections 101 to 102 of this Act (rights and remedies of exclusive licensee) apply where sections 96 to 100 of this Act apply; section 19 of the 1956 Act continues to apply where section 17 or 18 of that Act applies.
- (4) Sections 104 to 106 of this Act (presumptions) apply only in proceedings brought by virtue of this Act; section 20 of the 1956 Act continues to apply in proceedings brought by virtue of that Act.
- 32 Sections 101 and 102 of this Act (rights and remedies of exclusive licensee) do not apply to a licence granted before 1st June 1957.
- 33 (1) The provisions of section 107 of this Act (criminal liability for making or dealing with infringing articles, &c.) apply only in relation to acts done after commencement; section 21 of the 1956 Act (penalties and summary proceedings in respect of dealings which infringe copyright) continues to apply in relation to acts done before commencement.
- (2) Section 109 of this Act (search warrants) applies in relation to offences committed before commencement in relation to which section 21A or 21B of the 1956 Act

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applied; sections 21A and 21B continue to apply in relation to warrants issued before commencement.

*Copyright Tribunal: proceedings pending on commencement*

- 34 (1) The Lord Chancellor may, after consultation with the Lord Advocate, by rules make such provision as he considers necessary or expedient with respect to proceedings pending under Part IV of the 1956 Act immediately before commencement.
- (2) Rules under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Qualification for copyright protection*

- 35 Every work in which copyright subsisted under the 1956 Act immediately before commencement shall be deemed to satisfy the requirements of Part I of this Act as to qualification for copyright protection.

*Dependent territories*

- 36 (1) The 1911 Act shall remain in force as part of the law of any dependent territory in which it was in force immediately before commencement until—
- (a) the new copyright provisions come into force in that territory by virtue of an Order under section 157 of this Act (power to extend new copyright provisions), or
  - (b) in the case of any of the Channel Islands, the Act is repealed by Order under sub-paragraph (3) below.
- (2) An Order in Council in force immediately before commencement which extends to any dependent territory any provisions of the 1956 Act shall remain in force as part of the law of that territory until—
- (a) the new copyright provisions come into force in that territory by virtue of an Order under section 157 of this Act (power to extend new copyright provisions), or
  - (b) in the case of the Isle of Man, the Order is revoked by Order under sub-paragraph (3) below;
- and while it remains in force such an Order may be varied under the provisions of the 1956 Act under which it was made.
- (3) If it appears to Her Majesty that provision with respect to copyright has been made in the law of any of the Channel Islands or the Isle of Man otherwise than by extending the provisions of Part I of this Act, Her Majesty may by Order in Council repeal the 1911 Act as it has effect as part of the law of that territory or, as the case may be, revoke the Order extending the 1956 Act there.
- (4) A dependent territory in which the 1911 or 1956 Act remains in force shall be treated, in the law of the countries to which Part I extends, as a country to which that Part extends; and those countries shall be treated in the law of such a territory as countries to which the 1911 Act or, as the case may be, the 1956 Act extends.
- (5) If a country in which the 1911 or 1956 Act is in force ceases to be a colony of the United Kingdom, section 158 of this Act (consequences of country ceasing to be colony) applies with the substitution for the reference in subsection (3)(b) to the

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provisions of Part I of this Act of a reference to the provisions of the 1911 or 1956 Act, as the case may be.

- (6) In this paragraph “dependent territory” means any of the Channel Islands, the Isle of Man or any colony.
- 37 (1) This paragraph applies to a country which immediately before commencement was not a dependent territory within the meaning of paragraph 36 above but—
- (a) was a country to which the 1956 Act extended, or
  - (b) was treated as such a country by virtue of paragraph 39(2) of Schedule 7 to that Act (countries to which the 1911 Act extended or was treated as extending);
- and Her Majesty may by Order in Council conclusively declare for the purposes of this paragraph whether a country was such a country or was so treated.
- (2) A country to which this paragraph applies shall be treated as a country to which Part I extends for the purposes of sections 154 to 156 (qualification for copyright protection) until—
- (a) an Order in Council is made in respect of that country under section 159 (application of Part I to countries to which it does not extend), or
  - (b) an Order in Council is made declaring that it shall cease to be so treated by reason of the fact that the provisions of the 1956 Act or, as the case may be, the 1911 Act, which extended there as part of the law of that country have been repealed or amended.
- (3) A statutory instrument containing an Order in Council under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Territorial waters and the continental shelf*

- 38 Section 161 of this Act (application of Part I to things done in territorial waters or the United Kingdom sector of the continental shelf) does not apply in relation to anything done before commencement.

*British ships, aircraft and hovercraft*

- 39 Section 162 (British ships, aircraft and hovercraft) does not apply in relation to anything done before commencement.

*Crown copyright*

- 40 (1) Section 163 of this Act (general provisions as to Crown copyright) applies to an existing work if—
- (a) section 39 of the 1956 Act applied to the work immediately before commencement, and
  - (b) the work is not one to which section 164, 165 or 166 applies (copyright in Acts, Measures and Bills and Parliamentary copyright: see paragraphs 42 and 43 below).
- (2) Section 163 (1)(b) (first ownership of copyright) has effect subject to any agreement entered into before commencement under section 39(6) of the 1956 Act.
- 41 (1) The following provisions have effect with respect to the duration of copyright in existing works to which section 163 (Crown copyright) applies.

*Status: Point in time view as at 01/04/1998.*

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The question which provision applies to a work shall be determined by reference to the facts immediately before commencement; and expressions used in this paragraph which were defined for the purposes of the 1956 Act have the same meaning as in that Act.

- (2) Copyright in the following descriptions of work continues to subsist until the date on which it would have expired in accordance with the 1956 Act—
    - (a) published literary, dramatic or musical works;
    - (b) artistic works other than engravings or photographs;
    - (c) published engravings;
    - (d) published photographs and photographs taken before 1st June 1957;
    - (e) published sound recordings and sound recordings made before 1st June 1957;
    - (f) published films and films falling within section 13(3)(a) of the 1956 Act (films registered under former enactments relating to registration of films).
  - (3) Copyright in unpublished literary, dramatic or musical works continues to subsist until—
    - (a) the date on which copyright expires in accordance with section 163(3), or
    - (b) the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force,
 whichever is the later.
  - (4) Copyright in the following descriptions of work continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force—
    - (a) unpublished engravings;
    - (b) unpublished photographs taken on or after 1st June 1957.
  - (5) Copyright in a film or sound recording not falling within sub-paragraph (2) above continues to subsist until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force, unless the film or recording is published before the end of that period, in which case copyright expires 50 years from the end of the calendar year in which it is published.
- 42 (1) Section 164 (copyright in Acts and Measures) applies to existing Acts of Parliament and Measures of the General Synod of the Church of England.
- (2) References in that section to Measures of the General Synod of the Church of England include Church Assembly Measures.

#### *Parliamentary copyright*

- 43 (1) Section 165 of this Act (general provisions as to Parliamentary copyright) applies to existing unpublished literary, dramatic, musical or artistic works, but does not otherwise apply to existing works.
- (2) Section 166 (copyright in Parliamentary Bills) does not apply—
- (a) to a public Bill which was introduced into Parliament and published before commencement,
  - (b) to a private Bill of which a copy was deposited in either House before commencement, or

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- (c) to a personal Bill which was given a First Reading in the House of Lords before commencement.

*Copyright vesting in certain international organisations*

- 44 (1) Any work in which immediately before commencement copyright subsisted by virtue of section 33 of the 1956 Act shall be deemed to satisfy the requirements of section 168(1); but otherwise section 168 does not apply to works made or, as the case may be, published before commencement.
- (2) Copyright in any such work which is unpublished continues to subsist until the date on which it would have expired in accordance with the 1956 Act, or the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force, whichever is the earlier.

*Meaning of “publication”*

- 45 Section 175(3) (construction of building treated as equivalent to publication) applies only where the construction of the building began after commencement.

*Meaning of “unauthorised”*

- 46 For the purposes of the application of the definition in section 178 (minor definitions) of the expression “unauthorised” in relation to things done before commencement—
- (a) paragraph (a) applies in relation to things done before 1st June 1957 as if the reference to the licence of the copyright owner were a reference to his consent or acquiescence;
- (b) paragraph (b) applies with the substitution for the words from “or, in a case” to the end of the words “or any person lawfully claiming under him”; and
- (c) paragraph (c) shall be disregarded.

SCHEDULE 2 **U.K.**

Section 189.

RIGHTS IN PERFORMANCES: PERMITTED ACTS

**Modifications etc. (not altering text)**

**C10** Sch. 2 continued (31.10.2003) by virtue of [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), [reg. 33](#) (with [regs. 31-40](#))

*Introductory*

- 1 (1) The provisions of this Schedule specify acts which may be done in relation to a performance or recording notwithstanding the rights conferred by Part II; they relate only to the question of infringement of those rights and do not affect any other right or obligation restricting the doing of any of the specified acts.

*Status: Point in time view as at 01/04/1998.*

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- (2) No inference shall be drawn from the description of any act which may by virtue of this Schedule be done without infringing the rights conferred by Part II as to the scope of those rights.
- (3) The provisions of this Schedule are to be construed independently of each other, so that the fact that an act does not fall within one provision does not mean that it is not covered by another provision.

VALID FROM 31/10/2003

*[<sup>F2</sup>Making of temporary copies]*

**Textual Amendments**

- F2** Sch. 2 para. 1A and cross-heading inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 8(2)** (with regs. 31-40)

- 1A The rights conferred by Part 2 are not infringed by the making of a temporary copy of a recording of a performance which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable—
- (a) a transmission of the recording in a network between third parties by an intermediary; or
  - (b) a lawful use of the recording;
- and which has no independent economic significance.

*Criticism, reviews and news reporting*

- 2 (1) Fair dealing with a performance or recording—
- (a) for the purpose of criticism or review, of that or another performance or recording, or of a work, or
  - (b) for the purpose of reporting current events,
- does not infringe any of the rights conferred by Part II.
- (2) Expressions used in this paragraph have the same meaning as in section 30.

*Incidental inclusion of performance or recording*

- 3 (1) The rights conferred by Part II are not infringed by the incidental inclusion of a performance or recording in a sound recording, film, broadcast or cable programme.
- (2) Nor are those rights infringed by anything done in relation to copies of, or the playing, showing, broadcasting or inclusion in a cable programme service of, anything whose making was, by virtue of sub-paragraph (1), not an infringement of those rights.



*Status: Point in time view as at 01/04/1998.*

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- (3) A performance or recording so far as it consists of music, or words spoken or sung with music, shall not be regarded as incidentally included in a sound recording, broadcast or cable programme if it is deliberately included.
- (4) Expressions used in this paragraph have the same meaning as in section 31.

*Things done for purposes of instruction or examination*

- 4 (1) The rights conferred by Part II are not infringed by the copying of a recording of a performance in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving instruction.
- (2) The rights conferred by Part II are not infringed—
  - (a) by the copying of a recording of a performance for the purposes of setting or answering the questions in an examination, or
  - (b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.
- (3) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with, it shall be treated as an illicit recording for the purposes of that dealing, and if that dealing infringes any right conferred by Part II for all subsequent purposes.

For this purpose “dealt with” means sold or let for hire, or offered or exposed for sale or hire.

- (4) Expressions used in this paragraph have the same meaning as in section 32.

*Playing or showing sound recording, film, broadcast  
or cable programme at educational establishment*

- 5 (1) The playing or showing of a sound recording, film, broadcast or cable programme at an educational establishment for the purposes of instruction before an audience consisting of teachers and pupils at the establishment and other persons directly connected with the activities of the establishment is not a playing or showing of a performance in public for the purposes of infringement of the rights conferred by Part II.
- (2) A person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of a pupil at the establishment.
- (3) Expressions used in this paragraph have the same meaning as in section 34 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraph.

*Status: Point in time view as at 01/04/1998.*

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*Recording of broadcasts and cable programmes by educational establishments*

- 6 (1) A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing any of the rights conferred by Part II in relation to any performance or recording included in it.
- (2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with, it shall be treated as an illicit recording for the purposes of that dealing, and if that dealing infringes any right conferred by Part II for all subsequent purposes.
- For this purpose “dealt with” means sold or let for hire, or offered or exposed for sale or hire.
- (3) Expressions used in this paragraph have the same meaning as in section 35 and any provision made under section 174(2) with respect to the application of that section also applies for the purposes of this paragraph.

*[<sup>F3</sup>Lending of copies by educational establishments]*

**Textual Amendments**

**F3** Sch. 2 para. 6A and crossheading inserted (1.12.1996) by S.I. 1996/2967, reg. 20(3) (with Pt. III)

- [<sup>F4</sup>6A (1) The rights conferred by Part II are not infringed by the lending of copies of a recording of a performance by an educational establishment.
- (2) Expressions used in this paragraph have the same meaning as in section 36A; and any provision with respect to the application of that section made under section 174(2) (instruction given elsewhere than an educational establishment) applies also for the purposes of this paragraph.]

**Textual Amendments**

**F4** Sch. 2 para. 6A inserted (1.12.1996) by S.I. 1996/2967, reg. 20(3) (with Pt. III)

*[<sup>F5</sup>Lending of copies by libraries or archives]*

**Textual Amendments**

**F5** Sch. 2 para. 6B and crossheading inserted (1.12.1996) by S.I. 1996/2967, reg. 20(3) (with Pt. III)

- [<sup>F6</sup>6B (1) The rights conferred by Part II are not infringed by the lending of copies of a recording of a performance by a prescribed library or archive (other than a public library) which is not conducted for profit.

*Status: Point in time view as at 01/04/1998.*

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- (2) Expressions used in this paragraph have the same meaning as in section 40A(2); and any provision under section 37 prescribing libraries or archives for the purposes of that section applies also for the purposes of this paragraph.]

**Textual Amendments**

**F6** Sch. 2 para. 6B inserted (1.12.1996) by S.I. 1996/2967, reg. 20(3) (with Pt. III)

**Modifications etc. (not altering text)**

**C11** Sch. 2 para. 6B modified (1.12.1996) by S.I. 1996/2967, reg. 35 (with Pt. III)

*Copy of work required to be made as condition of export*

- 7 (1) If an article of cultural or historical importance or interest cannot lawfully be exported from the United Kingdom unless a copy of it is made and deposited in an appropriate library or archive, it is not an infringement of any right conferred by Part II to make that copy.
- (2) Expressions used in this paragraph have the same meaning as in section 44.

*Parliamentary and judicial proceedings*

- 8 (1) The rights conferred by Part II are not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purpose of reporting such proceedings.
- (2) Expressions used in this paragraph have the same meaning as in section 45.

*Royal Commissions and statutory inquiries*

- 9 (1) The rights conferred by Part II are not infringed by anything done for the purposes of the proceedings of a Royal Commission or statutory inquiry or for the purpose of reporting any such proceedings held in public.
- (2) Expressions used in this paragraph have the same meaning as in section 46.

*Public records*

- 10 (1) Material which is comprised in public records within the meaning of the <sup>M7</sup>Public Records Act 1958, the <sup>M8</sup>Public Records (Scotland) Act 1937 or the <sup>M9</sup>Public Records Act (Northern Ireland) 1923 which are open to public inspection in pursuance of that Act, may be copied, and a copy may be supplied to any person, by or with the authority of any officer appointed under that Act, without infringing any right conferred by Part II.
- (2) Expressions used in this paragraph have the same meaning as in section 49.

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#### Marginal Citations

- M7** 1958 c. 51.  
**M8** 1937 c. 43.  
**M9** 1923 c. 20 (N.I.).

#### *Acts done under statutory authority*

- 11 (1) Where the doing of a particular act is specifically authorised by an Act of Parliament, whenever passed, then, unless the Act provides otherwise, the doing of that act does not infringe the rights conferred by Part II.
- (2) Sub-paragraph (1) applies in relation to an enactment contained in Northern Ireland legislation as it applies to an Act of Parliament.
- (3) Nothing in this paragraph shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.
- (4) Expressions used in this paragraph have the same meaning as in section 50.

#### *Transfer of copies of works in electronic form*

- 12 (1) This paragraph applies where a recording of a performance in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to make further recordings in connection with his use of the recording.
- (2) If there are no express terms—
- (a) prohibiting the transfer of the recording by the purchaser, imposing obligations which continue after a transfer, prohibiting the assignment of any consent or terminating any consent on a transfer, or
- (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,
- anything which the purchaser was allowed to do may also be done by a transferee without infringement of the rights conferred by this Part, but any recording made by the purchaser which is not also transferred shall be treated as an illicit recording for all purposes after the transfer.
- (3) The same applies where the original purchased recording is no longer usable and what is transferred is a further copy used in its place.
- (4) The above provisions also apply on a subsequent transfer, with the substitution for references in sub-paragraph (2) to the purchaser of references to the subsequent transferor.
- (5) This paragraph does not apply in relation to a recording purchased before the commencement of Part II.
- (6) Expressions used in this paragraph have the same meaning as in section 56.

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### *Use of recordings of spoken works in certain cases*

- 13 (1) Where a recording of the reading or recitation of a literary work is made for the purpose—
- (a) of reporting current events, or
  - (b) of broadcasting or including in a cable programme service the whole or part of the reading or recitation,
- it is not an infringement of the rights conferred by Part II to use the recording (or to copy the recording and use the copy) for that purpose, provided the following conditions are met.
- (2) The conditions are that—
- (a) the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast or cable programme;
  - (b) the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation;
  - (c) the use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made; and
  - (d) the use is by or with the authority of a person who is lawfully in possession of the recording.
- (3) Expressions used in this paragraph have the same meaning as in section 58.

### *Recordings of folksongs*

- 14 (1) A recording of a performance of a song may be made for the purpose of including it in an archive maintained by a designated body without infringing any of the rights conferred by Part II, provided the conditions in sub-paragraph (2) below are met.
- (2) The conditions are that—
- (a) the words are unpublished and of unknown authorship at the time the recording is made,
  - (b) the making of the recording does not infringe any copyright, and
  - (c) its making is not prohibited by any performer.
- (3) Copies of a recording made in reliance on sub-paragraph (1) and included in an archive maintained by a designated body may, if the prescribed conditions are met, be made and supplied by the archivist without infringing any of the rights conferred by Part II.
- (4) In this paragraph—
- “designated body” means a body designated for the purposes of section 61, and
  - “the prescribed conditions” means the conditions prescribed for the purposes of subsection (3) of that section;
- and other expressions used in this paragraph have the same meaning as in that section.

*Status: Point in time view as at 01/04/1998.*

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*[<sup>F7</sup>Lending of certain recordings]*

**Textual Amendments**

**F7** Sch. 2 para. 14A and crossheading inserted (1.12.1996) by S.I. 1996/2967, reg. 20(3) (with Pt. III)

- <sup>F8</sup>14A (1) The Secretary of State may by order provide that in such cases as may be specified in the order the lending to the public of copies of films or sound recordings shall be treated as licensed by the performer subject only to the payment of such reasonable royalty or other payment as may be agreed or determined in default of agreement by the Copyright Tribunal.
- (2) No such order shall apply if, or to the extent that, there is a licensing scheme certified for the purposes of this paragraph under paragraph 16 of Schedule 2A providing for the grant of licences.
- (3) An order may make different provision for different cases and may specify cases by reference to any factor relating to the work, the copies lent, the lender or the circumstances of the lending.
- (4) An order shall be made by statutory instrument; and no order shall be made unless a draft of it has been laid before and approved by a resolution of each House of Parliament.
- (5) Nothing in this section affects any liability under section 184(1)(b) (secondary infringement: possessing or dealing with illicit recording) in respect of the lending of illicit recordings.
- (6) Expressions used in this paragraph have the same meaning as in section 66.

**Textual Amendments**

**F8** Sch. 2 para. 14A inserted (1.12.1996) by S.I. 1996/2967, reg. 20(3) (with Pt. III)

*Playing of sound recordings for purposes of club, society, &c*

- 15 (1) It is not an infringement of any right conferred by Part II to play a sound recording as part of the activities of, or for the benefit of, a club, society or other organisation if the following conditions are met.
- (2) The conditions are—
- (a) that the organisation is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare, and
- (b) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation.
- (3) Expressions used in this paragraph have the same meaning as in section 67.

*Status: Point in time view as at 01/04/1998.*

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*Incidental recording for purposes of broadcast or cable programme*

- 16 (1) A person who proposes to broadcast a recording of a performance, or include a recording of a performance in a cable programme service, in circumstances not infringing the rights conferred by Part II shall be treated as having consent for the purposes of that Part for the making of a further recording for the purposes of the broadcast or cable programme.
- (2) That consent is subject to the condition that the further recording—
- (a) shall not be used for any other purpose, and
  - (b) shall be destroyed within 28 days of being first used for broadcasting the performance or including it in a cable programme service.
- (3) A recording made in accordance with this paragraph shall be treated as an illicit recording—
- (a) for the purposes of any use in breach of the condition mentioned in subparagraph (2)(a), and
  - (b) for all purposes after that condition or the condition mentioned in subparagraph (2)(b) is broken.
- (4) Expressions used in this paragraph have the same meaning as in section 68.

*Recordings for purposes of supervision and control of broadcasts and cable programmes*

- 17 (1) The rights conferred by Part II are not infringed by the making or use by the British Broadcasting Corporation, for the purpose of maintaining supervision and control over programmes broadcast by them, of recordings of those programmes.
- [<sup>F9</sup>(2) The rights conferred by Part II are not infringed by anything done in pursuance of—
- (a) section 11(1), 95(1) or 167(1) of the Broadcasting Act 1990 or section 115(4) or (6), 116(5) or 117 of the Broadcasting Act 1996;
  - (b) a condition which, by virtue of section 11(2) or 95(2) of the Broadcasting Act 1990, is included in a licence granted under Part I or III of that Act or Part I or II of the Broadcasting Act 1996; or
  - (c) a direction given under section 109(2) of the Broadcasting Act 1990 (power of Radio Authority to require production of recordings etc).
- (3) The rights conferred by Part II are not infringed by—
- (a) the use by the Independent Television Commission or the Radio Authority, in connection with the performance of any of their functions under the Broadcasting Act 1990 or the Broadcasting Act 1996, of any recording, script or transcript which is provided to them under or by virtue of any provision of those Acts; or
  - (b) the use by the Broadcasting Standards Commission, in connection with any complaint made to them under the Broadcasting Act 1996, of any recording or transcript requested or required to be provided to them, and so provided, under section 115(4) or (6) or 116(5) of that Act.]

*Status: Point in time view as at 01/04/1998.*

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### Textual Amendments

- F9** Sch. 2 para. 17(2)(3) substituted (1.10.1996 for certain purposes and 1.4.1997 otherwise) by 1996 c. 55, s. 148(1), **Sch. 10 Pt. III para. 32** (with s. 43(6)); S.I. 1996/2120, art. 4(1), **Sch. 1**; S.I. 1997/1005, art. 4

VALID FROM 31/10/2003

### *[<sup>F10</sup>Recording for the purposes of time-shifting]*

#### Textual Amendments

- F10** Sch. 2 para. 17A and preceding heading inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 19(3)** (with regs. 31-40)

- 17A (1) The making in domestic premises for private and domestic use of a recording of a broadcast solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any right conferred by Part 2 in relation to a performance or recording included in the broadcast.
- (2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with—
- (a) it shall be treated as an illicit recording for the purposes of that dealing; and
  - (b) if that dealing infringes any right conferred by Part 2, it shall be treated as an illicit recording for all subsequent purposes.
- (3) In sub-paragraph (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.
- (4) Expressions used in this paragraph have the same meaning as in section 70.

VALID FROM 31/10/2003

### *[<sup>F11</sup>Photographs of broadcasts]*

#### Textual Amendments

- F11** Sch. 2 para. 17B and preceding heading inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), **reg. 20(2)** (with regs. 31-40)

- 17B (1) The making in domestic premises for private and domestic use of a photograph of the whole or any part of an image forming part of a broadcast, or a copy of such a photograph, does not infringe any right conferred by Part 2 in relation to a performance or recording included in the broadcast.



*Status: Point in time view as at 01/04/1998.*

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- (2) Where a recording which would otherwise be an illicit recording is made in accordance with this paragraph but is subsequently dealt with—
  - (a) it shall be treated as an illicit recording for the purposes of that dealing; and
  - (b) if that dealing infringes any right conferred by Part 2, it shall be treated as an illicit recording for all subsequent purposes.
- (3) In sub-paragraph (2), “dealt with” means sold or let for hire, offered or exposed for sale or hire or communicated to the public.
- (4) Expressions used in this paragraph have the same meaning as in section 71.

*Free public showing or playing of broadcast or cable programme*

- 18 (1) The showing or playing in public of a broadcast or cable programme to an audience who have not paid for admission to the place where the broadcast or programme is to be seen or heard does not infringe any right conferred by Part II in relation to a performance or recording included in—
  - (a) the broadcast or cable programme, or
  - (b) any sound recording or film which is played or shown in public by reception of the broadcast or cable programme.
- (2) The audience shall be treated as having paid for admission to a place—
  - (a) if they have paid for admission to a place of which that place forms part; or
  - (b) if goods or services are supplied at that place (or a place of which it forms part)—
    - (i) at prices which are substantially attributable to the facilities afforded for seeing or hearing the broadcast or programme, or
    - (ii) at prices exceeding those usually charged there and which are partly attributable to those facilities.
- (3) The following shall not be regarded as having paid for admission to a place—
  - (a) persons admitted as residents or inmates of the place;
  - (b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing broadcasts or programmes is only incidental to the main purposes of the club or society.
- (4) Where the making of the broadcast or inclusion of the programme in a cable programme service was an infringement of the rights conferred by Part II in relation to a performance or recording, the fact that it was heard or seen in public by the reception of the broadcast or programme shall be taken into account in assessing the damages for that infringement.
- (5) Expressions used in this paragraph have the same meaning as in section 72.

*Status: Point in time view as at 01/04/1998.*

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*[<sup>F12</sup>Reception and re-transmission of broadcast in cable programme service]*

**Textual Amendments**

**F12** Crossheading substituted (1.10.1996) by 1996 c. 55, s. 138, **Sch. 9 para. 5** (with s. 43(6)); S.I. 1996/2120, art. 4(1), **Sch. 1**

- [<sup>F13</sup>19 (1) This paragraph applies where a broadcast made from a place in the United Kingdom is, by reception and immediate re-transmission, included in a cable programme service.
- (2) The rights conferred by Part II in relation to a performance or recording included in the broadcast are not infringed if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided; but where the making of the broadcast was an infringement of those rights, the fact that the broadcast was re-transmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.
- (3) Where—
- (a) the inclusion is in pursuance of a relevant requirement, but
  - (b) to any extent, the area in which the cable programme service is provided (“the cable area”) falls outside the area for reception in which the broadcast is made (“the broadcast area”),
- the inclusion in the cable programme service (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any performance or recording included in the broadcast shall, subject to sub-paragraph (4), be treated as licensed by the owner of the rights conferred by Part II in relation to the performance or recording, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the inclusion of the broadcast in the cable programme service as may be agreed or determined in default of agreement by the Copyright Tribunal.
- (4) Sub-paragraph (3) does not apply if, or to the extent that, the inclusion of the work in the cable programme service is (apart from that sub-paragraph) licensed by the owner of the rights conferred by Part II in relation to the performance or recording.
- (5) The Secretary of State may by order—
- (a) provide that in specified cases sub-paragraph (2) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that sub-paragraph, or
  - (b) exclude the application of that sub-paragraph in relation to broadcasts of a specified description made as mentioned in that sub-paragraph.
- (6) Where the Secretary of State exercises the power conferred by sub-paragraph (5)
- (b) in relation to broadcasts of any description, the order may also provide for sub-paragraph (3) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description.
- (7) An order under this paragraph may contain such transitional provision as appears to the Secretary of State to be appropriate.

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- (8) An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Expressions used in this paragraph have the same meaning as in section 73.]

#### Textual Amendments

**F13** Sch. 2 para. 19 substituted (1.10.1996) by 1996 c. 55, s. 138, Sch. 9 para. 5 (with s. 43(6)); S.I. 1996/2120, art. 4(1), Sch. 1

- [<sup>F14</sup>19A(1) An application to settle the royalty or other sum payable in pursuance of sub-paragraph (3) of paragraph 19 may be made to the Copyright Tribunal by the owner of the rights conferred by Part II or the person making the broadcast.
- (2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
  - (3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
  - (4) An application under sub-paragraph (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that sub-paragraph.
  - (5) An order under sub-paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.]

#### Textual Amendments

**F14** Sch. 2 para. 19A inserted (1.10.1996) by 1996 c. 55, s. 138, Sch. 9 para. 6 (with s. 43(6)); S.I. 1996/2120, art. 4(1), Sch. 1

#### *Provision of sub-titled copies of broadcast or cable programme*

- 20 (1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, with copies which are sub-titled or otherwise modified for their special needs, make recordings of television broadcasts or cable programmes without infringing any right conferred by Part II in relation to a performance or recording included in the broadcast or cable programme.
- (2) In this paragraph “designated body” means a body designated for the purposes of section 74 and other expressions used in this paragraph have the same meaning as in that section.

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### *Recording of broadcast or cable programme for archival purposes*

- 21 (1) A recording of a broadcast or cable programme of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any right conferred by Part II in relation to a performance or recording included in the broadcast or cable programme.
- (2) In this paragraph “designated class” and “designated body” means a class or body designated for the purposes of section 75 and other expressions used in this paragraph have the same meaning as in that section.

[<sup>F15</sup>SCHEDULE 2A U.K.]

## LICENSING OF PERFORMERS' PROPERTY RIGHTS

### **Textual Amendments**

**F15** Sch. 2A inserted (1.12.1996) by [S.I. 1996/2967](#), [reg. 22\(2\)](#) (with [Pt. III](#))

### *Licensing schemes and licensing bodies*

- 1 (1) In Part II a “licensing scheme” means a scheme setting out—
- (a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant performers’ property right licences, and
  - (b) the terms on which licences would be granted in those classes of case;
- and for this purpose a “scheme” includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.
- (2) In Part II a “licensing body” means a society or other organisation which has as its main object, or one of its main objects, the negotiating or granting, whether as owner or prospective owner of a performer’s property rights or as agent for him, of performers’ property right licences, and whose objects include the granting of licences covering the performances of more than one performer.
- (3) In this paragraph “performers’ property right licences” means licences to do, or authorise the doing of, any of the things for which consent is required under section 182A, 182B or 182C.
- (4) References in this Part to licences or licensing schemes covering the performances of more than one performer do not include licences or schemes covering only—
- (a) performances recorded in a single recording,
  - (b) performances recorded in more than one recording where—
    - (i) the performers giving the performances are the same, or
    - (ii) the recordings are made by, or by employees of or commissioned by, a single individual, firm, company or group of companies. For

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purpose a group of companies means a holding company and its subsidiaries within the meaning of section 736 of the Companies Act 1985.

*References and applications with respect to licensing schemes*

- 2 Paragraphs 3 to 8 (references and applications with respect to licensing schemes) apply to licensing schemes operated by licensing bodies in relation to a performer's property rights which cover the performances of more than one performer, so far as they relate to licences for—
- (a) copying a recording of the whole or any substantial part of a qualifying performance, or
  - (b) renting or lending copies of a recording to the public;
- and in those paragraphs "licensing scheme" means a licensing scheme of any of those descriptions.

*Reference of proposed licensing scheme to tribunal*

- 3 (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Copyright Tribunal by an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.
- (2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.
- (3) If the Tribunal decides to entertain the reference it shall consider the matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

*Reference of licensing scheme to tribunal*

- 4 (1) If while a licensing scheme is in operation a dispute arises between the operator of the scheme and—
- (a) a person claiming that he requires a licence in a case of a description to which the scheme applies, or
  - (b) an organisation claiming to be representative of such persons,
- that person or organisation may refer the scheme to the Copyright Tribunal in so far as it relates to cases of that description.
- (2) A scheme which has been referred to the Tribunal under this paragraph shall remain in operation until proceedings on the reference are concluded.
- (3) The Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

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- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

*Further reference of scheme to tribunal*

- 5 (1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under paragraph 3 or 4, or under this paragraph, made an order with respect to the scheme, then, while the order remains in force—
- (a) the operator of the scheme,
  - (b) a person claiming that he requires a licence in a case of the description to which the order applies, or
  - (c) an organisation claiming to be representative of such persons,
- may refer the scheme again to the Tribunal so far as it relates to cases of that description.
- (2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases—
- (a) within twelve months from the date of the order on the previous reference, or
  - (b) if the order was made so as to be in force for 15 months or less, until the last three months before the expiry of the order.
- (3) A scheme which has been referred to the Tribunal under this paragraph shall remain in operation until proceedings on the reference are concluded.
- (4) The Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

*Application for grant of licence in connection with licensing scheme*

- 6 (1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Copyright Tribunal.
- (2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either—
- (a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted, or
  - (b) proposes terms for a licence which are unreasonable,
- may apply to the Copyright Tribunal.
- (3) A case shall be regarded as excluded from a licensing scheme for the purposes of sub-paragraph (2) if—
- (a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception, or

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- (b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.
- (4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

*Application for review of order as to entitlement to licence*

- 7 (1) Where the Copyright Tribunal has made an order under paragraph 6 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Tribunal to review its order.
- (2) An application shall not be made, except with the special leave of the Tribunal—
  - (a) within twelve months from the date of the order, or of the decision on a previous application under this paragraph, or
  - (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this paragraph is due to expire within 15 months of that decision, until the last three months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

*Effect of order of tribunal as to licensing scheme*

- 8 (1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal—
  - (a) under paragraph 3 (reference of terms of proposed scheme), or
  - (b) under paragraph 4 or 5 (reference of existing scheme to Tribunal),shall be in force or, as the case may be, remain in operation, so far as it relates to the description of case in respect of which the order was made, so long as the order remains in force.
- (2) While the order is in force a person who in a case of a class to which the order applies—
  - (a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained, and
  - (b) complies with the other terms applicable to such a licence under the scheme,shall be in the same position as regards infringement of performers’ property rights as if he had at all material times been the holder of a licence granted by the rights owner in question in accordance with the scheme.
- (3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than

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the date on which the reference was made or, if later, on which the scheme came into operation.

If such a direction is made—

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and
  - (b) the reference in sub-paragraph (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order. No such direction may be made where sub-paragraph (4) below applies.
- (4) An order of the Tribunal under paragraph 4 or 5 made with respect to a scheme which is certified for any purpose under paragraph 16 has effect, so far as it varies the scheme by reducing the charges payable for licences, from the date on which the reference was made to the Tribunal.
- (5) Where the Tribunal has made an order under paragraph 6 (order as to entitlement to licence under licensing scheme) and the order remains in force, the person in whose favour the order is made shall if he—
- (a) pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and
  - (b) complies with the other terms specified in the order,
- be in the same position as regards infringement of performers' property rights as if he had at all material times been the holder of a licence granted by the rights owner in question on the terms specified in the order.

*References and applications with respect to licensing by licensing bodies*

- 9 Paragraphs 10 to 13 (references and applications with respect to licensing by licensing bodies) apply to licences relating to a performer's property rights which cover the performance of more than one performer granted by a licensing body otherwise than in pursuance of a licensing scheme, so far as the licences authorise—
- (a) copying a recording of the whole or any substantial part of a qualifying performance, or
  - (b) renting or lending copies of a recording to the public;
- and references in those paragraphs to a licence shall be construed accordingly.

*Reference to tribunal of proposed licence*

- 10 (1) The terms on which a licensing body proposes to grant a licence may be referred to the Copyright Tribunal by the prospective licensee.
- (2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.
- (3) If the Tribunal decides to entertain the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms as it may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.



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*Reference to tribunal of expiring licence*

- 11 (1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Copyright Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.
- (2) Such an application may not be made until the last three months before the licence is due to expire.
- (3) A licence in respect of which a reference has been made to the Tribunal shall remain in operation until proceedings on the reference are concluded.
- (4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.
- (5) An order of the Tribunal under this paragraph may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

*Application for review of order as to licence*

- 12 (1) Where the Copyright Tribunal has made an order under paragraph 10 or 11, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.
- (2) An application shall not be made, except with the special leave of the Tribunal—
- (a) within twelve months from the date of the order or of the decision on a previous application under this paragraph, or
- (b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this paragraph is due to expire within 15 months of that decision, until the last three months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

*Effect of order of tribunal as to licence*

- 13 (1) Where the Copyright Tribunal has made an order under paragraph 10 or 11 and the order remains in force, the person entitled to the benefit of the order shall if he—
- (a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained, and
- (b) complies with the other terms specified in the order,
- be in the same position as regards infringement of performers’ property rights as if he had at all material times been the holder of a licence granted by the rights owner in question on the terms specified in the order.
- (2) The benefit of the order may be assigned—
- (a) in the case of an order under paragraph 10, if assignment is not prohibited under the terms of the Tribunal’s order; and
- (b) in the case of an order under paragraph 11, if assignment was not prohibited under the terms of the original licence.

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- (3) The Tribunal may direct that an order under paragraph 10 or 11, or an order under paragraph 12 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.

If such a direction is made—

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid, and
- (b) the reference in sub-paragraph (1)(a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

*General considerations: unreasonable discrimination*

- 14 (1) In determining what is reasonable on a reference or application under this Schedule relating to a licensing scheme or licence, the Copyright Tribunal shall have regard to—

- (a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and
- (b) the terms of those schemes or licences,

and shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

- (2) This does not affect the Tribunal's general obligation in any case to have regard to all relevant circumstances.

*Application to settle royalty or other sum payable for lending*

- 15 (1) An application to settle the royalty or other sum payable in pursuance of paragraph 14A of Schedule 2 (lending of certain recordings) may be made to the Copyright Tribunal by the owner of a performer's property rights or the person claiming to be treated as licensed by him.

- (2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

- (3) Either party may subsequently apply to the Tribunal to vary the order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.

- (4) An application under sub-paragraph (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that sub-paragraph.

- (5) An order under sub-paragraph (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

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### *Certification of licensing schemes*

- 16 (1) A person operating or proposing to operate a licensing scheme may apply to the Secretary of State to certify the scheme for the purposes of paragraph 14A of Schedule 2 (lending of certain recordings).
- (2) The Secretary of State shall by order made by statutory instrument certify the scheme if he is satisfied that it—
- (a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences, and
  - (b) sets out clearly the charges (if any) payable and the other terms on which licences will be granted.
- (3) The scheme shall be scheduled to the order and the certification shall come into operation for the purposes of paragraph 14A of Schedule 2—
- (a) on such date, not less than eight weeks after the order is made, as may be specified in the order, or
  - (b) if the scheme is the subject of a reference under paragraph 3 (reference of proposed scheme), any later date on which the order of the Copyright Tribunal under that paragraph comes into force or the reference is withdrawn.
- (4) A variation of the scheme is not effective unless a corresponding amendment of the order is made; and the Secretary of State shall make such an amendment in the case of a variation ordered by the Copyright Tribunal on a reference under paragraph 3, 4 or 5, and may do so in any other case if he thinks fit.
- (5) The order shall be revoked if the scheme ceases to be operated and may be revoked if it appears to the Secretary of State that it is no longer being operated according to its terms.

### *Powers exercisable in consequence of competition report*

- 17 (1) Where the matters specified in a report of the Monopolies and Mergers Commission as being those which in the Commission's opinion operate, may be expected to operate or have operated against the public interest include—
- (a) conditions in licences granted by the owner of a performer's property rights restricting the use to which a recording may be put by the licensee or the right of the owner to grant other licences, or
  - (b) a refusal of an owner of a performer's property rights to grant licences on reasonable terms,

the powers conferred by Part I of Schedule 8 to the Fair Trading Act 1973 (powers exercisable for purpose of remedying or preventing adverse effects specified in report of Commission) include power to cancel or modify those conditions and, instead or in addition, to provide that licences in respect of the performer's property rights shall be available as of right.

- (2) The references in sections 56(2) and 73(2) of that Act, and sections 10(2)(b) and 12(5) of the Competition Act 1980, to the powers specified in that Part of that Schedule shall be construed accordingly.

*Status: Point in time view as at 01/04/1998.*

*Changes to legislation: Copyright, Designs and Patents Act 1988 is up to date with all changes known to be in force on or before 31 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) A Minister shall only exercise the powers available by virtue of this paragraph if he is satisfied that to do so does not contravene any Convention relating to performers' rights to which the United Kingdom is a party.
- (4) The terms of a licence available by virtue of this paragraph shall, in default of agreement, be settled by the Copyright Tribunal on an application by the person requiring the licence; and terms so settled shall authorise the licensee to do everything in respect of which a licence is so available.
- (5) Where the terms of a licence are settled by the Tribunal, the licence has effect from the date on which the application to the Tribunal was made.

SCHEDULE 3 U.K.

Section 272.

REGISTERED DESIGNS: MINOR AND CONSEQUENTIAL AMENDMENTS OF 1949 ACT

**Modifications etc. (not altering text)**

**C12** Sch. 3 extended (with modifications) (Isle of Man) (9.12.2001) by [S.I. 2001/3678](#), [art. 3](#), [Sch. 3](#)

*Section 3: proceedings for registration*

1 In section 3 of the <sup>M10</sup>Registered Designs Act 1949 (proceedings for registration) for subsections (2) to (6) substitute—

- “(2) An application for the registration of a design in which design right subsists shall not be entertained unless made by the person claiming to be the design right owner.
- (3) For the purpose of deciding whether a design is new, the registrar may make such searches, if any, as he thinks fit.
- (4) The registrar may, in such cases as may be prescribed, direct that for the purpose of deciding whether a design is new an application shall be treated as made on a date earlier or later than that on which it was in fact made.
- (5) The registrar may refuse an application for the registration of a design or may register the design in pursuance of the application subject to such modifications, if any, as he thinks fit; and a design when registered shall be registered as of the date on which the application was made or is treated as having been made.
- (6) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within such time as may be prescribed shall be deemed to be abandoned.
- (7) An appeal lies from any decision of the registrar under this section.”

*Status: Point in time view as at 01/04/1998.*

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**Marginal Citations**

**M10** 1949 c. 88.

*Section 4: registration of same design in respect of other articles, etc.*

- 2 In section 4 of the <sup>M10</sup>Registered Designs Act 1949 (registration of same design in respect of other articles, etc.), in subsection (1), for the proviso substitute—

“Provided that the right in a design registered by virtue of this section shall not extend beyond the end of the period, and any extended period, for which the right subsists in the original registered design.”.

**Marginal Citations**

**M11** 1949 c. 88.

*Section 5: provisions for secrecy of certain designs*

- 3 (1) Section 5 of the Registered Designs Act 1949 is amended as follows.
- (2) For “a competent authority” or “the competent authority”, wherever occurring, substitute “the Secretary of State”; and in subsection (3)(c) for “that authority” substitute “he”.
- (3) For subsection (2) substitute—
- “(2) The Secretary of State shall by rules make provision for securing that where such directions are given—
- (a) the representation or specimen of the design, and
- (b) any evidence filed in support of the applicant’s contention that the appearance of an article is material (for the purposes of section 1(3) of this Act),
- shall not be open to public inspection at the Patent Office during the continuance in force of the directions.”
- (4) In subsection (3)(b) after “representation or specimen of the design” insert “, or any such evidence as is mentioned in subsection (2)(b) above,”.
- (5) Omit subsection (5).

*Section 6: provisions as to confidential disclosure, etc.*

- 4 (1) Section 6 of the Registered Designs Act 1949 (provisions as to confidential disclosure, etc.) is amended as follows.
- (2) In subsection (2) (display of design at certified exhibition), in paragraph (a) for “certified by the Board of Trade” substitute “certified by the Secretary of State”.

*Status: Point in time view as at 01/04/1998.*

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(3) For subsections (4) and (5) (registration of designs corresponding to copyright artistic works) substitute—

“(4) Where an application is made by or with the consent of the owner of copyright in an artistic work for the registration of a corresponding design, the design shall not be treated for the purposes of this Act as being other than new by reason only of any use previously made of the artistic work, subject to subsection (5).

(5) Subsection (4) does not apply if the previous use consisted of or included the sale, letting for hire or offer or exposure for sale or hire of articles to which had been applied industrially—

(a) the design in question, or

(b) a design differing from it only in immaterial details or in features which are variants commonly used in the trade,

and that previous use was made by or with the consent of the copyright owner.

(6) The Secretary of State may make provision by rules as to the circumstances in which a design is to be regarded for the purposes of this section as “applied industrially” to articles, or any description of articles.”

*Section 9: exemption of innocent infringer from liability for damages*

5 In section 9 of the <sup>M12</sup>Registered Designs Act 1949 (exemption of innocent infringer from liability for damages), in subsections (1) and (2) for “copyright in a registered design” substitute “the right in a registered design”.

**Marginal Citations**

**M12** 1949 c. 88.

*Section 11: cancellation of registration*

6 (1) Section 11 of the Registered Designs Act 1949 (cancellation of registration) is amended as follows.

(2) In subsection (2) omit “or original”.

(3) For subsections (2A) and (3) substitute—

“(3) At any time after a design has been registered, any person interested may apply to the registrar for the cancellation of the registration on the ground that—

(a) the design was at the time it was registered a corresponding design in relation to an artistic work in which copyright subsisted, and

(b) the right in the registered design has expired in accordance with section 8(4) of this Act (expiry of right in registered design on expiry of copyright in artistic work);

and the registrar may make such order on the application as he thinks fit.

*Status: Point in time view as at 01/04/1998.*

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- (4) A cancellation under this section takes effect—
- (a) in the case of cancellation under subsection (1), from the date of the registrar’s decision,
  - (b) in the case of cancellation under subsection (2), from the date of registration,
  - (c) in the case of cancellation under subsection (3), from the date on which the right in the registered design expired,
- or, in any case, from such other date as the registrar may direct.
- (5) An appeal lies from any order of the registrar under this section.”.

*Section 14: registration where application has been made in convention country*

7 In section 14 of the Registered Designs Act 1949 (registration where application has been made in convention country), for subsections (2) and (3) substitute—

“(2) Where an application for registration of a design is made by virtue of this section, the application shall be treated, for the purpose of determining whether that or any other design is new, as made on the date of the application for protection in the convention country or, if more than one such application was made, on the date of the first such application.

(3) Subsection (2) shall not be construed as excluding the power to give directions under section 3(4) of this Act in relation to an application made by virtue of this section.”.

*Section 15: extension of time for application under s.14 in certain cases*

8 In section 15(1) of the <sup>M13</sup>Registered Designs Act 1949 (power to make rules empowering registrar to extend time for applications under s.14) for “the Board of Trade are satisfied” substitute “ the Secretary of State is satisfied ” and for “they” substitute “ he ”.

**Marginal Citations**

**M13** 1949 c. 88.

*Section 16: protection of designs communicated under international agreements*

9 In section 16 of the Registered Designs Act 1949 (protection of designs communicated under international agreements)—

- (a) in subsection (1) for “the Board of Trade” substitute “the Secretary of State”, and
- (b) in subsection (3) for “the Board of Trade” substitute “the Secretary of State” and for “the Board are satisfied” substitute “the Secretary of State is satisfied”.

*Status: Point in time view as at 01/04/1998.*

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*Section 19: registration of assignments, &c.*

- 10 In section 19 of the Registered Designs Act 1949 (registration of assignments, &c.), after subsection (3) insert—

“(3A) Where design right subsists in a registered design, the registrar shall not register an interest under subsection (3) unless he is satisfied that the person entitled to that interest is also entitled to a corresponding interest in the design right.

(3B) Where design right subsists in a registered design and the proprietor of the registered design is also the design right owner, an assignment of the design right shall be taken to be also an assignment of the right in the registered design, unless a contrary intention appears.”.

*Section 20: rectification of the register*

- 11 In section 20 of the Registered Designs Act 1949 (rectification of the register), after subsection (4) add—

“(5) A rectification of the register under this section has effect as follows—

- (a) an entry made has effect from the date on which it should have been made,
  - (b) an entry varied has effect as if it had originally been made in its varied form, and
  - (c) an entry deleted shall be deemed never to have had effect,
- unless, in any case, the court directs otherwise.”.

*Section 22: inspection of registered designs*

- 12 (1) Section 22 of the Registered Designs Act 1949 (inspection of registered designs) is amended as follows.

- (2) For subsection (1) substitute—

“(1) Where a design has been registered under this Act, there shall be open to inspection at the Patent Office on and after the day on which the certificate of registration is issued—

- (a) the representation or specimen of the design, and
- (b) any evidence filed in support of the applicant’s contention that the appearance of an article is material (for the purposes of section 1(3) of this Act).

This subsection has effect subject to the following provisions of this section and to any rules made under section 5(2) of this Act.”.

- (3) In subsection (2), subsection (3) (twice) and subsection (4) for “representation or specimen of the design” substitute “representation, specimen or evidence”.

*Section 23: information as to existence of right in registered design*

- 13 For section 23 of the <sup>M14</sup>Registered Designs Act 1949 (information as to existence of right in registered design) substitute—



*Status: Point in time view as at 01/04/1998.*

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### “23 Information as to existence of right in registered design.

On the request of a person furnishing such information as may enable the registrar to identify the design, and on payment of the prescribed fee, the registrar shall inform him—

- (a) whether the design is registered and, if so, in respect of what articles, and
- (b) whether any extension of the period of the right in the registered design has been granted,

and shall state the date of registration and the name and address of the registered proprietor.”

#### Marginal Citations

M14 1949 c. 88.

#### *Section 25: certificate of contested validity of registration*

- 14 In section 25 of the Registered Designs Act 1949 (certificate of contested validity of registration), in subsection (2) for “the copyright in the registered design” substitute “ the right in the registered design ”.

#### *Section 26: remedy for groundless threats of infringement proceedings*

- 15 (1) Section 26 of the Registered Designs Act 1949 (remedy for groundless threats of infringement proceedings) is amended as follows.
- (2) In subsections (1) and (2) for “the copyright in a registered design” substitute “ the right in a registered design ”.
- (3) After subsection (2) insert—
- “(2A) Proceedings may not be brought under this section in respect of a threat to bring proceedings for an infringement alleged to consist of the making or importing of anything.”.

#### *Section 27: the court*

- 16 For section 27 of the Registered Designs Act 1949 (the court) substitute—

### “27 The court.

- (1) In this Act “the court” means—
- (a) in England and Wales the High Court or any patents county court having jurisdiction by virtue of an order under section 287 of the Copyright, Designs and Patents Act 1988,
  - (b) in Scotland, the Court of Session, and
  - (c) in Northern Ireland, the High Court.
- (2) Provision may be made by rules of court with respect to proceedings in the High Court in England and Wales for references and applications under this

*Status: Point in time view as at 01/04/1998.*

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Act to be dealt with by such judge of that court as the Lord Chancellor may select for the purpose.”.

*Section 28: the Appeal Tribunal*

- 17 (1) Section 28 of the Registered Designs Act 1949 (the Appeal Tribunal) is amended as follows.
- (2) For subsection (2) (members of Tribunal) substitute—
- “(2) The Appeal Tribunal shall consist of—
- (a) one or more judges of the High Court nominated by the Lord Chancellor, and
- (b) one judge of the Court of Session nominated by the Lord President of that Court.”.
- (3) In subsection (5) (costs), after “costs” (twice) insert “ or expenses ”, and for the words from “and any such order” to the end substitute—
- “and any such order may be enforced—
- (a) in England and Wales or Northern Ireland, in the same way as an order of the High Court;
- (b) in Scotland, in the same way as a decree for expenses granted by the Court of Session.”.
- (4) For subsection (10) (seniority of judges) substitute—
- “(10) In this section “the High Court” means the High Court in England and Wales; and for the purposes of this section the seniority of judges shall be reckoned by reference to the dates on which they were appointed judges of that court or the Court of Session.”.
- (5) The amendments to section 28 made by section 10(5) of the <sup>M15</sup>Administration of Justice Act 1970 (power to make rules as to right of audience) shall be deemed always to have extended to Northern Ireland.

**Marginal Citations**

**M15** 1970 c. 31.

*Section 29: exercise of discretionary powers of registrar*

- 18 In section 29 of the <sup>M16</sup>Registered Designs Act 1949 (exercise of discretionary powers of registrar) for “the registrar shall give” substitute “ rules made by the Secretary of State under this Act shall require the registrar to give ”.

**Marginal Citations**

**M16** 1949 c. 88.

*Status: Point in time view as at 01/04/1998.*

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*Section 30: costs and security for costs*

19 For section 30 of the Registered Designs Act 1949 (costs and security for costs) substitute—

**“30 Costs and security for costs.**

- (1) Rules made by the Secretary of State under this Act may make provision empowering the registrar, in any proceedings before him under this Act—
  - (a) to award any party such costs as he may consider reasonable, and
  - (b) to direct how and by what parties they are to be paid.
- (2) Any such order of the registrar may be enforced—
  - (a) in England and Wales or Northern Ireland, in the same way as an order of the High Court;
  - (b) in Scotland, in the same way as a decree for expenses granted by the Court of Session.
- (3) Rules made by the Secretary of State under this Act may make provision empowering the registrar to require a person, in such cases as may be prescribed, to give security for the costs of—
  - (a) an application for cancellation of the registration of a design,
  - (b) an application for the grant of a licence in respect of a registered design, or
  - (c) an appeal from any decision of the registrar under this Act,and enabling the application or appeal to be treated as abandoned in default of such security being given.”.

*Section 31: evidence before registrar*

20 For section 31 of the <sup>M17</sup>Registered Designs Act 1949 (evidence before registrar) substitute—

**“31 Evidence before registrar.**

- Rules made by the Secretary of State under this Act may make provision—
- (a) as to the giving of evidence in proceedings before the registrar under this Act by affidavit or statutory declaration;
  - (b) conferring on the registrar the powers of an official referee of the Supreme Court as regards the examination of witnesses on oath and the discovery and production of documents; and
  - (c) applying in relation to the attendance of witnesses in proceedings before the registrar the rules applicable to the attendance of witnesses in proceedings before such a referee.”.

**Marginal Citations**

M17 1949 c. 88.

*Status: Point in time view as at 01/04/1998.*

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*Section 32: power of registrar to refuse to deal with certain agents*

- 21 Section 32 of the Registered Designs Act 1949 (power of registrar to refuse to deal with certain agents) is repealed.

*Section 33: offences under s.5 (secrecy of certain designs)*

- 22 (1) Section 33 of the Registered Designs Act 1949 (offences under s.5 (secrecy of certain designs)) is amended as follows.
- (2) In subsection (1), for paragraphs (a) and (b) substitute—
- “(a) on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both;
- (b) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both.”.
- (3) Omit subsection (2).
- (4) The above amendments do not apply in relation to offences committed before the commencement of Part IV.

*Section 34: falsification of register, &c.*

- 23 (1) In section 34 of the Registered Designs Act 1949 (falsification of register, &c.) for “shall be guilty of a misdemeanour” substitute—
- “shall be guilty of an offence and liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both;
- (b) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both.”.
- (2) The above amendment does not apply in relation to offences committed before the commencement of Part IV.

*Section 35: fine for falsely representing a design as registered*

- 24 (1) Section 35 of the <sup>M18</sup>Registered Designs Act 1949 (fine for falsely representing a design as registered) is amended as follows.
- (2) In subsection (1) for the words from “a fine not exceeding £50” substitute “a fine not exceeding level 3 on the standard scale”.
- (3) In subsection (2)—
- (a) for “the copyright in a registered design” substitute “the right in a registered design”;
- (b) for “subsisting copyright in the design” substitute “subsisting right in the design under this Act”; and
- (c) for the words from “a fine” to the end substitute “a fine not exceeding level 1 on the standard scale”.
- (4) The amendment in sub-paragraph (2) does not apply in relation to offences committed before the commencement of Part IV.

*Status: Point in time view as at 01/04/1998.*

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#### Marginal Citations

M18 1949 c. 88.

#### *Section 35A: offence by body corporate - liability of officers*

25 (1) In the Registered Designs Act 1949 after section 35 insert—

#### **“35A Offence by body corporate: liability of officers.**

- (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
  - (2) In relation to a body corporate whose affairs are managed by its members “director” means a member of the body corporate.”.
- (2) The above amendment does not apply in relation to offences committed before the commencement of Part IV.

#### *Section 36: general power to make rules, &c.*

26 (1) Section 36 of the Registered Designs Act 1949 (general power to make rules, &c.) is amended as follows.

- (2) In subsection (1) for “the Board of Trade” and “the Board” substitute “ the Secretary of State ”, and for “as they think expedient” substitute “ as he thinks expedient ”.
- (3) For the words in subsection (1) from “and in particular” to the end substitute the following subsections—

“(1A) Rules may, in particular, make provision—

- (a) prescribing the form of applications for registration of designs and of any representations or specimens of designs or other documents which may be filed at the Patent Office, and requiring copies to be furnished of any such representations, specimens or documents;
  - (b) regulating the procedure to be followed in connection with any application or request to the registrar or in connection with any proceeding before him, and authorising the rectification of irregularities of procedure;
  - (c) providing for the appointment of advisers to assist the registrar in proceedings before him;
  - (d) regulating the keeping of the register of designs;
  - (e) authorising the publication and sale of copies of representations of designs and other documents in the Patent Office;
  - (f) prescribing anything authorised or required by this Act to be prescribed by rules.
- (1B) The remuneration of an adviser appointed to assist the registrar shall be determined by the Secretary of State with the consent of the Treasury and shall be defrayed out of money provided by Parliament.”.

*Status: Point in time view as at 01/04/1998.*

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*Section 37: provisions as to rules and Orders*

- 27 (1) Section 37 of the <sup>M19</sup>Registered Designs Act 1949 (provisions as to rules and orders) is amended as follows.
- (2) Omit subsection (1) (duty to advertise making of rules).
- (3) In subsections (2), (3) and (4) for “the Board of Trade” substitute “ the Secretary of State ”.

**Marginal Citations**

**M19** 1949 c. 88.

*Section 38: proceedings of the Board of Trade*

- 28 Section 38 of the Registered Designs Act 1949 (proceedings of the Board of Trade) is repealed.

*Section 39: hours of business and excluded days*

- 29 In section 39 of the Registered Designs Act 1949 (hours of business and excluded days), in subsection (1) for “the Board of Trade” substitute “ the Secretary of State ”.

*Section 40: fees*

- 30 In section 40 of the Registered Designs Act 1949 (fees) for “the Board of Trade” substitute “ the Secretary of State ”.

*Section 44: interpretation*

- 31 (1) In section 44 of the Registered Designs Act 1949 (interpretation), subsection (1) is amended as follows.
- (2) In the definition of “artistic work” for “the Copyright Act 1956” substitute “Part I of the Copyright, Designs and Patents Act 1988”.
- (3) At the appropriate place insert—
- ““author” in relation to a design, has the meaning given by section 2(3) and (4);”.
- (4) Omit the definition of “copyright”.
- (5) In the definition of “corresponding design”, for the words from “has the same meaning” to the end substitute “, in relation to an artistic work, means a design which if applied to an article would produce something which would be treated for the purposes of Part I of the Copyright, Designs and Patents Act 1988 as a copy of that work;”.
- (6) For the definition of “court” substitute—
- ““the court” shall be construed in accordance with section 27 of this Act;”.

*Status: Point in time view as at 01/04/1998.*

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- (7) In the definition of “design” for “subsection (3) of section one of this Act” substitute “section 1(1) of this Act”.
- (8) At the appropriate place insert—

““employee”, “employment” and “employer” refer to employment under a contract of service or of apprenticeship.”.
- (9) Omit the definition of “Journal”.
- (10) In the definition of “prescribed” for “the Board of Trade” substitute “the Secretary of State”.

*Section 45: application to Scotland*

- 32 In section 45 of the <sup>M20</sup>Registered Designs Act 1949 (application to Scotland), omit paragraphs (1) and (2).

**Marginal Citations**

**M20** 1949 c. 88.

*Section 46: application to Northern Ireland*

- 33 (1) Section 46 of the Registered Designs Act 1949 (application to Northern Ireland) is amended as follows.
- (2) Omit paragraphs (1) and (2).
  - (3) For paragraph (3) substitute—

“(3) References to enactments include enactments comprised in Northern Ireland legislation.”.
  - (4) After paragraph (3) insert—

“(3A) References to the Crown include the Crown in right of Her Majesty’s Government in Northern Ireland.”.
  - (5) In paragraph (4) for “a department of the Government of Northern Ireland” substitute “a Northern Ireland department”, and at the end add “and in relation to a Northern Ireland department references to the Treasury shall be construed as references to the Department of Finance and Personnel”.

*Section 47: application to Isle of Man*

- 34 For section 47 of the Registered Designs Act 1949 (application to Isle of Man) substitute—

**“47 Application to Isle of Man.**

This Act extends to the Isle of Man, subject to any modifications contained in an Order made by Her Majesty in Council, and accordingly, subject to any

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such Order, references in this Act to the United Kingdom shall be construed as including the Isle of Man.”.

*Section 47A: territorial waters and the continental shelf*

35 In the Registered Designs Act 1949, after section 47 insert—

**“47A Territorial waters and the continental shelf.**

- (1) For the purposes of this Act the territorial waters of the United Kingdom shall be treated as part of the United Kingdom.
- (2) This Act applies to things done in the United Kingdom sector of the continental shelf on a structure or vessel which is present there for purposes directly connected with the exploration of the sea bed or subsoil or the exploitation of their natural resources as it applies to things done in the United Kingdom.
- (3) The United Kingdom sector of the continental shelf means the areas designated by order under section 1(7) of the Continental Shelf Act 1964.”.

*Section 48: repeals, savings and transitional provisions*

36 In section 48 of the Registered Designs Act 1949 (repeals, savings and transitional provisions), omit subsection (1) (repeals).

*Schedule 1: provisions as to Crown use of registered designs*

- 37 (1) The First Schedule to the <sup>M21</sup>Registered Designs Act 1949 (provisions as to Crown use of registered designs) is amended as follows.
- (2) In paragraph 2(1) after “copyright” insert “ or design right ”.
  - (3) In paragraph 3(1) omit “in such manner as may be prescribed by rules of court”.
  - (4) In paragraph 4(2) (definition of “period of emergency”) for the words from “the period ending” to “any other period” substitute “ a period ”.
  - (5) For paragraph 4(3) substitute—

“(3) No Order in Council under this paragraph shall be submitted to Her Majesty unless a draft of it has been laid before and approved by a resolution of each House of Parliament.”.

**Marginal Citations**

M21 1949 c. 88.

*Schedule 2: enactments repealed*

38 Schedule 2 to the Registered Designs Act 1949 (enactments repealed) is repealed.



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## SCHEDULE 4 **U.K.**

Section 273.

### THE REGISTERED DESIGNS ACT 1949 AS AMENDED ARRANGEMENT OF SECTIONS

#### **Modifications etc. (not altering text)**

**C13** Sch. 4 extended (with modifications) (Isle of Man) (9.12.2001) by [S.I. 2001/3678](#), art. 3, [Sch. 3](#)

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[16th December 1949]

### *Registrable designs and proceedings for registration*

#### *Designs registrable under Act.*

- 1 (1) In this Act “design” means features of shape, configuration, pattern or ornament applied to an article by any industrial process, being features which in the finished article appeal to and are judged by the eye, but does not include—
  - (a) a method or principle of construction, or
  - (b) features of shape or configuration of an article which—
    - (i) are dictated solely by the function which the article has to perform, or
    - (ii) are dependent upon the appearance of another article of which the article is intended by the author of the design to form an integral part.
- (2) A design which is new may, upon application by the person claiming to be the proprietor, be registered under this Act in respect of any article, or set of articles, specified in the application.
- (3) A design shall not be registered in respect of an article if the appearance of the article is not material, that is, if aesthetic considerations are not normally taken into account to a material extent by persons acquiring or using articles of that description, and would not be so taken into account if the design were to be applied to the article.
- (4) A design shall not be regarded as new for the purposes of this Act if it is the same as a design—
  - (a) registered in respect of the same or any other article in pursuance of a prior application, or
  - (b) published in the United Kingdom in respect of the same or any other article before the date of the application,or if it differs from such a design only in immaterial details or in features which are variants commonly used in the trade.

This subsection has effect subject to the provisions of sections 4, 6 and 16 of this Act.
- (5) The Secretary of State may by rules provide for excluding from registration under this Act designs for such articles of a primarily literary or artistic character as the Secretary of State thinks fit.

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*Proprietorship of designs.*

- 2 (1) The author of a design shall be treated for the purposes of this Act as the original proprietor of the design, subject to the following provisions.
- (1A) Where a design is created in pursuance of a commission for money or money's worth, the person commissioning the design shall be treated as the original proprietor of the design.
- (1B) Where, in a case not falling within subsection (1A), a design is created by an employee in the course of his employment, his employer shall be treated as the original proprietor of the design.
- (2) Where a design, or the right to apply a design to any article, becomes vested, whether by assignment, transmission or operation of law, in any person other than the original proprietor, either alone or jointly with the original proprietor, that other person, or as the case may be the original proprietor and that other person, shall be treated for the purposes of this Act as the proprietor of the design or as the proprietor of the design in relation to that article.
- (3) In this Act the "author" of a design means the person who creates it.
- (4) In the case of a design generated by computer in circumstances such that there is no human author, the person by whom the arrangements necessary for the creation of the design are made shall be taken to be the author.

*Proceedings for registration.*

- 3 (1) An application for the registration of a design shall be made in the prescribed form and shall be filed at the Patent Office in the prescribed manner.
- (2) An application for the registration of a design in which design right subsists shall not be entertained unless made by the person claiming to be the design right owner.
- (3) For the purpose of deciding whether a design is new, the registrar may make such searches, if any, as he thinks fit.
- (4) The registrar may, in such cases as may be prescribed, direct that for the purpose of deciding whether a design is new an application shall be treated as made on a date earlier or later than that on which it was in fact made.
- (5) The registrar may refuse an application for the registration of a design or may register the design in pursuance of the application subject to such modifications, if any, as he thinks fit; and a design when registered shall be registered as of the date on which the application was made or is treated as having been made.
- (6) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within such time as may be prescribed shall be deemed to be abandoned.
- (7) An appeal lies from any decision of the registrar under this section.

*Registration of same design in respect of other articles, etc.*

- 4 (1) Where the registered proprietor of a design registered in respect of any article makes an application—

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- (a) for registration in respect of one or more other articles, of the registered design, or
- (b) for registration in respect of the same or one or more other articles, of a design consisting of the registered design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof,

the application shall not be refused and the registration made on that application shall not be invalidated by reason only of the previous registration or publication of the registered design:

Provided that the right in a design registered by virtue of this section shall not extend beyond the end of the period, and any extended period, for which the right subsists in the original registered design.

- (2) Where any person makes an application for the registration of a design in respect of any article and either—
  - (a) that design has been previously registered by another person in respect of some other article; or
  - (b) the design to which the application relates consists of a design previously registered by another person in respect of the same or some other article with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof,

then, if at any time while the application is pending the applicant becomes the registered proprietor of the design previously registered, the foregoing provisions of this section shall apply as if at the time of making the application the applicant had been the registered proprietor of that design.

*Provisions for secrecy of certain designs.*

- 5 (1) Where, either before or after the commencement of this Act, an application for the registration of a design has been made, and it appears to the registrar that the design is one of a class notified to him by the Secretary of State as relevant for defence purposes, he may give directions for prohibiting or restricting the publication of information with respect to the design, or the communication of such information to any person or class of persons specified in the directions.

- (2) The Secretary of State shall by rules make provision for securing that where such directions are given—
  - (a) the representation or specimen of the design, and
  - (b) any evidence filed in support of the applicant's contention that the appearance of an article is material (for the purposes of section 1(3) of this Act),

shall not be open to public inspection at the Patent Office during the continuance in force of the directions.

- (3) Where the registrar gives any such directions as aforesaid, he shall give notice of the application and of the directions to the Secretary of State, and thereupon the following provisions shall have effect, that is to say:—
  - (a) the Secretary of State shall, upon receipt of such notice, consider whether the publication of the design would be prejudicial to the defence of the realm and unless a notice under paragraph (c) of this subsection has previously been given by that authority to the registrar, shall reconsider that question before

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- the expiration of nine months from the date of filing of the application for registration of the design and at least once in every subsequent year;
- (b) for the purpose aforesaid, the Secretary of State may, at any time after the design has been registered or, with the consent of the applicant, at any time before the design has been registered, inspect the representation or specimen of the design, or any such evidence as is mentioned in subsection (2)(b) above, filed in pursuance of the application;
  - (c) if upon consideration of the design at any time it appears to the Secretary of State that the publication of the design would not, or would no longer, be prejudicial to the defence of the realm, he shall give notice to the registrar to that effect;
  - (d) on the receipt of any such notice the registrar shall revoke the directions and may, subject to such conditions, if any, as he thinks fit, extend the time for doing anything required or authorised to be done by or under this Act in connection with the application or registration, whether or not that time has previously expired.
- (4) No person resident in the United Kingdom shall, except under the authority of a written permit granted by or on behalf of the registrar, make or cause to be made any application outside the United Kingdom for the registration of a design of any class prescribed for the purposes of this subsection unless—
- (a) an application for registration of the same design has been made in the United Kingdom not less than six weeks before the application outside the United Kingdom; and
  - (b) either no directions have been given under subsection (1) of this section in relation to the application in the United Kingdom or all such directions have been revoked:

Provided that this subsection shall not apply in relation to a design for which an application for protection has first been filed in a country outside the United Kingdom by a person resident outside the United Kingdom.

... ..

*Provisions as to confidential disclosure, etc.*

- 6 (1) An application for the registration of a design shall not be refused, and the registration of a design shall not be invalidated, by reason only of—
- (a) the disclosure of the design by the proprietor to any other person in such circumstances as would make it contrary to good faith for that other person to use or publish the design;
  - (b) the disclosure of the design in breach of good faith by any person other than the proprietor of the design; or
  - (c) in the case of a new or original textile design intended for registration, the acceptance of a first and confidential order for goods bearing the design.
- (2) An application for the registration of a design shall not be refused and the registration of a design shall not be invalidated by reason only—
- (a) that a representation of the design, or any article to which the design has been applied, has been displayed, with the consent of the proprietor of the design, at an exhibition certified by the Secretary of State for the purposes of this subsection;

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- (b) that after any such display as aforesaid, and during the period of the exhibition, a representation of the design or any such article as aforesaid has been displayed by any person without the consent of the proprietor; or
  - (c) that a representation of the design has been published in consequence of any such display as is mentioned in paragraph (a) of this subsection,if the application for registration of the design is made not later than six months after the opening of the exhibition.
- (3) An application for the registration of a design shall not be refused, and the registration of a design shall not be invalidated, by reason only of the communication of the design by the proprietor thereof to a government department or to any person authorised by a government department to consider the merits of the design, or of anything done in consequence of such a communication.
- (4) Where an application is made by or with the consent of the owner of copyright in an artistic work for the registration of a corresponding design, the design shall not be treated for the purposes of this Act as being other than new by reason only of any use previously made of the artistic work, subject to subsection (5).
- (5) Subsection (4) does not apply if the previous use consisted of or included the sale, letting for hire or offer or exposure for sale or hire of articles to which had been applied industrially—
  - (a) the design in question, or
  - (b) a design differing from it only in immaterial details or in features which are variants commonly used in the trade,and that previous use was made by or with the consent of the copyright owner.
- (6) The Secretary of State may make provision by rules as to the circumstances in which a design is to be regarded for the purposes of this section as “applied industrially” to articles, or any description of articles.

*Effect of registration, &c.*

*Right given by registration.*

- 7
- (1) The registration of a design under this Act gives the registered proprietor the exclusive right—
    - (a) to make or import—
      - (i) for sale or hire, or
      - (ii) for use for the purposes of a trade or business, or
    - (b) to sell, hire or offer or expose for sale or hire,an article in respect of which the design is registered and to which that design or a design not substantially different from it has been applied.
  - (2) The right in the registered design is infringed by a person who without the licence of the registered proprietor does anything which by virtue of subsection (1) is the exclusive right of the proprietor.
  - (3) The right in the registered design is also infringed by a person who, without the licence of the registered proprietor makes anything for enabling any such article to be made, in the United Kingdom or elsewhere, as mentioned in subsection (1).

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- (4) The right in the registered design is also infringed by a person who without the licence of the registered proprietor—
- (a) does anything in relation to a kit that would be an infringement if done in relation to the assembled article (see subsection (1)), or
  - (b) makes anything for enabling a kit to be made or assembled, in the United Kingdom or elsewhere, if the assembled article would be such an article as is mentioned in subsection (1);
- and for this purpose a “kit” means a complete or substantially complete set of components intended to be assembled into an article.
- (5) No proceedings shall be taken in respect of an infringement committed before the date on which the certificate of registration of the design under this Act is granted.
- (6) The right in a registered design is not infringed by the reproduction of a feature of the design which, by virtue of section 1(1)(b), is left out of account in determining whether the design is registrable.

*Duration of right in registered design.*

- 8 (1) The right in a registered design subsists in the first instance for a period of five years from the date of the registration of the design.
- (2) The period for which the right subsists may be extended for a second, third, fourth and fifth period of five years, by applying to the registrar for an extension and paying the prescribed renewal fee.
- (3) If the first, second, third or fourth period expires without such application and payment being made, the right shall cease to have effect; and the registrar shall, in accordance with rules made by the Secretary of State, notify the proprietor of that fact.
- (4) If during the period of six months immediately following the end of that period an application for extension is made and the prescribed renewal fee and any prescribed additional fee is paid, the right shall be treated as if it had never expired, with the result that—
- (a) anything done under or in relation to the right during that further period shall be treated as valid,
  - (b) an act which would have constituted an infringement of the right if it had not expired shall be treated as an infringement, and
  - (c) an act which would have constituted use of the design for the services of the Crown if the right had not expired shall be treated as such use.
- (5) Where it is shown that a registered design—
- (a) was at the time it was registered a corresponding design in relation to an artistic work in which copyright subsists, and
  - (b) by reason of a previous use of that work would not have been registrable but for section 6(4) of this Act (registration despite certain prior applications of design),
- the right in the registered design expires when the copyright in that work expires, if that is earlier than the time at which it would otherwise expire, and it may not thereafter be renewed.



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- (6) The above provisions have effect subject to the proviso to section 4(1) (registration of same design in respect of other articles, &c.).

*Restoration of lapsed right in design.*

- 8A (1) Where the right in a registered design has expired by reason of a failure to extend, in accordance with section 8(2) or (4), the period for which the right subsists, an application for the restoration of the right in the design may be made to the registrar within the prescribed period.
- (2) The application may be made by the person who was the registered proprietor of the design or by any other person who would have been entitled to the right in the design if it had not expired; and where the design was held by two or more persons jointly, the application may, with the leave of the registrar, be made by one or more of them without joining the others.
- (3) Notice of the application shall be published by the registrar in the prescribed manner.
- (4) If the registrar is satisfied that the proprietor took reasonable care to see that the period for which the right subsisted was extended in accordance with section 8(2) or (4), he shall, on payment of any unpaid renewal fee and any prescribed additional fee, order the restoration of the right in the design.
- (5) The order may be made subject to such conditions as the registrar thinks fit, and if the proprietor of the design does not comply with any condition the registrar may revoke the order and give such consequential directions as he thinks fit.
- (6) Rules altering the period prescribed for the purposes of subsection (1) may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient.

*Effect of order for restoration of right.*

- 8B (1) The effect of an order under section 8A for the restoration of the right in a registered design is as follows.
- (2) Anything done under or in relation to the right during the period between expiry and restoration shall be treated as valid.
- (3) Anything done during that period which would have constituted an infringement if the right had not expired shall be treated as an infringement—
- (a) if done at a time when it was possible for an application for extension to be made under section 8(4); or
- (b) if it was a continuation or repetition of an earlier infringing act.
- (4) If after it was no longer possible for such an application for extension to be made, and before publication of notice of the application for restoration, a person—
- (a) began in good faith to do an act which would have constituted an infringement of the right in the design if it had not expired, or
- (b) made in good faith effective and serious preparations to do such an act,
- he has the right to continue to do the act or, as the case may be, to do the act, notwithstanding the restoration of the right in the design; but this does not extend to granting a licence to another person to do the act.

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- (5) If the act was done, or the preparations were made, in the course of a business, the person entitled to the right conferred by subsection (4) may—
  - (a) authorise the doing of that act by any partners of his for the time being in that business, and
  - (b) assign that right, or transmit it on death (or in the case of a body corporate on its dissolution), to any person who acquires that part of the business in the course of which the act was done or the preparations were made.
- (6) Where an article is disposed of to another in exercise of the rights conferred by subsection (4) or subsection (5), that other and any person claiming through him may deal with the article in the same way as if it had been disposed of by the registered proprietor of the design.
- (7) The above provisions apply in relation to the use of a registered design for the services of the Crown as they apply in relation to infringement of the right in the design.

*Exemption of innocent infringer from liability for damages.*

- 9 (1) In proceedings for the infringement of the right in a registered design damages shall not be awarded against a defendant who proves that at the date of the infringement he was not aware, and had no reasonable ground for supposing, that the design was registered; and a person shall not be deemed to have been aware or to have had reasonable grounds for supposing as aforesaid by reason only of the marking of an article with the word “registered” or any abbreviation thereof, or any word or words expressing or implying that the design applied to the article has been registered, unless the number of the design accompanied the word or words or the abbreviation in question.
- (2) Nothing in this section shall affect the power of the court to grant an injunction in any proceedings for infringement of the right in a registered design.

*Compulsory licence in respect of registered design.*

- 10 (1) At any time after a design has been registered any person interested may apply to the registrar for the grant of a compulsory licence in respect of the design on the ground that the design is not applied in the United Kingdom by any industrial process or means to the article in respect of which it is registered to such an extent as is reasonable in the circumstances of the case; and the registrar may make such order on the application as he thinks fit.
- (2) An order for the grant of a licence shall, without prejudice to any other method of enforcement, have effect as if it were a deed executed by the registered proprietor and all other necessary parties, granting a licence in accordance with the order.
- (3) No order shall be made under this section which would be at variance with any treaty, convention, arrangement or engagement applying to the United Kingdom and any convention country.
- (4) An appeal shall lie from any order of the registrar under this section.

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### *Cancellation of registration.*

- 11 (1) The registrar may, upon a request made in the prescribed manner by the registered proprietor, cancel the registration of a design.
- (2) At any time after a design has been registered any person interested may apply to the registrar for the cancellation of the registration of the design on the ground that the design was not, at the date of the registration thereof, new..., or on any other ground on which the registrar could have refused to register the design; and the registrar may make such order on the application as he thinks fit.
- (3) At any time after a design has been registered, any person interested may apply to the registrar for the cancellation of the registration on the ground that—
- (a) the design was at the time it was registered a corresponding design in relation to an artistic work in which copyright subsisted, and
  - (b) the right in the registered design has expired in accordance with section 8(4) of this Act (expiry of right in registered design on expiry of copyright in artistic work);
- and the registrar may make such order on the application as he thinks fit.
- (4) A cancellation under this section takes effect—
- (a) in the case of cancellation under subsection (1), from the date of the registrar's decision,
  - (b) in the case of cancellation under subsection (2), from the date of registration,
  - (c) in the case of cancellation under subsection (3), from the date on which the right in the registered design expired,
- or, in any case, from such other date as the registrar may direct.
- (5) An appeal lies from any order of the registrar under this section.

### *Powers exercisable for protection of the public interest.*

- 11A (1) Where a report of the Monopolies and Mergers Commission has been laid before Parliament containing conclusions to the effect—
- (a) on a monopoly reference, that a monopoly situation exists and facts found by the Commission operate or may be expected to operate against the public interest,
  - (b) on a merger reference, that a merger situation qualifying for investigation has been created and the creation of the situation, or particular elements in or consequences of it specified in the report, operate or may be expected to operate against the public interest,
  - (c) on a competition reference, that a person was engaged in an anti-competitive practice which operated or may be expected to operate against the public interest, or
  - (d) on a reference under section 11 of the Competition Act 1980 (reference of public bodies and certain other persons), that a person is pursuing a course of conduct which operates against the public interest,
- the appropriate Minister or Ministers may apply to the registrar to take action under this section.
- (2) Before making an application the appropriate Minister or Ministers shall publish, in such manner as he or they think appropriate, a notice describing the nature of the proposed application and shall consider any representations which may be made

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within 30 days of such publication by persons whose interests appear to him or them to be affected.

- (3) If on an application under this section it appears to the registrar that the matters specified in the Commission’s report as being those which in the Commission’s opinion operate, or operated or may be expected to operate, against the public interest include—
- (a) conditions in licences granted in respect of a registered design by its proprietor restricting the use of the design by the licensee or the right of the proprietor to grant other licences, or
  - (b) a refusal by the proprietor of a registered design to grant licences on reasonable terms,
- he may by order cancel or modify any such condition or may, instead or in addition, make an entry in the register to the effect that licences in respect of the design are to be available as of right.
- (4) The terms of a licence available by virtue of this section shall, in default of agreement, be settled by the registrar on an application by the person requiring the licence; and terms so settled shall authorise the licensee to do everything which would be an infringement of the right in the registered design in the absence of a licence.
- (5) Where the terms of a licence are settled by the registrar, the licence has effect from the date on which the application to him was made.
- (6) An appeal lies from any order of the registrar under this section.
- (7) In this section “the appropriate Minister or Ministers” means the Minister or Ministers to whom the report of the Monopolies and Mergers Commission was made.

*Undertaking to take licence of right in infringement proceedings.*

- 11B (1) If in proceedings for infringement of the right in a registered design in respect of which a licence is available as of right under section 11A of this Act the defendant undertakes to take a licence on such terms as may be agreed or, in default of agreement, settled by the registrar under that section—
- (a) no injunction shall be granted against him, and
  - (b) the amount recoverable against him by way of damages or on an account of profits shall not exceed double the amount which would have been payable by him as licensee if such a licence on those terms had been granted before the earliest infringement.
- (2) An undertaking may be given at any time before final order in the proceedings, without any admission of liability.
- (3) Nothing in this section affects the remedies available in respect of an infringement committed before licences of right were available.

*Use for services of the Crown.*

- 12 The provisions of the First Schedule to this Act shall have effect with respect to the use of registered designs for the services of the Crown and the rights of third parties in respect of such use.

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### *International Arrangements*

#### *Orders in Council as to convention countries.*

- 13 (1) His Majesty may, with a view to the fulfilment of a treaty, convention, arrangement or engagement, by Order in Council declare that any country specified in the Order is a convention country for the purposes of this Act:

Provided that a declaration may be made as aforesaid for the purposes either of all or of some only of the provisions of this Act, and a country in the case of which a declaration made for the purposes of some only of the provisions of this Act is in force shall be deemed to be a convention country for the purposes of those provisions only.

- (2) His Majesty may by Order in Council direct that any of the Channel Islands, any colony,... shall be deemed to be a convention country for the purposes of all or any of the provisions of this Act; and an Order made under this subsection may direct that any such provisions shall have effect, in relation to the territory in question, subject to such conditions or limitations, if any, as may be specified in the Order.
- (3) For the purposes of subsection (1) of this section, every colony, protectorate, territory subject to the authority or under the suzerainty of another country, and territory administered by another country... under the trusteeship system of the United Nations, shall be deemed to be a country in the case of which a declaration may be made under that subsection.

#### *Registration of design where application for protection in convention country has been made.*

- 14 (1) An application for registration of a design in respect of which protection has been applied for in a convention country may be made in accordance with the provisions of this Act by the person by whom the application for protection was made or his personal representative or assignee:

Provided that no application shall be made by virtue of this section after the expiration of six months from the date of the application for protection in a convention country or, where more than one such application for protection has been made, from the date of the first application.

- (2) Where an application for registration of a design is made by virtue of this section, the application shall be treated, for the purpose of determining whether that or any other design is new, as made on the date of the application for protection in the convention country or, if more than one such application was made, on the date of the first such application.
- (3) Subsection (2) shall not be construed as excluding the power to give directions under section 3(4) of this Act in relation to an application made by virtue of this section.
- (4) Where a person has applied for protection for a design by an application which—

- (a) in accordance with the terms of a treaty subsisting between two or more convention countries, is equivalent to an application duly made in any one of those convention countries; or
- (b) in accordance with the law of any convention country, is equivalent to an application duly made in that convention country,

he shall be deemed for the purposes of this section to have applied in that convention country.

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*Extension of time for applications under s.14 in certain cases.*

- 15 (1) If the Secretary of State is satisfied that provision substantially equivalent to the provision to be made by or under this section has been or will be made under the law of any convention country, he may make rules empowering the registrar to extend the time for making application under subsection (1) of section 14 of this Act for registration of a design in respect of which protection has been applied for in that country in any case where the period specified in the proviso to that subsection expires during a period prescribed by the rules.
- (2) Rules made under this section—
- (a) may, where any agreement or arrangement has been made between His Majesty's Government in the United Kingdom and the government of the convention country for the supply or mutual exchange of information or articles, provide, either generally or in any class of case specified in the rules, that an extension of time shall not be granted under this section unless the design has been communicated in accordance with the agreement or arrangement;
  - (b) may, either generally or in any class of case specified in the rules, fix the maximum extension which may be granted under this section;
  - (c) may prescribe or allow any special procedure in connection with applications made by virtue of this section;
  - (d) may empower the registrar to extend, in relation to an application made by virtue of this section, the time limited by or under the foregoing provisions of this Act for doing any act, subject to such conditions, if any, as may be imposed by or under the rules;
  - (e) may provide for securing that the rights conferred by registration on an application made by virtue of this section shall be subject to such restrictions or conditions as may be specified by or under the rules and in particular to restrictions and conditions for the protection of persons (including persons acting on behalf of His Majesty) who, otherwise than as the result of a communication made in accordance with such an agreement or arrangement as is mentioned in paragraph (a) of this subsection, and before the date of the application in question or such later date as may be allowed by the rules, may have imported or made articles to which the design is applied or may have made any application for registration of the design.

*Protection of designs communicated under international agreements.*

- 16 (1) Subject to the provisions of this section, the Secretary of State may make rules for securing that, where a design has been communicated in accordance with an agreement or arrangement made between His Majesty's Government in the United Kingdom and the government of any other country for the supply or mutual exchange of information or articles,—
- (a) an application for the registration of the design made by the person from whom the design was communicated or his personal representative or assignee shall not be prejudiced, and the registration of the design in pursuance of such an application shall not be invalidated, by reason only that the design has been communicated as aforesaid or that in consequence thereof—
    - (i) the design has been published or applied, or

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- (ii) an application for registration of the design has been made by any other person, or the design has been registered on such an application;
  - (b) any application for the registration of a design made in consequence of such a communication as aforesaid may be refused and any registration of a design made on such an application may be cancelled.
- (2) Rules made under subsection (1) of this section may provide that the publication or application of a design, or the making of any application for registration thereof shall, in such circumstances and subject to such conditions or exceptions as may be prescribed by the rules, be presumed to have been in consequence of such a communication as is mentioned in that subsection.
- (3) The powers of the Secretary of State under this section, so far as they are exercisable for the benefit of persons from whom designs have been communicated to His Majesty's Government in the United Kingdom by the government of any other country, shall only be exercised if and to the extent that the Secretary of State is satisfied that substantially equivalent provision has been or will be made under the law of that country for the benefit of persons from whom designs have been communicated by His Majesty's Government in the United Kingdom to the government of that country.
- (4) References in the last foregoing subsection to the communication of a design to or by His Majesty's Government or the government of any other country shall be construed as including references to the communication of the design by or to any person authorised in that behalf by the government in question.

*Register of designs, etc.*

*Register of designs.*

- 17 (1) The registrar shall maintain the register of designs, in which shall be entered—
- (a) the names and addresses of proprietors of registered designs;
  - (b) notices of assignments and of transmissions of registered designs; and
  - (c) such other matters as may be prescribed or as the registrar may think fit.
- (2) No notice of any trust, whether express, implied or constructive, shall be entered in the register of designs, and the registrar shall not be affected by any such notice.
- (3) The register need not be kept in documentary form.
- (4) Subject to the provisions of this Act and to rules made by the Secretary of State under it, the public shall have a right to inspect the register at the Patent Office at all convenient times.
- (5) Any person who applies for a certified copy of an entry in the register or a certified extract from the register shall be entitled to obtain such a copy or extract on payment of a fee prescribed in relation to certified copies and extracts; and rules made by the Secretary of State under this Act may provide that any person who applies for an uncertified copy or extract shall be entitled to such a copy or extract on payment of a fee prescribed in relation to uncertified copies and extracts.
- (6) Applications under subsection (5) above or rules made by virtue of that subsection shall be made in such manner as may be prescribed.

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- (7) In relation to any portion of the register kept otherwise than in documentary form—
- (a) the right of inspection conferred by subsection (4) above is a right to inspect the material on the register; and
  - (b) the right to a copy or extract conferred by subsection (5) above or rules is a right to a copy or extract in a form in which it can be taken away and in which it is visible and legible.
- (8) Subject to subsection (11) below, the register shall be prima facie evidence of anything required or authorised to be entered in it and in Scotland shall be sufficient evidence of any such thing.
- (9) A certificate purporting to be signed by the registrar and certifying that any entry which he is authorised by or under this Act to make has or has not been made, or that any other thing which he is so authorised to do has or has not been done, shall be prima facie evidence, and in Scotland shall be sufficient evidence, of the matters so certified.
- (10) Each of the following—
- (a) a copy of an entry in the register or an extract from the register which is supplied under subsection (5) above;
  - (b) a copy or any representation, specimen or document kept in the Patent Office or an extract from any such document,
- which purports to be a certified copy or certified extract shall, subject to subsection (11) below, be admitted in evidence without further proof and without production of any original; and in Scotland such evidence shall be sufficient evidence.
- (11) In the application of this section to England and Wales nothing in it shall be taken as detracting from section 69 or 70 of the Police and Criminal Evidence Act 1984 or any provision made by virtue of either of them.
- (12) In this section “certified copy” and “certified extract” means a copy and extract certified by the registrar and sealed with the seal of the Patent Office.

*Certificate of registration.*

- 18 (1) The registrar shall grant a certificate of registration in the prescribed form to the registered proprietor of a design when the design is registered.
- (2) The registrar may, in a case where he is satisfied that the certificate of registration has been lost or destroyed, or in any other case in which he thinks it expedient, furnish one or more copies of the certificate.

*Registration of assignments, etc.*

- 19 (1) Where any person becomes entitled by assignment, transmission or operation of law to a registered design or to a share in a registered design, or becomes entitled as mortgagee, licensee or otherwise to any other interest in a registered design, he shall apply to the registrar in the prescribed manner for the registration of his title as proprietor or co-proprietor or, as the case may be, of notice of his interest, in the register of designs.
- (2) Without prejudice to the provisions of the foregoing subsection, an application for the registration of the title of any person becoming entitled by assignment to a registered



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design or a share in a registered design, or becoming entitled by virtue of a mortgage, licence or other instrument to any other interest in a registered design, may be made in the prescribed manner by the assignor, mortgagor, licensor or other party to that instrument, as the case may be.

- (3) Where application is made under this section for the registration of the title of any person, the registrar shall, upon proof of title to his satisfaction—
- (a) where that person is entitled to a registered design or a share in a registered design, register him in the register of designs as proprietor or co-proprietor of the design, and enter in that register particulars of the instrument or event by which he derives title; or
  - (b) where that person is entitled to any other interest in the registered design, enter in that register notice of his interest, with particulars of the instrument (if any) creating it.
- (3A) Where design right subsists in a registered design, the registrar shall not register an interest under subsection (3) unless he is satisfied that the person entitled to that interest is also entitled to a corresponding interest in the design right.
- (3B) Where design right subsists in a registered design and the proprietor of the registered design is also the design right owner, an assignment of the design right shall be taken to be also an assignment of the right in the registered design, unless a contrary intention appears.
- (4) Subject to any rights vested in any other person of which notice is entered in the register of designs, the person or persons registered as proprietor of a registered design shall have power to assign, grant licences under, or otherwise deal with the design, and to give effectual receipts for any consideration for any such assignment, licence or dealing.
- Provided that any equities in respect of the design may be enforced in like manner as in respect of any other personal property.
- (5) Except for the purposes of an application to rectify the register under the following provisions of this Act, a document in respect of which no entry has been made in the register of designs under subsection (3) of this section shall not be admitted in any court as evidence of the title of any person to a registered design or share of or interest in a registered design unless the court otherwise directs.

#### *Rectification of register.*

- 20 (1) The court may, on the application of any person aggrieved, order the register of designs to be rectified by the making of any entry therein or the variation or deletion of any entry therein.
- (2) In proceedings under this section the court may determine any question which it may be necessary or expedient to decide in connection with the rectification of the register.
- (3) Notice of any application to the court under this section shall be given in the prescribed manner to the registrar, who shall be entitled to appear and be heard on the application, and shall appear if so directed by the court.
- (4) Any order made by the court under this section shall direct that notice of the order shall be served on the registrar in the prescribed manner; and the registrar shall, on receipt of the notice, rectify the register accordingly.

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- (5) A rectification of the register under this section has effect as follows—
- (a) an entry made has effect from the date on which it should have been made,
  - (b) an entry varied has effect as if it had originally been made in its varied form, and
  - (c) an entry deleted shall be deemed never to have had effect,
- unless, in any case, the court directs otherwise.

*Power to correct clerical errors.*

- 21 (1) The registrar may, in accordance with the provisions of this section, correct any error in an application for the registration or in the representation of a design, or any error in the register of designs.
- (2) A correction may be made in pursuance of this section either upon a request in writing made by any person interested and accompanied by the prescribed fee, or without such a request.
- (3) Where the registrar proposes to make any such correction as aforesaid otherwise than in pursuance of a request made under this section, he shall give notice of the proposal to the registered proprietor or the applicant for registration of the design, as the case may be, and to any other person who appears to him to be concerned, and shall give them an opportunity to be heard before making the correction.

*Inspection of registered designs.*

- 22 (1) Where a design has been registered under this Act, there shall be open to inspection at the Patent Office on and after the day on which the certificate of registration is issued—
- (a) the representation or specimen of the design, and
  - (b) any evidence filed in support of the applicant's contention that the appearance of an article is material (for the purposes of section 1(3) of this Act).

This subsection has effect subject to the following provisions of this section and to any rules made under section 5(2) of this Act.

- (2) In the case of a design registered in respect of an article of any class prescribed for the purposes of this subsection, no representation, specimen or evidence filed in pursuance of the application shall, until the expiration of such period after the day on which the certificate of registration is issued as may be prescribed in relation to articles of that class, be open to inspection at the Patent Office except by the registered proprietor, a person authorised in writing by the registered proprietor, or a person authorised by the registrar or by the court:

Provided that where the registrar proposes to refuse an application for the registration of any other design on the ground that it is the same as the first-mentioned design or differs from that design only in immaterial details or in features which are variants commonly used in the trade, the applicant shall be entitled to inspect the representation or specimen of the first-mentioned design filed in pursuance of the application for registration of that design.

- (3) In the case of a design registered in respect of an article of any class prescribed for the purposes of the last foregoing subsection, the representation, specimen or evidence

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shall not, during the period prescribed as aforesaid, be inspected by any person by virtue of this section except in the presence of the registrar or of an officer acting under him; and except in the case of an inspection authorised by the proviso to that subsection, the person making the inspection shall not be entitled to take a copy of the representation, specimen or evidence or any part thereof.

- (4) Where an application for the registration of a design has been abandoned or refused, neither the application for registration nor any representation, specimen or evidence filed in pursuance thereof shall at any time be open to inspection at the Patent Office or be published by the registrar.

*Information as to existence of right in registered design.*

- 23 On the request of a person furnishing such information as may enable the registrar to identify the design, and on payment of the prescribed fee, the registrar shall inform him—
- (a) whether the design is registered and, if so, in respect of what articles, and
  - (b) whether any extension of the period of the right in the registered design has been granted,
- and shall state the date of registration and the name and address of the registered proprietor.

.....

*Legal proceedings and appeals*

*Certificate of contested validity of registration.*

- 25 (1) If in any proceedings before the court the validity of the registration of a design is contested, and it is found by the court that the design is validly registered, the court may certify that the validity of the registration of the design was contested in those proceedings.
- (2) Where any such certificate has been granted, then if in any subsequent proceedings before the court for infringement of the right in the registered design or for cancellation of the registration of the design, a final order or judgment is made or given in favour of the registered proprietor, he shall, unless the court otherwise directs, be entitled to his costs as between solicitor and client:

Provided that this subsection shall not apply to the costs of any appeal in any such proceedings as aforesaid.

*Remedy for groundless threats of infringement proceedings.*

- 26 (1) Where any person (whether entitled to or interested in a registered design or an application for registration of a design or not) by circulars, advertisements or otherwise threatens any other person with proceedings for infringement of the right in a registered design, any person aggrieved thereby may bring an action against him for any such relief as is mentioned in the next following subsection.
- (2) Unless in any action brought by virtue of this section the defendant proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute, an infringement of the right in a registered design the registration of

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which is not shown by the plaintiff to be invalid, the plaintiff shall be entitled to the following relief, that is to say:—

- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an injunction against the continuance of the threats; and
- (c) such damages, if any, as he has sustained thereby.

(2A) Proceedings may not be brought under this section in respect of a threat to bring proceedings for an infringement alleged to consist of the making or importing of anything.

(3) For the avoidance of doubt it is hereby declared that a mere notification that a design is registered does not constitute a threat of proceedings within the meaning of this section.

*The court.*

27 (1) In this Act “the court” means—

- (a) in England and Wales, the High Court or any patents county court having jurisdiction by virtue of an order under section 287 of the Copyright, Designs and Patents Act 1988,
- (b) in Scotland, the Court of Session, and
- (c) in Northern Ireland, the High Court.

(2) Provision may be made by rules of court with respect to proceedings in the High Court in England and Wales for references and applications under this Act to be dealt with by such judge of that court as the Lord Chancellor may select for the purpose.

*The Appeal Tribunal.*

28 (1) Any appeal from the registrar under this Act shall lie to the Appeal Tribunal.

(2) The Appeal Tribunal shall consist of—

- (a) one or more judges of the High Court nominated by the Lord Chancellor, and
- (b) one judge of the Court of Session nominated by the Lord President of that Court.

(2A) At any time when it consists of two or more judges, the jurisdiction of the Appeal Tribunal—

- (a) where in the case of any particular appeal the senior of those judges so directs, shall be exercised in relation to that appeal by both of the judges, or (if there are more than two) by two of them, sitting together, and
- (b) in relation to any appeal in respect of which no such direction is given, may be exercised by any one of the judges;

and, in the exercise of that jurisdiction, different appeals may be heard at the same time by different judges.

(3) The expenses of the Appeal Tribunal shall be defrayed and the fees to be taken therein may be fixed as if the Tribunal were a court of the High Court.

(4) The Appeal Tribunal may examine witnesses on oath and administer oaths for that purpose.

(5) Upon any appeal under this Act the Appeal Tribunal may by order award to any party such costs or expenses as the Tribunal may consider reasonable and direct how

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and by what parties the costs or expenses are to be paid; and any such order may be enforced—

- (a) in England and Wales or Northern Ireland, in the same way as an order of the High Court;
- (b) in Scotland, in the same way as a decree for expenses granted by the Court of Session.

.....

- (7) Upon any appeal under this Act the Appeal Tribunal may exercise any power which could have been exercised by the registrar in the proceeding from which the appeal is brought.
- (8) Subject to the foregoing provisions of this section the Appeal Tribunal may make rules for regulating all matters relating to proceedings before it under this Act, including right of audience.
- (8A) At any time when the Appeal Tribunal consists of two or more judges, the power to make rules under subsection (8) of this section shall be exercisable by the senior of those judges:  
  
Provided that another of those judges may exercise that power if it appears to him that it is necessary for rules to be made and that the judge (or, if more than one, each of the judges) senior to him is for the time being prevented by illness, absence or otherwise from making them.
- (9) An appeal to the Appeal Tribunal under this Act shall not be deemed to be a proceeding in the High Court.
- (10) In this section “the High Court” means the High Court in England and Wales; and for the purposes of this section the seniority of judges shall be reckoned by reference to the dates on which they were appointed judges of that court or the Court of Session.

### *Powers and duties of Registrar*

#### *Exercise of discretionary powers of registrar.*

- 29 Without prejudice to any provisions of this Act requiring the registrar to hear any party to proceedings thereunder, or to give to any such party an opportunity to be heard, rules made by the Secretary of State under this Act shall require the registrar to give to any applicant for registration of a design an opportunity to be heard before exercising adversely to the applicant any discretion vested in the registrar by or under this Act.

#### *Costs and security for costs.*

- 30 (1) Rules made by the Secretary of State under this Act may make provision empowering the registrar, in any proceedings before him under this Act—
  - (a) to award any party such costs as he may consider reasonable, and
  - (b) to direct how and by what parties they are to be paid.
- (2) Any such order of the registrar may be enforced—
  - (a) in England and Wales or Northern Ireland, in the same way as an order of the High Court;

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- (b) in Scotland, in the same way as a decree for expenses granted by the Court of Session.
- (3) Rules made by the Secretary of State under this Act may make provision empowering the registrar to require a person, in such cases as may be prescribed, to give security for the costs of—
  - (a) an application for cancellation of the registration of a design,
  - (b) an application for the grant of a licence in respect of a registered design, or
  - (c) an appeal from any decision of the registrar under this Act,
 and enabling the application or appeal to be treated as abandoned in default of such security being given.

*Evidence before registrar:*

- 31 Rules made by the Secretary of State under this Act may make provision—
  - (a) as to the giving of evidence in proceedings before the registrar under this Act by affidavit or statutory declaration;
  - (b) conferring on the registrar the powers of an official referee of the Supreme Court as regards the examination of witnesses on oath and the discovery and production of documents; and
  - (c) applying in relation to the attendance of witnesses in proceedings before the registrar the rules applicable to the attendance of witnesses in proceedings before such a referee.

.....

*Offences*

*Offences under s.5.*

- 33 (1) If any person fails to comply with any direction given under section five of this Act or makes or causes to be made an application for the registration of a design in contravention of that section, he shall be guilty of an offence and liable—
  - (a) on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both;
  - (b) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both.

.....

*Falsification of register, etc.*

- 34 If any person makes or causes to be made a false entry in the register of designs, or a writing falsely purporting to be a copy of an entry in that register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of an offence and liable—
  - (a) on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both;
  - (b) on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or both.

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*Fine for falsely representing a design as registered.*

- 35 (1) If any person falsely represents that a design applied to any article sold by him is registered in respect of that article, he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; and for the purposes of this provision a person who sells an article having stamped, engraved or impressed thereon or otherwise applied thereto the word “registered”, or any other word expressing or implying that the design applied to the article is registered, shall be deemed to represent that the design applied to the article is registered in respect of that article.
- (2) If any person, after the right in a registered design has expired, marks any article to which the design has been applied with the word “registered”, or any word or words implying that there is a subsisting right in the design under this Act, or causes any such article to be so marked, he shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

*Offence by body corporate: liability of officers.*

- 35A (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In relation to a body corporate whose affairs are managed by its members “director” means a member of the body corporate.

*Rules, etc.*

*General power of Secretary of State to make rules, etc.*

- 36 (1) Subject to the provisions of this Act, the Secretary of State may make such rules as he thinks expedient for regulating the business of the Patent Office in relation to designs and for regulating all matters by this Act placed under the direction or control of the registrar or the Secretary of State.
- (1A) Rules may, in particular, make provision—
- (a) prescribing the form of applications for registration of designs and of any representations or specimens of designs or other documents which may be filed at the Patent Office, and requiring copies to be furnished of any such representations, specimens or documents;
  - (b) regulating the procedure to be followed in connection with any application or request to the registrar or in connection with any proceeding before him, and authorising the rectification of irregularities of procedure;
  - (c) providing for the appointment of advisers to assist the registrar in proceedings before him;
  - (d) regulating the keeping of the register of designs;
  - (e) authorising the publication and sale of copies of representations of designs and other documents in the Patent Office;
  - (f) prescribing anything authorised or required by this Act to be prescribed by rules.

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- (1B) The remuneration of an adviser appointed to assist the registrar shall be determined by the Secretary of State with the consent of the Treasury and shall be defrayed out of money provided by Parliament.
- (2) Rules made under this section may provide for the establishment of branch offices for designs and may authorise any document or thing required by or under this Act to be filed or done at the Patent Office to be filed or done at the branch office at Manchester or any other branch office established in pursuance of the rules.

*Provisions as to rules and Orders.*

- 37 (1) ... ..
- (2) Any rules made by the Secretary of State in pursuance of section 15 or section 16 of this Act, and any order made, direction given, or other action taken under the rules by the registrar, may be made, given or taken so as to have effect as respects things done or omitted to be done on or after such date, whether before or after the coming into operation of the rules or of this Act, as may be specified in the rules.
- (3) Any power to make rules conferred by this Act on the Secretary of State or on the Appeal Tribunal shall be exercisable by statutory instrument; and the Statutory Instruments Act 1946 shall apply to a statutory instrument containing rules made by the Appeal Tribunal in like manner as if the rules had been made by a Minister of the Crown.
- (4) Any statutory instrument containing rules made by the Secretary of State under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Any Order in Council made under this Act may be revoked or varied by a subsequent Order in Council.
- ... ..

*Supplemental*

*Hours of business and excluded days.*

- 39 (1) Rules made by the Secretary of State under this Act may specify the hour at which the Patent Office shall be deemed to be closed on any day for purposes of the transaction by the public of business under this Act or of any class of such business, and may specify days as excluded days for any such purposes.
- (2) Any business done under this Act on any day after the hour specified as aforesaid in relation to business of that class, or on a day which is an excluded day in relation to business of that class, shall be deemed to have been done on the next following day not being an excluded day; and where the time for doing anything under this Act expires on an excluded day, that time shall be extended to the next following day not being an excluded day.

*Fees.*

- 40 There shall be paid in respect of the registration of designs and applications therefor, and in respect of other matters relating to designs arising under this Act, such fees



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as may be prescribed by rules made by the Secretary of State with the consent of the Treasury.

*Service of notices, &c., by post.*

- 41 Any notice required or authorised to be given by or under this Act, and any application or other document so authorised or required to be made or filed, may be given, made or filed by post.

*Annual report of registrar.*

- 42 The Comptroller-General of Patents, Designs and Trade Marks shall, in his annual report with respect to the execution of the Patents Act 1977, include a report with respect to the execution of this Act as if it formed a part of or was included in that Act.

*Savings.*

- 43 (1) Nothing in this Act shall be construed as authorising or requiring the registrar to register a design the use of which would, in his opinion, be contrary to law or morality.
- (2) Nothing in this Act shall affect the right of the Crown or of any person deriving title directly or indirectly from the Crown to sell or use articles forfeited under the laws relating to customs or excise.

*Interpretation.*

- 44 (1) In this Act, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned by them, that is to say—
- “Appeal Tribunal” means the Appeal Tribunal constituted and acting in accordance with section 28 of this Act as amended by the Administration of Justice Act 1969;
- “article” means any article of manufacture and includes any part of an article if that part is made and sold separately;
- “artistic work” has the same meaning as in Part I of the Copyright, Designs and Patents Act 1988;
- “assignee” includes the personal representative of a deceased assignee, and references to the assignee of any person include references to the assignee of the personal representative or assignee of that person;
- “author”, in relation to a design, has the meaning given by section 2(3) and (4);
- ... ..
- “corresponding design”, in relation to an artistic work, means a design which if applied to an article would produce something which would be treated for the purposes of Part I of the Copyright, Designs and Patents Act 1988 as a copy of that work;
- “the court” shall be construed in accordance with section 27 of this Act;
- “design” has the meaning assigned to it by section 1(1) of this Act;
- “employee”, “employment” and “employer” refer to employment under a contract of service or of apprenticeship;

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.....  
 “prescribed” means prescribed by rules made by the Secretary of State under this Act;

“proprietor” has the meaning assigned to it by section two of this Act;

“registered proprietor” means the person or persons for the time being entered in the register of designs as proprietor of the design;

“registrar” means the Comptroller-General of Patents Designs and Trade Marks;

“set of articles” means a number of articles of the same general character ordinarily on sale or intended to be used together, to each of which the same design, or the same design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, is applied.

- (2) Any reference in this Act to an article in respect of which a design is registered shall, in the case of a design registered in respect of a set of articles, be construed as a reference to any article of that set.
- (3) Any question arising under this Act whether a number of articles constitute a set of articles shall be determined by the registrar; and notwithstanding anything in this Act any determination of the registrar under this subsection shall be final.
- (4) For the purposes of subsection (1) of section 14 and of section 16 of this Act, the expression “personal representative”, in relation to a deceased person, includes the legal representative of the deceased appointed in any country outside the United Kingdom.

*Application to Scotland.*

45 In the application of this Act to Scotland—

- .....  
 (3) The expression “injunction” means “interdict”; the expression “arbitrator” means “arbiter”;  
 the expression “plaintiff” means “pursuer”; the expression “defendant” means “defender”.

*Application to Northern Ireland.*

46 In the application of this Act to Northern Ireland—

- .....  
 (3) References to enactments include enactments comprised in Northern Ireland legislation:
- (3A) References to the Crown include the Crown in right of Her Majesty’s Government in Northern Ireland:
- (4) References to a government department shall be construed as including references to a Northern Ireland department, and in relation to a Northern Ireland department references to the Treasury shall be construed as references to the Department of Finance and Personnel.
- .....

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*Application to Isle of Man.*

- 47 This Act extends to the Isle of Man, subject to any modifications contained in an Order made by Her Majesty in Council, and accordingly, subject to any such Order, references in this Act to the United Kingdom shall be construed as including the Isle of Man.

*Territorial waters and the continental shelf.*

- 47A (1) For the purposes of this Act the territorial waters of the United Kingdom shall be treated as part of the United Kingdom.
- (2) This Act applies to things done in the United Kingdom sector of the continental shelf on a structure or vessel which is present there for purposes directly connected with the exploration of the sea bed or subsoil or the exploitation of their natural resources as it applies to things done in the United Kingdom.
- (3) The United Kingdom sector of the continental shelf means the areas designated by order under section 1(7) of the Continental Shelf Act 1964.

*Repeals, savings, and transitional provisions.*

- 48 (1) ... ..
- (2) Subject to the provisions of this section, any Order in Council, rule, order, requirement, certificate, notice, decision, direction, authorisation, consent, application, request or thing made, issued, given or done under any enactment repealed by this Act shall, if in force at the commencement of this Act, and so far as it could have been made, issued, given or done under this Act, continue in force and have effect as if made, issued, given or done under the corresponding enactment of this Act.
- (3) Any register kept under the Patents and Designs Act 1907 shall be deemed to form part of the corresponding register under this Act.
- (4) Any design registered before the commencement of this Act shall be deemed to be registered under this Act in respect of articles of the class in which it is registered.
- (5) Where, in relation to any design, the time for giving notice to the registrar under section 59 of the Patents and Designs Act 1907 expired before the commencement of this Act and the notice was not given, subsection (2) of section 6 of this Act shall not apply in relation to that design or any registration of that design.
- (6) Any document referring to any enactment repealed by this Act shall be construed as referring to the corresponding enactment of this Act.
- (7) Nothing in the foregoing provisions of this section shall be taken as prejudicing the operation of section 38 of the Interpretation Act 1889 (which relates to the effect of repeals).

*Short title and commencement.*

- 49 (1) This Act may be cited as the Registered Designs Act 1949.

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- (2) This Act shall come into operation on the first day of January, nineteen hundred and fifty, immediately after the coming into operation of the Patents and Designs Act 1949.

### *FIRST SCHEDULE*

Provisions as to the Use of Registered Designs for the Services of the Crown and as to the Rights of Third Parties in Respect of such Use

#### *Use of registered designs for services of the Crown*

- 1 (1) Notwithstanding anything in this Act, any Government department, and any person authorised in writing by a Government department, may use any registered design for the services of the Crown in accordance with the following provisions of this paragraph.
- (2) If and so far as the design has before the date of registration thereof been duly recorded by or applied by or on behalf of a Government department otherwise than in consequence of the communication of the design directly or indirectly by the registered proprietor or any person from whom he derives title, any use of the design by virtue of this paragraph may be made free of any royalty or other payment to the registered proprietor.
- (3) If and so far as the design has not been so recorded or applied as aforesaid, any use of the design made by virtue of this paragraph at any time after the date of registration thereof, or in consequence of any such communication as aforesaid, shall be made upon such terms as may be agreed upon, either before or after the use, between the Government department and the registered proprietor with the approval of the Treasury, or as may in default of agreement be determined by the court on a reference under paragraph 3 of this Schedule.
- (4) The authority of a Government department in respect of a design may be given under this paragraph either before or after the design is registered and either before or after the acts in respect of which the authority is given are done, and may be given to any person whether or not he is authorised directly or indirectly by the registered proprietor to use the design.
- (5) Where any use of a design is made by or with the authority of a Government department under this paragraph, then, unless it appears to the department that it would be contrary to the public interest so to do, the department shall notify the registered proprietor as soon as practicable after the use is begun, and furnish him with such information as to the extent of the use as he may from time to time require.
- (6) For the purposes of this and the next following paragraph “the services of the Crown” shall be deemed to include—
- (a) the supply to the government of any country outside the United Kingdom, in pursuance of an agreement or arrangement between Her Majesty’s Government in the United Kingdom and the government of that country, of articles required—
    - (i) for the defence of that country; or
    - (ii) for the defence of any other country whose government is party to any agreement or arrangement with Her Majesty’s said Government in respect of defence matters;

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- (b) the supply to the United Nations, or the government of any country belonging to that organisation, in pursuance of an agreement or arrangement between Her Majesty's Government and that organisation or government, of articles required for any armed forces operating in pursuance of a resolution of that organisation or any organ of that organisation;

and the power of a Government department or a person authorised by a Government department under this paragraph to use a design shall include power to sell to any such government or to the said organisation any articles the supply of which is authorised by this sub-paragraph, and to sell to any person any articles made in the exercise of the powers conferred by this paragraph which are no longer required for the purpose for which they were made.

- (7) The purchaser of any articles sold in the exercise of powers conferred by this paragraph, and any person claiming through him, shall have power to deal with them in the same manner as if the rights in the registered design were held on behalf of His Majesty.

*Rights of third parties in respect of Crown use*

- 2 (1) In relation to any use of a registered design, or a design in respect of which an application for registration is pending, made for the services of the Crown—
  - (a) by a Government department or a person authorised by a Government department under the last foregoing paragraph; or
  - (b) by the registered proprietor or applicant for registration to the order of a Government department,

the provisions of any licence, assignment or agreement made, whether before or after the commencement of this Act, between the registered proprietor or applicant for registration or any person who derives title from him or from whom he derives title and any person other than a Government department shall be of no effect so far as those provisions restrict or regulate the use of the design, or any model, document or information relating thereto, or provide for the making of payments in respect of any such use, or calculated by reference thereto; and the reproduction or publication of any model or document in connection with the said use shall not be deemed to be an infringement of any copyright or design right subsisting in the model or document.

- (2) Where an exclusive licence granted otherwise than for royalties or other benefits determined by reference to the use of the design is in force under the registered design then—
  - (a) in relation to any use of the design which, but for the provisions of this and the last foregoing paragraph, would constitute an infringement of the rights of the licensee, sub-paragraph (3) of the last foregoing paragraph shall have effect as if for the reference to the registered proprietor there were substituted a reference to the licensee; and
  - (b) in relation to any use of the design by the licensee by virtue of an authority given under the last foregoing paragraph, that paragraph shall have effect as if the said sub-paragraph (3) were omitted.
- (3) Subject to the provisions of the last foregoing sub-paragraph, where the registered design or the right to apply for or obtain registration of the design has been assigned to the registered proprietor in consideration of royalties or other benefits determined by reference to the use of the design, then—

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- (a) in relation to any use of the design by virtue of paragraph 1 of this Schedule, sub-paragraph (3) of that paragraph shall have effect as if the reference to the registered proprietor included a reference to the assignor, and any sum payable by virtue of that sub-paragraph shall be divided between the registered proprietor and the assignor in such proportion as may be agreed upon between them or as may in default of agreement be determined by the court on a reference under the next following paragraph; and
  - (b) in relation to any use of the design made for the services of the Crown by the registered proprietor to the order of a Government department, sub-paragraph (3) of paragraph 1 of this Schedule shall have effect as if that use were made by virtue of an authority given under that paragraph.
- (4) Where, under sub-paragraph (3) of paragraph 1 of this Schedule, payments are required to be made by a Government department to a registered proprietor in respect of any use of a design, any person being the holder of an exclusive licence under the registered design (not being such a licence as is mentioned in sub-paragraph (2) of this paragraph) authorising him to make that use of the design shall be entitled to recover from the registered proprietor such part (if any) of those payments as may be agreed upon between that person and the registered proprietor, or as may in default of agreement be determined by the court under the next following paragraph to be just having regard to any expenditure incurred by that person—
- (a) in developing the said design; or
  - (b) in making payments to the registered proprietor, other than royalties or other payments determined by reference to the use of the design, in consideration of the licence;
- and if, at any time before the amount of any such payment has been agreed upon between the Government department and the registered proprietor, that person gives notice in writing of his interest to the department, any agreement as to the amount of that payment shall be of no effect unless it is made with his consent.
- (5) In this paragraph “exclusive licence” means a licence from a registered proprietor which confers on the licensee, or on the licensee and persons authorised by him, to the exclusion of all other persons (including the registered proprietor), any right in respect of the registered design.

*Compensation for loss of profit*

- 2A (1) Where Crown use is made of a registered design, the government department concerned shall pay—
- (a) to the registered proprietor, or
  - (b) if there is an exclusive licence in force in respect of the design, to the exclusive licensee,
- compensation for any loss resulting from his not being awarded a contract to supply the articles to which the design is applied.
- (2) Compensation is payable only to the extent that such a contract could have been fulfilled from his existing manufacturing capacity; but is payable notwithstanding the existence of circumstances rendering him ineligible for the award of such a contract.
- (3) In determining the loss, regard shall be had to the profit which would have been made on such a contract and to the extent to which any manufacturing capacity was under-used.

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- (4) No compensation is payable in respect of any failure to secure contracts for the supply of articles to which the design is applied otherwise than for the services of the Crown.
- (5) The amount payable under this paragraph shall, if not agreed between the registered proprietor or licensee and the government department concerned with the approval of the Treasury, be determined by the court on a reference under paragraph 3; and it is in addition to any amount payable under paragraph 1 or 2 of this schedule.
- (6) In this paragraph—
  - “Crown use”, in relation to a design, means the doing of anything by virtue of paragraph 1 which would otherwise be an infringement of the right in the design; and
  - “the government department concerned”, in relation to such use, means the government department by whom or on whose authority the act was done.

*Reference of disputes as to Crown use*

- 3 (1) Any dispute as to—
  - (a) the exercise by a Government department, or a person authorised by a Government department, of the powers conferred by paragraph 1 of this Schedule,
  - (b) terms for the use of a design for the services of the Crown under that paragraph,
  - (c) the right of any person to receive any part of a payment made under paragraph 1(3), or
  - (d) the right of any person to receive a payment under paragraph 2A,may be referred to the court by either party to the dispute.
- (2) In any proceedings under this paragraph to which a Government department are a party, the department may—
  - (a) if the registered proprietor is a party to the proceedings, apply for cancellation of the registration of the design upon any ground upon which the registration of a design may be cancelled on an application to the court under section twenty of this Act;
  - (b) in any case, put in issue the validity of the registration of the design without applying for its cancellation.
- (3) If in such proceedings as aforesaid any question arises whether a design has been recorded or applied as mentioned in paragraph 1 of this Schedule, and the disclosure of any document recording the design, or of any evidence of the application thereof, would in the opinion of the department be prejudicial to the public interest, the disclosure may be made confidentially to counsel for the other party or to an independent expert mutually agreed upon.
- (4) In determining under this paragraph any dispute between a Government department and any person as to terms for the use of a design for the services of the Crown, the court shall have regard to any benefit or compensation which that person or any person from whom he derives title may have received, or may be entitled to receive, directly or indirectly from any Government department in respect of the design in question.
- (5) In any proceedings under this paragraph the court may at any time order the whole proceedings or any question or issue of fact arising therein to be referred to a

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special or official referee or an arbitrator on such terms as the court may direct; and references to the court in the foregoing provisions of this paragraph shall be construed accordingly.

*Special provisions as to Crown use during emergency*

- 4 (1) During any period of emergency within the meaning of this paragraph, the powers exercisable in relation to a design by a Government department, or a person authorised by a Government department under paragraph 1 of this Schedule shall include power to use the design for any purpose which appears to the department necessary or expedient—

- (a) for the efficient prosecution of any war in which His Majesty may be engaged;
- (b) for the maintenance of supplies and services essential to the life of the community;
- (c) for securing a sufficiency of supplies and services essential to the well-being of the community;
- (d) for promoting the productivity of industry, commerce and agriculture;
- (e) for fostering and directing exports and reducing imports, or imports of any classes, from all or any countries and for redressing the balance of trade;
- (f) generally for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community; or
- (g) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in any part of His Majesty’s dominions or any foreign countries that are in grave distress as the result of war;

and any reference in this Schedule to the services of the Crown shall be construed as including a reference to the purposes aforesaid.

- (2) In this paragraph the expression “period of emergency” means a period beginning on such date as may be declared by Order in Council to be the commencement, and ending on such date as may be so declared to be the termination, of a period of emergency for the purposes of this paragraph.
- (3) No Order in Council under this paragraph shall be submitted to Her Majesty unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

.....

SCHEDULE 5 **U.K.**

Section 295.

PATENTS: MISCELLANEOUS AMENDMENTS

*Withdrawal of application before publication of specification*

- 1 In section 13(2) of the <sup>M22</sup>Patents Act 1949 (duty of comptroller to advertise acceptance of and publish complete specification) after the word “and”, in the first place where it occurs, insert “, unless the application is withdrawn,”.



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**Marginal Citations**

**M22** 1949 c. 87.

*Correction of clerical errors*

- 2 (1) In section 15 of the <sup>M23</sup>Patents Act 1977 (filing of application), after subsection (3) insert—
- “(3A) Nothing in subsection (2) or (3) above shall be construed as affecting the power of the comptroller under section 117(1) below to correct errors or mistakes with respect to the filing of drawings.”.
- (2) The above amendment applies only in relation to applications filed after the commencement of this paragraph.

**Marginal Citations**

**M23** 1977 c. 37.

*Supplementary searches*

- 3 (1) Section 17 of the Patents Act 1977 (preliminary examination and search) is amended as follows.
- (2) In subsection (7) (supplementary searches) for “subsection (4) above” substitute “subsections (4) and (5) above” and for “it applies” substitute “they apply”.
- (3) After that subsection add—
- “(8) A reference for a supplementary search in consequence of—
- (a) an amendment of the application made by the applicant under section 18(3) or 19(1) below, or
- (b) a correction of the application, or of a document filed in connection with the application, under section 117 below,
- shall be made only on payment of the prescribed fee, unless the comptroller directs otherwise.”.
- 4 In section 18 of the Patents Act 1977 (substantive examination and grant or refusal of patent), after subsection (1) insert—
- “(1A) If the examiner forms the view that a supplementary search under section 17 above is required for which a fee is payable, he shall inform the comptroller, who may decide that the substantive examination should not proceed until the fee is paid; and if he so decides, then unless within such period as he may allow—
- (a) the fee is paid, or
- (b) the application is amended so as to render the supplementary search unnecessary,
- he may refuse the application.”.

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- 5 In section 130(1) of the Patents Act 1977 (interpretation), in the definition of “search fee”, for “section 17 above” substitute “section 17(1) above”.

*Application for restoration of lapsed patent*

- 6 (1) Section 28 of the Patents Act 1977 (restoration of lapsed patents) is amended as follows.

- (2) For subsection (1) (application for restoration within period of one year) substitute—

“(1) Where a patent has ceased to have effect by reason of a failure to pay any renewal fee, an application for the restoration of the patent may be made to the comptroller within the prescribed period.

(1A) Rules prescribing that period may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient.”.

- (3) After subsection (2) insert—

“(2A) Notice of the application shall be published by the comptroller in the prescribed manner.”.

- (4) In subsection (3), omit paragraph (b) (requirement that failure to renew is due to circumstances beyond proprietor’s control) and the word “and” preceding it.

This amendment does not apply to a patent which has ceased to have effect in accordance with section 25(3) of the <sup>M24</sup>Patents Act 1977 (failure to renew within prescribed period) and in respect of which the period referred to in subsection (4) of that section (six months’ period of grace for renewal) has expired before commencement.

- (5) Omit subsections (5) to (9) (effect of order for restoration).

**Marginal Citations**

M24 1977 c. 37.

- 7 After that section insert—

**“28A Effect of order for restoration of patent.**

- (1) The effect of an order for the restoration of a patent is as follows.
- (2) Anything done under or in relation to the patent during the period between expiry and restoration shall be treated as valid.
- (3) Anything done during that period which would have constituted an infringement if the patent had not expired shall be treated as an infringement—
- (a) if done at a time when it was possible for the patent to be renewed under section 25(4), or
- (b) if it was a continuation or repetition of an earlier infringing act.
- (4) If after it was no longer possible for the patent to be so renewed, and before publication of notice of the application for restoration, a person—

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- (a) began in good faith to do an act which would have constituted an infringement of the patent if it had not expired, or
- (b) made in good faith effective and serious preparations to do such an act,

he has the right to continue to do the act or, as the case may be, to do the act, notwithstanding the restoration of the patent; but this right does not extend to granting a licence to another person to do the act.

- (5) If the act was done, or the preparations were made, in the course of a business, the person entitled to the right conferred by subsection (4) may—
  - (a) authorise the doing of that act by any partners of his for the time being in that business, and
  - (b) assign that right, or transmit it on death (or in the case of a body corporate on its dissolution), to any person who acquires that part of the business in the course of which the act was done or the preparations were made.
- (6) Where a product is disposed of to another in exercise of the rights conferred by subsection (4) or (5), that other and any person claiming through him may deal with the product in the same way as if it had been disposed of by the registered proprietor of the patent.
- (7) The above provisions apply in relation to the use of a patent for the services of the Crown as they apply in relation to infringement of the patent.”.

8 In consequence of the above amendments—

- (a) in section 60(6)(b) of the <sup>M25</sup>Patents Act 1977, for “section 28(6)” substitute “section 28A(4) or (5)”; and
- (b) in sections 77(5), 78(6) and 80(4) of that Act, for the words from “section 28(6)” to the end substitute “section 28A(4) and (5) above, and subsections (6) and (7) of that section shall apply accordingly.”.

#### **Marginal Citations**

**M25** 1977 c. 37.

#### *Determination of right to patent after grant*

9 (1) Section 37 of the Patents Act 1977 (determination of right to patent after grant) is amended as follows.

(2) For subsection (1) substitute—

“(1) After a patent has been granted for an invention any person having or claiming a proprietary interest in or under the patent may refer to the comptroller the question—

- (a) who is or are the true proprietor or proprietors of the patent,
- (b) whether the patent should have been granted to the person or persons to whom it was granted, or
- (c) whether any right in or under the patent should be transferred or granted to any other person or persons;

*Status: Point in time view as at 01/04/1998.*

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and the comptroller shall determine the question and make such order as he thinks fit to give effect to the determination.”.

- (3) Substitute “this section”—
- (a) in subsections (4) and (7) for “subsection (1)(a) above”, and
  - (b) in subsection (8) for “subsection (1) above”.
- 10 In section 74(6) (meaning of “entitlement proceedings”), for “section 37(1)(a) above” substitute “section 37(1) above”.

*Employees’ inventions*

- 11 (1) In section 39 of the Patents Act 1977 (right to employees’ inventions), after subsection (2) add—
- “(3) Where by virtue of this section an invention belongs, as between him and his employer, to an employee, nothing done—
- (a) by or on behalf of the employee or any person claiming under him for the purposes of pursuing an application for a patent, or
  - (b) by any person for the purpose of performing or working the invention,
- shall be taken to infringe any copyright or design right to which, as between him and his employer, his employer is entitled in any model or document relating to the invention.”.
- (2) In section 43 of the <sup>M26</sup>Patents Act 1977 (supplementary provisions with respect to employees’ inventions), in subsection (4) (references to patents to include other forms of protection, whether in UK or elsewhere) for “in sections 40 to 42” substitute “in sections 39 to 42.”.

**Marginal Citations**

M26 1977 c. 37.

*Undertaking to take licence in infringement proceedings*

- 12 (1) Section 46 of the Patents Act 1977 (licences of right) is amended as follows.
- (2) In subsection (3)(c) (undertaking to take licence in infringement proceedings) after the words “(otherwise than by the importation of any article” insert “from a country which is not a member State of the European Economic Community”.
- (3) After subsection (3) insert—
- “(3A) An undertaking under subsection (3)(c) above may be given at any time before final order in the proceedings, without any admission of liability.”.

*Power of comptroller on grant of compulsory licence*

- 13 In section 49 of the Patents Act 1977 (supplementary provisions with respect to compulsory licences), omit subsection (3) (power to order that licence has effect to revoke existing licences and deprive proprietor of power to work invention or grant licences).

*Status: Point in time view as at 01/04/1998.*

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*Powers exercisable in consequence of report of Monopolies and Mergers Commission*

- 14 For section 51 of the Patents Act 1977 (licences of right: application by Crown in consequence of report of Monopolies and Mergers Commission) substitute—

**“51 Powers exercisable in consequence of report of Monopolies and Mergers Commission.**

- (1) Where a report of the Monopolies and Mergers Commission has been laid before Parliament containing conclusions to the effect—

- (a) on a monopoly reference, that a monopoly situation exists and facts found by the Commission operate or may be expected to operate against the public interest,
- (b) on a merger reference, that a merger situation qualifying for investigation has been created and the creation of the situation, or particular elements in or consequences of it specified in the report, operate or may be expected to operate against the public interest,
- (c) on a competition reference, that a person was engaged in an anti-competitive practice which operated or may be expected to operate against the public interest, or
- (d) on a reference under section 11 of the Competition Act 1980 (reference of public bodies and certain other persons), that a person is pursuing a course of conduct which operates against the public interest,

the appropriate Minister or Ministers may apply to the comptroller to take action under this section.

- (2) Before making an application the appropriate Minister or Ministers shall publish, in such manner as he or they think appropriate, a notice describing the nature of the proposed application and shall consider any representations which may be made within 30 days of such publication by persons whose interests appear to him or them to be affected.

- (3) If on an application under this section it appears to the comptroller that the matters specified in the Commission’s report as being those which in the Commission’s opinion operate, or operated or may be expected to operate, against the public interest include—

- (a) conditions in licences granted under a patent by its proprietor restricting the use of the invention by the licensee or the right of the proprietor to grant other licences, or
- (b) a refusal by the proprietor of a patent to grant licences on reasonable terms

he may by order cancel or modify any such condition or may, instead or in addition, make an entry in the register to the effect that licences under the patent are to be available as of right.

- (4) In this section “the appropriate Minister or Ministers” means the Minister or Ministers to whom the report of the Commission was made.”.

*Compulsory licensing: reliance on statements in competition report*

- 15 In section 53(2) of the <sup>M27</sup>Patents Act 1977 (compulsory licensing: reliance on statements in reports of Monopolies and Mergers Commission)—

*Status: Point in time view as at 01/04/1998.*

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- (a) for “application made in relation to a patent under sections 48 to 51 above” substitute “application made under section 48 above in respect of a patent”; and
- (b) after “Part VIII of the Fair Trading Act 1973” insert “or section 17 of the Competition Act 1980”.

#### Marginal Citations

M27 1977 c. 37.

#### *Crown use: compensation for loss of profit*

- 16 (1) In the Patents Act 1977, after section 57 insert—

#### “57A Compensation for loss of profit.

- (1) Where use is made of an invention for the services of the Crown, the government department concerned shall pay—
  - (a) to the proprietor of the patent, or
  - (b) if there is an exclusive licence in force in respect of the patent, to the exclusive licensee,
 compensation for any loss resulting from his not being awarded a contract to supply the patented product or, as the case may be, to perform the patented process or supply a thing made by means of the patented process.
- (2) Compensation is payable only to the extent that such a contract could have been fulfilled from his existing manufacturing or other capacity; but is payable notwithstanding the existence of circumstances rendering him ineligible for the award of such a contract.
- (3) In determining the loss, regard shall be had to the profit which would have been made on such a contract and to the extent to which any manufacturing or other capacity was under-used.
- (4) No compensation is payable in respect of any failure to secure contracts to supply the patented product or, as the case may be, to perform the patented process or supply a thing made by means of the patented process, otherwise than for the services of the Crown.
- (5) The amount payable shall, if not agreed between the proprietor or licensee and the government department concerned with the approval of the Treasury, be determined by the court on a reference under section 58, and is in addition to any amount payable under section 55 or 57.
- (6) In this section “the government department concerned”, in relation to any use of an invention for the services of the Crown, means the government department by whom or on whose authority the use was made.
- (7) In the application of this section to Northern Ireland, the reference in subsection (5) above to the Treasury shall, where the government department concerned is a department of the Government of Northern Ireland, be construed as a reference to the Department of Finance and Personnel.”.

*Status: Point in time view as at 01/04/1998.*

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(2) In section 58 of the <sup>M28</sup>Patents Act 1977 (reference of disputes as to Crown use), for subsection (1) substitute—

“(1) Any dispute as to—

- (a) the exercise by a government department, or a person authorised by a government department, of the powers conferred by section 55 above,
  - (b) terms for the use of an invention for the services of the Crown under that section,
  - (c) the right of any person to receive any part of a payment made in pursuance of subsection (4) of that section, or
  - (d) the right of any person to receive a payment under section 57A,
- may be referred to the court by either party to the dispute after a patent has been granted for the invention.”;

and in subsection (4) for “under this section” substitute “under subsection (1)(a), (b) or (c) above”.

(3) In section 58(11) of the Patents Act 1977 (exclusion of right to compensation for Crown use if relevant transaction, instrument or event not registered), after “section 57(3) above” insert “, or to any compensation under section 57A above.”.

(4) The above amendments apply in relation to any use of an invention for the services of the Crown after the commencement of this section, even if the terms for such use were settled before commencement.

#### Marginal Citations

**M28** 1977 c. 37.

#### *Right to continue use begun before priority date*

17 For section 64 of the Patents Act 1977 (right to continue use begun before priority date) substitute—

#### “64 **Right to continue use begun before priority date.**

(1) Where a patent is granted for an invention, a person who in the United Kingdom before the priority date of the invention—

- (a) does in good faith an act which would constitute an infringement of the patent if it were in force, or
- (b) makes in good faith effective and serious preparations to do such an act,

has the right to continue to do the act or, as the case may be, to do the act, notwithstanding the grant of the patent; but this right does not extend to granting a licence to another person to do the act.

(2) If the act was done, or the preparations were made, in the course of a business, the person entitled to the right conferred by subsection (1) may—

- (a) authorise the doing of that act by any partners of his for the time being in that business, and

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- (b) assign that right, or transmit it on death (or in the case of a body corporate on its dissolution), to any person who acquires that part of the business in the course of which the act was done or the preparations were made.
- (3) Where a product is disposed of to another in exercise of the rights conferred by subsection (1) or (2), that other and any person claiming through him may deal with the product in the same way as if it had been disposed of by the registered proprietor of the patent.”.

*Revocation on grounds of grant to wrong person*

- 18 In section 72(1) of the <sup>M29</sup>Patents Act 1977 (grounds for revocation of patent), for paragraph (b) substitute—
- “(b) that the patent was granted to a person who was not entitled to be granted that patent;”.

**Marginal Citations**

M29 1977 c. 37.

*Revocation where two patents granted for same invention*

- 19 In section 73 of the Patents Act 1977 (revocation on initiative of comptroller), for subsections (2) and (3) (revocation of patent where European patent (UK) granted in respect of same invention) substitute—
- “(2) If it appears to the comptroller that a patent under this Act and a European patent (UK) have been granted for the same invention having the same priority date, and that the applications for the patents were filed by the same applicant or his successor in title, he shall give the proprietor of the patent under this Act an opportunity of making observations and of amending the specification of the patent, and if the proprietor fails to satisfy the comptroller that there are not two patents in respect of the same invention, or to amend the specification so as to prevent there being two patents in respect of the same invention, the comptroller shall revoke the patent.
- (3) The comptroller shall not take action under subsection (2) above before—
- (a) the end of the period for filing an opposition to the European patent (UK) under the European Patent Convention, or
  - (b) if later, the date on which opposition proceedings are finally disposed of;
- and he shall not then take any action if the decision is not to maintain the European patent or if it is amended so that there are not two patents in respect of the same invention.
- (4) The comptroller shall not take action under subsection (2) above if the European patent (UK) has been surrendered under section 29(1) above before the date on which by virtue of section 25(1) above the patent under this Act is to be treated as having been granted or, if proceedings for the surrender of the European patent (UK) have been begun before that date,



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until those proceedings are finally disposed of; and he shall not then take any action if the decision is to accept the surrender of the European patent.”.

*Applications and amendments not to include additional matter*

20 For section 76 of the <sup>M30</sup>Patents Act 1977 (amendments of applications and patents not to include added matter) substitute—

**“76 Amendments of applications and patents not to include added matter.**

- (1) An application for a patent which—
  - (a) is made in respect of matter disclosed in an earlier application, or in the specification of a patent which has been granted, and
  - (b) discloses additional matter, that is, matter extending beyond that disclosed in the earlier application, as filed, or the application for the patent, as filed,may be filed under section 8(3), 12 or 37(4) above, or as mentioned in section 15(4) above, but shall not be allowed to proceed unless it is amended so as to exclude the additional matter.
- (2) No amendment of an application for a patent shall be allowed under section 17(3), 18(3) or 19(1) if it results in the application disclosing matter extending beyond that disclosed in the application as filed.
- (3) No amendment of the specification of a patent shall be allowed under section 27(1), 73 or 75 if it—
  - (a) results in the specification disclosing additional matter, or
  - (b) extends the protection conferred by the patent.”.

**Marginal Citations**

**M30** 1977 c. 37.

*Effect of European patent (UK)*

- 21 (1) Section 77 of the Patents Act 1977 (effect of European patent (UK)) is amended as follows.
- (2) For subsection (3) (effect of finding of partial validity on pending proceedings) substitute—
- “(3) Where in the case of a European patent (UK)—
- (a) proceedings for infringement, or proceedings under section 58 above, have been commenced before the court or the comptroller and have not been finally disposed of, and
  - (b) it is established in proceedings before the European Patent Office that the patent is only partially valid,
- the provisions of section 63 or, as the case may be, of subsections (7) to (9) of section 58 apply as they apply to proceedings in which the validity of a patent is put in issue and in which it is found that the patent is only partially valid.”.

*Status: Point in time view as at 01/04/1998.*

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(3) For subsection (4) (effect of amendment or revocation under European Patent Convention) substitute—

“(4) Where a European patent (UK) is amended in accordance with the European Patent Convention, the amendment shall have effect for the purposes of Parts I and III of this Act as if the specification of the patent had been amended under this Act; but subject to subsection (6)(b) below.

(4A) Where a European patent (UK) is revoked in accordance with the European Patent Convention, the patent shall be treated for the purposes of Parts I and III of this Act as having been revoked under this Act.”.

(4) In subsection (6) (filing of English translation), in paragraph (b) (amendments) for “a translation of the amendment into English” substitute “a translation into English of the specification as amended”.

(5) In subsection (7) (effect of failure to file translation) for the words from “a translation” to “above” substitute “such a translation is not filed”.

*The state of the art: material contained in patent applications*

22 In section 78 of the <sup>M31</sup>Patents Act 1977 (effect of filing an application for a European patent (UK)), for subsection (5) (effect of withdrawal of application, &c.) substitute—

“(5) Subsections (1) to (3) above shall cease to apply to an application for a European patent (UK), except as mentioned in subsection (5A) below, if—

- (a) the application is refused or withdrawn or deemed to be withdrawn, or
- (b) the designation of the United Kingdom in the application is withdrawn or deemed to be withdrawn,

but shall apply again if the rights of the applicant are re-established under the European Patent Convention, as from their re-establishment.

(5A) The occurrence of any of the events mentioned in subsection (5)(a) or (b) shall not affect the continued operation of section 2(3) above in relation to matter contained in an application for a European patent (UK) which by virtue of that provision has become part of the state of the art as regards other inventions.”.

**Marginal Citations**

**M31** 1977 c. 37.

*Jurisdiction in certain proceedings*

23 Section 88 of the Patents Act 1977 (jurisdiction in legal proceedings in connection with Community Patent Convention) is repealed.

*Effect of filing international application for patent*

24 (1) Section 89 of the Patents Act 1977 (effect of filing international application for patent) is amended as follows.

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(2) After subsection (3) insert—

“(3A) If the relevant conditions are satisfied with respect to an application which is amended in accordance with the Treaty and the relevant conditions are not satisfied with respect to any amendment, that amendment shall be disregarded.”.

(3) After subsection (4) insert—

“(4A) In subsection (4)(a) “a copy of the application” includes a copy of the application published in accordance with the Treaty in a language other than that in which it was filed.”.

(4) For subsection (10) (exclusion of certain applications subject to European Patent Convention) substitute—

“(10) The foregoing provisions of this section do not apply to an application which falls to be treated as an international application for a patent (UK) by reason only of its containing an indication that the applicant wishes to obtain a European patent (UK); but without prejudice to the application of those provisions to an application which also separately designates the United Kingdom.”.

(5) The amendments in this paragraph shall be deemed always to have had effect.

(6) This paragraph shall be repealed by the order bringing the following paragraph into force.

25 For section 89 of the <sup>M32</sup>Patents Act 1977 (effect of filing international application for patent) substitute—

**“89 Effect of international application for patent.**

(1) An international application for a patent (UK) for which a date of filing has been accorded under the Patent Co-operation Treaty shall, subject to—  
section 89A (international and national phases of application), and  
section 89B (adaptation of provisions in relation to international application),

be treated for the purposes of Parts I and III of this Act as an application for a patent under this Act.

(2) If the application, or the designation of the United Kingdom in it, is withdrawn or (except as mentioned in subsection (3)) deemed to be withdrawn under the Treaty, it shall be treated as withdrawn under this Act.

(3) An application shall not be treated as withdrawn under this Act if it, or the designation of the United Kingdom in it, is deemed to be withdrawn under the Treaty—

(a) because of an error or omission in an institution having functions under the Treaty, or

(b) because, owing to circumstances outside the applicant’s control, a copy of the application was not received by the International Bureau before the end of the time limited for that purpose under the Treaty,

or in such other circumstances as may be prescribed.

*Status: Point in time view as at 01/04/1998.*

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- (4) For the purposes of the above provisions an application shall not be treated as an international application for a patent (UK) by reason only of its containing an indication that the applicant wishes to obtain a European patent (UK), but an application shall be so treated if it also separately designates the United Kingdom.
- (5) If an international application for a patent which designates the United Kingdom is refused a filing date under the Treaty and the comptroller determines that the refusal was caused by an error or omission in an institution having functions under the Treaty, he may direct that the application shall be treated as an application under this Act, having such date of filing as he may direct.

### **89A International and national phases of application.**

- (1) The provisions of the Patent Co-operation Treaty relating to publication, search, examination and amendment, and not those of this Act, apply to an international application for a patent (UK) during the international phase of the application.
- (2) The international phase of the application means the period from the filing of the application in accordance with the Treaty until the national phase of the application begins.
- (3) The national phase of the application begins—
  - (a) when the prescribed period expires, provided any necessary translation of the application into English has been filed at the Patent Office and the prescribed fee has been paid by the applicant; or
  - (b) on the applicant expressly requesting the comptroller to proceed earlier with the national phase of the application, filing at the Patent Office—
    - (i) a copy of the application, if none has yet been sent to the Patent Office in accordance with the Treaty, and
    - (ii) any necessary translation of the application into English, and paying the prescribed fee.

For this purpose a “copy of the application” includes a copy published in accordance with the Treaty in a language other than that in which it was originally filed.
- (4) If the prescribed period expires without the conditions mentioned in subsection (3)(a) being satisfied, the application shall be taken to be withdrawn.
- (5) Where during the international phase the application is amended in accordance with the Treaty, the amendment shall be treated as made under this Act if—
  - (a) when the prescribed period expires, any necessary translation of the amendment into English has been filed at the Patent Office, or
  - (b) where the applicant expressly requests the comptroller to proceed earlier with the national phase of the application, there is then filed at the Patent Office—

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- (i) a copy of the amendment, if none has yet been sent to the Patent Office in accordance with the Treaty, and
  - (ii) any necessary translation of the amendment into English; otherwise the amendment shall be disregarded.
- (6) The comptroller shall on payment of the prescribed fee publish any translation filed at the Patent Office under subsection (3) or (5) above.

### **89B Adaptation of provisions in relation to international application.**

- (1) Where an international application for a patent (UK) is accorded a filing date under the Patent Co-operation Treaty—
- (a) that date, or if the application is re-dated under the Treaty to a later date that later date, shall be treated as the date of filing the application under this Act,
  - (b) any declaration of priority made under the Treaty shall be treated as made under section 5(2) above, and where in accordance with the Treaty any extra days are allowed, the period of 12 months specified in section 5(2) shall be treated as altered accordingly, and
  - (c) any statement of the name of the inventor under the Treaty shall be treated as a statement filed under section 13(2) above.
- (2) If the application, not having been published under this Act, is published in accordance with the Treaty it shall be treated, for purposes other than those mentioned in subsection (3), as published under section 16 above when the conditions mentioned in section 89A(3)(a) are complied with.
- (3) For the purposes of section 55 (use of invention for service of the Crown) and section 69 (infringement of rights conferred by publication) the application, not having been published under this Act, shall be treated as published under section 16 above—
- (a) if it is published in accordance with the Treaty in English, on its being so published; and
  - (b) if it is so published in a language other than English—
    - (i) on the publication of a translation of the application in accordance with section 89A(6) above, or
    - (ii) on the service by the applicant of a translation into English of the specification of the application on the government department concerned or, as the case may be, on the person committing the infringing act.
- The reference in paragraph (b)(ii) to the service of a translation on a government department or other person is to its being sent by post or delivered to that department or person.
- (4) During the international phase of the application, section 8 above does not apply (determination of questions of entitlement in relation to application under this Act) and section 12 above (determination of entitlement in relation to foreign and convention patents) applies notwithstanding the application; but after the end of the international phase, section 8 applies and section 12 does not.

*Status: Point in time view as at 01/04/1998.*

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- (5) When the national phase begins the comptroller shall refer the application for so much of the examination and search under section 17 and 18 above as he considers appropriate in view of any examination or search carried out under the Treaty.”.

**Marginal Citations**

M32 1977 c. 37.

*Proceedings before the court or the comptroller*

26 In the <sup>M33</sup>Patents Act 1977, after section 99 (general powers of the court) insert—

**“99A Power of Patents Court to order report.**

- (1) Rules of court shall make provision empowering the Patents Court in any proceedings before it under this Act, on or without the application of any party, to order the Patent Office to inquire into and report on any question of fact or opinion.
- (2) Where the court makes such an order on the application of a party, the fee payable to the Patent Office shall be at such rate as may be determined in accordance with rules of court and shall be costs of the proceedings unless otherwise ordered by the court.
- (3) Where the court makes such an order of its own motion, the fee payable to the Patent Office shall be at such rate as may be determined by the Lord Chancellor with the approval of the Treasury and shall be paid out of money provided by Parliament.

**99B Power of Court of Session to order report.**

- (1) In any proceedings before the Court of Session under this Act the court may, either of its own volition or on the application of any party, order the Patent Office to inquire into and report on any question of fact or opinion.
- (2) Where the court makes an order under subsection (1) above of its own volition the fee payable to the Patent Office shall be at such rate as may be determined by the Lord President of the Court of Session with the consent of the Treasury and shall be defrayed out of moneys provided by Parliament.
- (3) Where the court makes an order under subsection (1) above on the application of a party, the fee payable to the Patent Office shall be at such rate as may be provided for in rules of court and shall be treated as expenses in the cause.”.

**Marginal Citations**

M33 1977 c. 37.

27 For section 102 of the <sup>M34</sup>Patents Act 1977 (right of audience in patent proceedings) substitute—

*Status: Point in time view as at 01/04/1998.*

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### **“102 Right of audience, &c. in proceedings before comptroller.**

- (1) A party to proceedings before the comptroller under this Act, or under any treaty or international convention to which the United Kingdom is a party, may appear before the comptroller in person or be represented by any person whom he desires to represent him.
- (2) No offence is committed under the enactments relating to the preparation of documents by persons not legally qualified by reason only of the preparation by any person of a document, other than a deed, for use in such proceedings.
- (3) Subsection (1) has effect subject to rules made under section 281 of the Copyright, Designs and Patents Act 1988 (power of comptroller to refuse to recognise certain agents).
- (4) In its application to proceedings in relation to applications for, or otherwise in connection with, European patents, this section has effect subject to any restrictions imposed by or under the European Patent Convention.

### **102A Right of audience, &c. in proceedings on appeal from the comptroller.**

- (1) A solicitor of the Supreme Court may appear and be heard on behalf of any party to an appeal under this Act from the comptroller to the Patents Court.
- (2) A registered patent agent or a member of the Bar not in actual practice may do, in or in connection with proceedings on an appeal under this Act from the comptroller to the Patents Court, anything which a solicitor of the Supreme Court might do, other than prepare a deed.
- (3) The Lord Chancellor may by regulations—
  - (a) provide that the right conferred by subsection (2) shall be subject to such conditions and restrictions as appear to the Lord Chancellor to be necessary or expedient, and
  - (b) apply to persons exercising that right such statutory provisions, rules of court and other rules of law and practice applying to solicitors as may be specified in the regulations;and different provision may be made for different descriptions of proceedings.
- (4) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) This section is without prejudice to the right of counsel to appear before the High Court.”.

#### **Marginal Citations**

**M34** 1977 c. 37.

*Status: Point in time view as at 01/04/1998.*

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*Provision of information*

- 28 In section 118 of the <sup>M35</sup>Patents Act 1977 (information about patent applications, &c.), in subsection (3) (restriction on disclosure before publication of application: exceptions) for “section 22(6)(a) above” substitute “section 22(6) above”.

**Marginal Citations**

M35 1977 c. 37.

*Power to extend time limits*

- 29 In section 123 of the Patents Act 1977 (rules), after subsection (3) insert—
- “(3A) It is hereby declared that rules—
- (a) authorising the rectification of irregularities of procedure, or
  - (b) providing for the alteration of any period of time,
- may authorise the comptroller to extend or further extend any period notwithstanding that the period has already expired.”.

*Availability of samples of micro-organisms*

- 30 In the Patents Act 1977 after section 125 insert—
- “125A Disclosure of invention by specification: availability of samples of micro-organisms.**
- (1) Provision may be made by rules prescribing the circumstances in which the specification of an application for a patent, or of a patent, for an invention which requires for its performance the use of a micro-organism is to be treated as disclosing the invention in a manner which is clear enough and complete enough for the invention to be performed by a person skilled in the art.
  - (2) The rules may in particular require the applicant or patentee—
    - (a) to take such steps as may be prescribed for the purposes of making available to the public samples of the micro-organism, and
    - (b) not to impose or maintain restrictions on the uses to which such samples may be put, except as may be prescribed.
  - (3) The rules may provide that, in such cases as may be prescribed, samples need only be made available to such persons or descriptions of persons as may be prescribed; and the rules may identify a description of persons by reference to whether the comptroller has given his certificate as to any matter.
  - (4) An application for revocation of the patent under section 72(1)(c) above may be made if any of the requirements of the rules cease to be complied with.”.



*Status: Point in time view as at 01/04/1998.*

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VALID FROM 31/10/2003

[<sup>F16</sup>SCHEDULE  
5A U.K.]

Section 296ZE

PERMITTED ACTS TO WHICH SECTION 296ZE APPLIES

**Textual Amendments**

**F16** Sch. 5A inserted (31.10.2003) by [The Copyright and Related Rights Regulations 2003 \(S.I. 2003/2498\)](#), reg. 24(2), **Sch. 3** (with regs. 31-40)

SCHEDULE 6 U.K.]

Section 301.

PROVISIONS FOR THE BENEFIT OF THE HOSPITAL FOR SICK CHILDREN

*Interpretation*

- 1 (1) In this Schedule—
- “the Hospital” means The Hospital for Sick Children, Great Ormond Street, London,
  - “the trustees” means the special trustees appointed for the Hospital under the <sup>M36</sup>National Health Service Act 1977; and
  - “the work” means the play “Peter Pan” by Sir James Matthew Barrie.
- (2) Expressions used in this Schedule which are defined for the purposes of Part I of this Act (copyright) have the same meaning as in that Part.

**Marginal Citations**

**M36** 1977 c. 49.

*Entitlement to royalty*

- 2 (1) The trustees are entitled, subject to the following provisions of this Schedule, to a royalty in respect of any public performance, commercial publication, broadcasting or inclusion in a cable programme service of the whole or any substantial part of the work or an adaptation of it.
- (2) Where the trustees are or would be entitled to a royalty, another form of remuneration may be agreed.

*Status: Point in time view as at 01/04/1998.*

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### *Exceptions*

- 3 No royalty is payable in respect of—
- (a) anything which immediately before copyright in the work expired on 31st December 1987 could lawfully have been done without the licence, or further licence, of the trustees as copyright owners; or
  - (b) anything which if copyright still subsisted in the work could, by virtue of any provision of Chapter III of Part I of this Act (acts permitted notwithstanding copyright), be done without infringing copyright.

### *Saving*

- 4 No royalty is payable in respect of anything done in pursuance of arrangements made before the passing of this Act.

### *Procedure for determining amount payable*

- 5 (1) In default of agreement application may be made to the Copyright Tribunal which shall consider the matter and make such order regarding the royalty or other remuneration to be paid as it may determine to be reasonable in the circumstances.
- (2) Application may subsequently be made to the Tribunal to vary its order, and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
- (3) An application for variation shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application for variation.
- (4) A variation order has effect from the date on which it is made or such later date as may be specified by the Tribunal.
- [<sup>F18</sup>(5) The provisions of Chapter VIII of Part I (general provisions relating to the Copyright Tribunal) apply in relation to the Tribunal when exercising any jurisdiction under this paragraph.]

#### **Textual Amendments**

**F18** Sch. 6 para. 5(5) added (1.12.1996) by S.I. 1996/2967, reg. 24(3) (with Pt. III)

### *Sums received to be held on trust*

- 6 The sums received by the trustees by virtue of this Schedule, after deduction of any relevant expenses, shall be held by them on trust for the purposes of the Hospital.

### *Right only for the benefit of the Hospital*

- 7 (1) The right of the trustees under this Schedule may not be assigned and shall cease if the trustees purport to assign or charge it.
- (2) The right may not be the subject of an order under section 92 of the <sup>M37</sup>National Health Service Act 1977 (transfers of trust property by order of the Secretary of State)

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and shall cease if the Hospital ceases to have a separate identity or ceases to have purposes which include the care of sick children.

- (3) Any power of Her Majesty, the court (within the meaning of [F19the Charities Act 1993]) or any other person to alter the trusts of a charity is not exercisable in relation to the trust created by this Schedule.

#### Textual Amendments

F19 Words in Sch. 6 para. 7 substituted (1.8.1993) by 1993 c. 10, ss. 98(1), 99(1), Sch. 6 para.30

#### Marginal Citations

M37 1977 c. 49.

## SCHEDULE 7 U.K.

Section 303(1).

### CONSEQUENTIAL AMENDMENTS: GENERAL

#### *British Mercantile Marine Uniform Act 1919 (c.62)*

- 1 For section 2 of the British Mercantile Marine Uniform Act 1919 (copyright in distinctive marks of uniform) substitute—

#### **“2 Right in registered design of distinctive marks of uniform.**

The right of the Secretary of State in any design forming part of the British mercantile marine uniform which is registered under the Registered Designs Act 1949 is not limited to the period prescribed by section 8 of that Act but shall continue to subsist so long as the design remains on the register.”

#### *Chartered Associations (Protection of Names and Uniforms) Act 1926 (c.26)*

- 2 In section 1(5) of the Chartered Associations (Protection of Names and Uniforms) Act 1926 for “the copyright in respect thereof” substitute “ the right in the registered design ”.

#### *Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 (c.107)*

- 3 (1) The Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 is amended as follows.
- (2) In section 1 (effect of licence where owner is enemy or enemy subject)—
- (a) in subsection (1) after “a copyright” and “the copyright” insert “ or design right ”;
  - (b) in subsection (2) after “the copyright” insert “ or design right ” and for “or copyright” substitute “ , copyright or design right ”.
- (3) In section 2 (power of comptroller to grant licences)—

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- (a) in subsection (1) after “a copyright”, “the copyright” (twice) and “the said copyright” insert “ or design right ” and for “or copyright” (twice) substitute “ , copyright or design right ”;
  - (b) in subsections (2) and (3) for “ , or copyright ” substitute “ , copyright or design right ”;
  - (c) in subsection (4) and in subsection (5) (twice), after “the copyright” insert “ or design right ”;
  - (d) in subsection (8)(c) for “or work in which copyright subsists” substitute “ work in which copyright subsists or design in which design right subsists ”.
- (4) In section 5 (effect of war on international arrangements)—
- (a) in subsection (1) for “section twenty-nine of the Copyright Act 1911” substitute “ section 159 or 256 of the Copyright, Designs and Patents Act 1988 (countries enjoying reciprocal copyright or design right protection) ”;
  - (b) in subsection (2) after “copyright” (four times) insert “ or design right ” and for “the Copyright Act 1911” (twice) substitute “ Part I or III of the Copyright, Designs and Patents Act 1988 ”.
- (5) In section 10(1) (interpretation) omit the definition of “copyright”, and for the definitions of “design”, “invention”, “patent” and “patentee” substitute—
- ““design” has in reference to a registered design the same meaning as in the Registered Designs Act 1949, and in reference to design right the same meaning as in Part III of the Copyright, Designs and Patents Act 1988;
- “invention” and “patent” have the same meaning as in the Patents Act 1977.”.

*Crown Proceedings Act 1947 (c.44)*

- 4 (1) In the Crown Proceedings Act 1947 for section 3 (provisions as to industrial property) substitute—

**“3 Infringement of intellectual property rights.**

- (1) Civil proceedings lie against the Crown for an infringement committed by a servant or agent of the Crown, with the authority of the Crown, of—
- (a) a patent,
  - (b) a registered trade mark or registered service mark,
  - (c) the right in a registered design,
  - (d) design right, or
  - (e) copyright;
- but save as provided by this subsection no proceedings lie against the Crown by virtue of this Act in respect of an infringement of any of those rights.
- (2) Nothing in this section, or any other provision of this Act, shall be construed as affecting—
- (a) the rights of a government department under section 55 of the Patents Act 1977, Schedule 1 to the Registered Designs Act 1949 or section 240 of the Copyright, Designs and Patents Act 1988 (Crown use of patents and designs), or

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- (b) the rights of the Secretary of State under section 22 of the Patents Act 1977 or section 5 of the Registered Designs Act 1949 (security of information prejudicial to defence or public safety).”.
- (2) In the application of sub-paragraph (1) to Northern Ireland—
- (a) the reference to the Crown Proceedings Act 1947 is to that Act as it applies to the Crown in right of Her Majesty’s Government in Northern Ireland, as well as to the Crown in right of Her Majesty’s Government in the United Kingdom, and
  - (b) in the substituted section 3 as it applies in relation to the Crown in right of Her Majesty’s Government in Northern Ireland, subsection (2)(b) shall be omitted.

*Patents Act 1949 (c.87)*

- 5 In section 47 of the Patents Act 1949 (rights of third parties in respect of Crown use of patent), in the closing words of subsection (1) (which relate to the use of models or documents), after “copyright” insert “ or design right ”.

*Public Libraries (Scotland) Act 1955 (c.27)*

F20 6 .....

**Textual Amendments**

F20 Sch. 7 para. 6 repealed (1.12.1996) by S.I. 1996/2967, reg. 11(7) (with Pt. III)

*London County Council (General Powers) Act 1958 (c.xxi)*

- 7 In section 36 of the London County Council (General Powers) Act 1958 (power as to libraries: provision and repair of things other than books) for subsection (5) substitute—

“(5) Nothing in this section shall be construed as authorising an infringement of copyright.”.

*Public Libraries and Museums Act 1964 (c.75)*

F21 8 .....

**Textual Amendments**

F21 Sch. 7 para. 8 repealed (1.12.1996) by S.I. 1996/2967, reg. 11(7) (with Pt. III)

*Marine, &c., Broadcasting (Offences) Act 1967 (c.41)*

- 9 In section 5 of the Marine, &c., Broadcasting (Offences) Act 1967 (provision of material for broadcasting by pirate radio stations)—

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- (a) in subsection (3)(a) for the words from “cinematograph film” to “in the record” substitute “ film or sound recording with intent that a broadcast of it ”; and
- (b) in subsection (6) for the words from “and references” to the end substitute “ and “film”, “sound recording”, “literary, dramatic or musical work” and “artistic work” have the same meaning as in Part I of the Copyright, Designs and Patents Act 1988 (copyright) ”.

*Medicines Act 1968 (c.67)*

- 10 (1) Section 92 of the Medicines Act 1968 (scope of provisions restricting promotion of sales of medicinal products) is amended as follows.
- (2) In subsection (1) (meaning of “advertisement”) for the words from “or by the exhibition” to “service” substitute “ or by means of a photograph, film, sound recording, broadcast or cable programme, ”.
- (3) In subsection (2) (exception for the spoken word)—
- (a) in paragraph (a) omit the words from “or embodied” to “film”; and
  - (b) in paragraph (b) for the words from “by way of” to the end substitute “ or included in a cable programme service ”.
- (4) For subsection (6) substitute—
- “(6) In this section “film”, “sound recording”, “broadcast”, “cable programme”, “cable programme service”, and related expressions, have the same meaning as in Part I of the Copyright, Designs and Patents Act 1988 (copyright).”.

*Post Office Act 1969 (c.48)*

- 11 In Schedule 10 to the Post Office Act 1969 (special transitional provisions relating to use of patents and registered designs), in the closing words of paragraphs 8(1) and 18(1) (which relate to the use of models and documents), after “copyright” insert “ or design right ”.

*Merchant Shipping Act 1970 (c.36)*

- 12 In section 87 of the Merchant Shipping Act 1970 (merchant navy uniform), for subsection (4) substitute—
- “(4) Where any design forming part of the merchant navy uniform has been registered under the Registered Designs Act 1949 and the Secretary of State is the proprietor of the design, his right in the design is not limited to the period prescribed by section 8 of that Act but shall continue to subsist so long as the design remains registered.”.

*Taxes Management Act 1970 (c.9)*

- 13 In section 16 of the Taxes Management Act 1970 (returns to be made in respect of certain payments)—
- (a) in subsection (1)(c), and
  - (b) in subsection (2)(b),

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for “or public lending right” substitute “, public lending right, right in a registered design or design right”.

*Tribunals and Inquiries Act 1971 (c.62)*

F22 14 .....

**Textual Amendments**

**F22** Sch. 7 para. 14 repealed (1.10.1992) by Tribunals and Inquiries Act 1992 (c. 53), ss. 18(2), 19(2), Sch. 4 Pt.I

*Fair Trading Act 1973 (c.41)*

15 In Schedule 4 to the Fair Trading Act 1973 (excluded services), for paragraph 10 (services of patent agents) substitute—

“10 The services of registered patent agents (within the meaning of Part V of the Copyright, Designs and Patents Act 1988) in their capacity as such.”;  
and in paragraph 10A (services of European patent attorneys) for “section 84(7) of the Patents Act 1977” substitute “Part V of the Copyright, Designs and Patents Act 1988”.

*House of Commons Disqualification Act 1975 (c.24)*

16 In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert “ The Copyright Tribunal ”.

*Northern Ireland Assembly Disqualification Act 1975 (c.25)*

17 In Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert “ The Copyright Tribunal ”.

*Restrictive Trade Practices Act 1976 (c.34)*

18 (1) The Restrictive Trade Practices Act 1976 is amended as follows.  
(2) In Schedule 1 (excluded services) for paragraph 10 (services of patent agents) substitute—

“10 The services of registered patent agents (within the meaning of Part V of the Copyright, Designs and Patents Act 1988) in their capacity as such.”;  
and in paragraph 10A (services of European patent attorneys) for “section 84(7) of the Patents Act 1977” substitute “ Part V of the Copyright, Designs and Patents Act 1988 ”.

(3) In Schedule 3 (excepted agreements), after paragraph 5A insert—

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*“ Design right*

- 5B (1) This Act does not apply to—
- (a) a licence granted by the owner or a licensee of any design right,
  - (b) an assignment of design right, or
  - (c) an agreement for such a licence or assignment,
- if the licence, assignment or agreement is one under which no such restrictions as are described in section 6(1) above are accepted, or no such information provisions as are described in section 7(1) above are made, except in respect of articles made to the design; but subject to the following provisions.
- (2) Sub-paragraph (1) does not exclude a licence, assignment or agreement which is a design pooling agreement or is granted or made (directly or indirectly) in pursuance of a design pooling agreement.
- (3) In this paragraph a “design pooling agreement” means an agreement—
- (a) to which the parties are or include at least three persons (the “principal parties”) each of whom has an interest in one or more design rights, and
  - (b) by which each principal party agrees, in respect of design right in which he has, or may during the currency of the agreement acquire, an interest to grant an interest (directly or indirectly) to one or more of the other principal parties, or to one or more of those parties and to other persons.
- (4) In this paragraph—
- “assignment”, in Scotland, means assignation; and
- “interest” means an interest as owner or licensee of design right.
- (5) This paragraph applies to an interest held by or granted to more than one person jointly as if they were one person.
- (6) References in this paragraph to the granting of an interest to a person indirectly are to its being granted to a third person for the purpose of enabling him to make a grant to the person in question.”.

*Resale Prices Act 1976 (c. 53)*

- 19 In section 10(4) of the Resale Prices Act 1976 (patented articles: articles to be treated in same way), in paragraph (a) after “protected” insert “ by design right or ”.

*Patents Act 1977 (c. 37)*

- 20 In section 57 of the Patents Act 1977 (rights of third parties in respect of Crown use of patent), in the closing words of subsection (1) (which relate to the use of models or documents), after “copyright” insert “ or design right ”.
- 21 In section 105 of the Patents Act 1977 (privilege in Scotland for communications relating to patent proceedings), omit “within the meaning of section 104 above”, make the existing text subsection (1) and after it insert—



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“(2) In this section—

“patent proceedings” means proceedings under this Act or any of the relevant conventions, before the court, the comptroller or the relevant convention court, whether contested or uncontested and including an application for a patent; and

“the relevant conventions” means the European Patent Convention, the Community Patent Convention and the Patent Co-operation Treaty.”.

22 In section 123(7) of the Patents Act 1977 (publication of case reports by the comptroller)—

(a) for “and registered designs” substitute “registered designs or design right”,

(b) for “and copyright” substitute “, copyright and design right”.

23 In section 130(1) of the Patents Act 1977 (interpretation), in the definition of “court”, for paragraph (a) substitute—

“(a) as respects England and Wales, the High Court or any patents county court having jurisdiction by virtue of an order under section 287 of the Copyright, Designs and Patents Act 1988;”.

*Unfair Contract Terms Act 1977 (c. 50)*

24 In paragraph 1 of Schedule 1 to the Unfair Contract Terms Act 1977 (scope of main provisions: excluded contracts), in paragraph (c) (contracts relating to grant or transfer of interest in intellectual property) after “copyright” insert “ or design right”.

*Judicature (Northern Ireland) Act 1978 (c. 23)*

25 In section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property), in subsection (5) (meaning of “intellectual property”) after “copyright” insert “ or design right”.

*Capital Gains Tax Act 1979 (c. 14)*

<sup>F23</sup>26 .....

**Textual Amendments**

**F23** Sch. 7 para. 26 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch.12 (with s. 201(3), Sch. 11 paras. 22, 26(2), 27)

*British Telecommunications Act 1981 (c. 38)*

27 In Schedule 5 to the British Telecommunications Act 1981 (special transitional provisions relating to use of patents and registered designs), in the closing words of paragraphs 9(1) and 19(1) (which relate to the use of models and documents), after “copyright” insert “ or design right”.

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*Supreme Court Act 1981 (c. 54)*

- 28 (1) The Supreme Court Act 1981 is amended as follows.
- (2) In section 72 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property), in subsection (5) (meaning of “intellectual property”) after “copyright” insert “ , design right ”.
- (3) In Schedule 1 (distribution of business in the High Court), in paragraph 1(i) (business assigned to the Chancery Division: causes and matters relating to certain intellectual property) for “or copyright” substitute “ , copyright or design right ”.
- <sup>F24</sup>29, 30. . . . .

**Textual Amendments**

**F24** Sch. 7 paras. 29, 30 repealed by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(3), Sch. 21 (the repeal being in force subject, as to para. 29, as mentioned in S.I. 1990/2347 art. 3(3))

*Companies Act 1985 (c. 6)*

- <sup>F25</sup>31 (1) Part XII of the Companies Act 1985 (registration of charges) is amended as follows.
- (2) In section 396 (registration of charges in England and Wales: charges which must be registered), in subsection (1)(j) for the words from “on a patent” to the end substitute “ or on any intellectual property ”, and after subsection (3) insert—
- “(3A) The following are “intellectual property” for the purposes of this section—
- (a) any patent, trade mark, service mark, registered design, copyright or design right;
- (b) any licence under or in respect of any such right.”.
- (3) In section 410 (registration of charges in Scotland: charges which must be registered), in subsection (4)(c) (incorporeal moveable property) after subparagraph (vi) insert—
- “(vii) a registered design or a licence in respect of such a design,  
(viii) a design right or a licence under a design right.”.]

**Textual Amendments**

**F25** Sch. 7 para. 31 repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 215(2), Sch. 24

*Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73)*

- 32 In section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property), in subsection (5) (meaning of “intellectual property”) after “copyright” insert “ or design right ”.

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*Atomic Energy Authority Act 1986 (c. 3)*

- 33 In section 8(2) of the Atomic Energy Authority Act 1986 (powers of Authority as to exploitation of research: meaning of “intellectual property”), after “copyrights” insert “, design rights”.

*Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I.3))*

F2634 .....

**Textual Amendments**

**F26** Sch. 7 para. 34 repealed (16.1.1994) by S.I. 1993/2810 (N.I. 12), arts. 1(2), 50(2), Sch.5 and expressed to be repealed (1.12.1996) by S.I. 1996/2967, reg. 11(7) (with Pt. III)

*Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I.6))*

- [F2735 In Article 403 of the Companies (Northern Ireland) Order 1986 (registration of charges: charges which must be registered), in paragraph (1)(j) for the words from “on a patent” to the end substitute “ or on any intellectual property ”, and after paragraph (3) insert—

“(3A) The following are “intellectual property” for the purposes of this Article—  
(a) any patent, trade mark, service mark, registered design, copyright or design right;  
(b) any licence under or in respect of any such right.”.]

**Textual Amendments**

**F27** Sch. 7 para. 35 repealed (prosp.) by S.I. 1990/1504 (N.I. 10), arts. 1, 113, Sch. 6

*Income and Corporation Taxes Act 1988 (c. 1)*

- 36 (1) The Income and Corporation Taxes Act 1988 is amended as follows.
- (2) In section 83 (fees and expenses deductible in computing profits and gains of trade) for “the extension of the period of copyright in a design” substitute “ an extension of the period for which the right in a registered design subsists ”.
- (3) In section 103 (charge on receipts after discontinuance of trade, profession or vocation), in subsection (3) (sums to which the section does not apply), after paragraph (b) insert—  
“(bb) a lump sum paid to the personal representatives of the designer of a design in which design right subsists as consideration for the assignment by them, wholly or partially, of that right.”.
- (4) In section 387 (carry forward as losses of certain payments made under deduction of tax), in subsection (3) (payments to which the section does not apply), in

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paragraph (e) (copyright royalties) after “applies” insert “ or royalties in respect of a right in a design to which section 537B applies ”.

- (5) In section 536 (taxation of copyright royalties where owner abroad), for the definition of “copyright” in subsection (2) substitute—
- ““copyright” does not include copyright in—
- (i) a cinematograph film or video recording, or
  - (ii) the sound-track of such a film or recording, so far as it is not separately exploited; and”.
- (6) In Chapter I of Part XIII (miscellaneous special provisions: intellectual property), after section 537 insert—

*“ Designs*

**537A Relief for payments in respect of designs.**

- (1) Where the designer of a design in which design right subsists assigns that right, or the author of a registered design assigns the right in the design, wholly or partially, or grants an interest in it by licence, and—
  - (a) the consideration for the assignment or grant consists, in whole or in part, of a payment to which this section applies, the whole amount of which would otherwise be included in computing the amount of his profits or gains for a single year of assessment, and
  - (b) he was engaged in the creation of the design for a period of more than 12 months,
 he may, on making a claim, require that effect shall be given to the following provisions in connection with that payment.
- (2) If the period for which he was engaged in the creation of the design does not exceed 24 months, then, for all income tax purposes, one-half only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable and the remaining half shall be treated as having become receivable 12 months before that date.
- (3) If the period for which he was engaged in the creation of the design exceeds 24 months, then, for all income tax purposes, one-third only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and one-third shall be treated as having become receivable 12 months, and one-third 24 months, before that date.
- (4) This section applies to—
  - (a) a lump sum payment, including an advance on account of royalties which is not returnable, and
  - (b) any other payment of or on account of royalties or sums payable periodically which does not only become receivable more than two years after articles made to the design or, as the case may be, articles to which the design is applied are first made available for sale or hire.
- (5) A claim under this section with respect to any payment to which it applies by virtue only of subsection (4)(b) above shall have effect as a claim with respect to all such payments in respect of rights in the design in question which are receivable by the claimant, whether before or after the claim; and

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such a claim may be made at any time not later than 5th April next following the expiration of eight years after articles made to the design or, as the case may be, articles to which the design is applied were first made available for sale or hire.

- (6) In this section—
- (a) “designer” includes a joint designer, and
  - (b) any reference to articles being made available for sale or hire is to their being so made available anywhere in the world by or with the licence of the design right owner or, as the case may be, the proprietor of the registered design.

### **537B Taxation of design royalties where owner abroad.**

- (1) Where the usual place of abode of the owner of a right in a design is not within the United Kingdom, section 349(1) shall apply to any payment of or on account of any royalties or sums paid periodically for or in respect of that right as it applies to annual payments not payable out of profits or gains brought into charge to income tax.
- (2) In subsection (1) above—
- (a) “right in a design” means design right or the right in a registered design,
  - (b) the reference to the owner of a right includes a person who, notwithstanding that he has assigned the right to some other person, is entitled to receive periodical payments in respect of the right, and
  - (c) the reference to royalties or other sums paid periodically for or in respect of a right does not include royalties or sums paid in respect of articles which are shown on a claim to have been exported from the United Kingdom for distribution outside the United Kingdom.
- (3) Where a payment to which subsection (1) above applies is made through an agent resident in the United Kingdom and that agent is entitled as against the owner of the right to deduct any sum by way of commission in respect of services rendered, the amount of the payment shall for the purposes of section 349(1) be taken to be diminished by the sum which the agent is entitled to deduct.
- (4) Where the person by or through whom the payment is made does not know that any such commission is payable or does not know the amount of any such commission, any income tax deducted by or assessed and charged on him shall be computed in the first instance on, and the account to be delivered of the payment shall be an account of, the total amount of the payment without regard being had to any diminution thereof, and in that case, on proof of the facts on a claim, there shall be made to the agent on behalf of the owner of the right such repayment of income tax as is proper in respect of the sum deducted by way of commission.
- (5) The time of the making of a payment to which subsection (1) above applies shall, for all tax purposes, be taken to be the time when it is made by the person by whom it is first made and not the time when it is made by or through any other person.

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- (6) Any agreement for the making of any payment to which subsection (1) above applies in full and without deduction of income tax shall be void.”.
- (7) In section 821 (payments made under deduction of tax before passing of Act imposing income tax for that year), in subsection (3) (payments subject to adjustment) after paragraph (a) insert—
- “(aa) any payment for or in respect of a right in a design to which section 537B applies; and”.
- (8) In Schedule 19 (apportionment of income of close companies), in paragraph 10(4) (cessation or liquidation: debts taken into account although creditor is participator or associate), in paragraph (c) (payments for use of certain property) for the words from “tangible property” to “extend)” substitute—
- “(i) tangible property,  
(ii) copyright in a literary, dramatic, musical or artistic work within the meaning of Part I of the Copyright, Designs and Patents Act 1988 (or any similar right under the law of a country to which that Part does not extend), or  
(iii) design right,”.
- (9) In Schedule 25 (taxation of UK-controlled foreign companies: exempt activities), in paragraph 9(1)(a) (investment business: holding of property) for “patents or copyrights” substitute “or intellectual property” and after that subparagraph insert—
- “(1A) In sub-paragraph (1)(a) above “intellectual property” means patents, registered designs, copyright and design right (or any similar rights under the law of a country outside the United Kingdom).”.

SCHEDULE 8 **U.K.**

Section 303(2).

REPEALS

1939 c. 107.	Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939.	In section 10(1), the definition of “copyright”.
1945 c. 16.	Limitation (Enemies and War Prisoners) Act 1945.	In sections 2(1) and 4(a), the reference to section 10 of the Copyright Act 1911.
1949 c. 88.	Registered Designs Act 1949.	In section 3(2), the words “or original”. Section 5(5). In section 11(2), the words “or original”. In section 14(3), the words “or the Isle of Man”. Section 32. Section 33(2).

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		Section 37(1).
		Section 38.
		In section 44(1), the definitions of “copyright” and “Journal”.
		In section 45, paragraphs (1) and (2).
		In section 46, paragraphs (1) and (2).
1949 c. 88.— <i>cont.</i>	Registered Designs Act 1949.— <i>cont.</i>	Section 48(1).
		In Schedule 1, in paragraph 3(1), the words “in such manner as may be prescribed by rules of court”.
		Schedule 2.
1956 c. 74.	Copyright Act 1956.	The whole Act.
1957 c. 6.	Ghana Independence Act 1957.	In Schedule 2, paragraph 12.
1957 c. 60.	Federation of Malaya Independence Act 1957.	In Schedule 1, paragraphs 14 and 15.
1958 c. 44.	Dramatic and Musical Performers’ Protection Act 1958.	The whole Act.
1958 c. 51.	Public Records Act 1958.	Section 11. Schedule 3.
1960 c. 52.	Cyprus Independence Act 1960.	In the Schedule, paragraph 13.
1960 c. 55.	Nigeria Independence Act 1960.	In Schedule 2, paragraphs 12 and 13.
1961 c. 1.	Tanganyika Independence Act 1961.	In Schedule 2, paragraphs 13 and 14.
1961 c. 16.	Sierra Leone Independence Act 1961.	In Schedule 3, paragraphs 13 and 14.
1961 c. 25.	Patents and Designs (Renewals, Extensions and Fees) Act 1961.	The whole Act.
1962 c. 40.	Jamaica Independence Act 1962.	In Schedule 2, paragraph 13.
1962 c. 54.	Trinidad and Tobago Independence Act 1962.	In Schedule 2, paragraph 13.

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1963 c. 53.	Performers' Protection Act 1963.	The whole Act.
1964 c. 46.	Malawi Independence Act 1964.	In Schedule 2, paragraph 13.
1964 c. 65.	Zambia Independence Act 1964.	In Schedule 1, paragraph 9.
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1964 c. 93.	Gambia Independence Act 1964.	In Schedule 2, paragraph 12.
1966 c. 24.	Lesotho Independence Act 1966.	In the Schedule, paragraph 9.
1966 c. 37.	Barbados Independence Act 1966.	In Schedule 2, paragraph 12.
1967 c. 80.	Criminal Justice Act 1967.	In Parts I and IV of Schedule 3, the entries relating to the Registered Designs Act 1949.
1968 c. 56.	Swaziland Independence Act 1968.	In the Schedule, paragraph 9.
1968 c. 67.	Medicines Act 1968.	In section 92(2)(a), the words from "or embodied" to "film". Section 98.
1968 c. 68.	Design Copyright Act 1968.	The whole Act.
1971 c. 4.	Copyright (Amendment) Act 1971.	The whole Act.
1971 c. 23.	Courts Act 1971.	In Schedule 9, the entry relating to the Copyright Act 1956.
1971 c. 62.	Tribunals and Inquiries Act 1971.	In Schedule 1, paragraph 24.
1972 c. 32.	Performers' Protection Act 1972.	The whole Act.
1975 c. 24.	House of Commons Disqualification Act 1975.	In Part II of Schedule 1, the entry relating to the Performing Right Tribunal.
1975 c. 25.	Northern Ireland Assembly Disqualification Act 1975.	In Part II of Schedule 1, the entry relating to the Performing Right Tribunal.
1977 c. 37.	Patents Act 1977.	Section 14(4) and (8).



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		In section 28(3), paragraph (b) and the word “and” preceding it.
		Section 28(5) to (9).
		Section 49(3).
		Sections 72(3).
		Sections 84 and 85.
		Section 88.
		Section 104.
		In section 105, the words “within the meaning of section 104 above”.
		Sections 114 and 115.
		Section 123(2)(k).
		In section 130(1), the definition of “patent agent”.
		In section 130(7), the words “88(6) and (7),”.
		In Schedule 5, paragraphs 1 and 2, in paragraph 3 the words “and 44(1)” and “in each case”, and paragraphs 7 and 8.
1979 c. 2.	Customs and Excise Management Act 1979.	In Schedule 4, the entry relating to the Copyright Act 1956.
1980 c. 21.	Competition Act 1980.	Section 14.
1981 c. 68.	Broadcasting Act 1981.	Section 20(9)(a).
1982 c. 35.	Copyright Act 1956 (Amendment) Act 1982.	The whole Act.
1983 c. 42.	Copyright (Amendment) Act 1983.	The whole Act.
1984 c. 46.	Cable and Broadcasting Act 1984.	Section 8(8).
		Section 16(4) and (5).
		Sections 22 to 24.
		Section 35(2) and (3).
		Sections 53 and 54.
		In section 56(2), the definition of “the 1956 Act”.

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		In Schedule 5, paragraphs 6, 7, 13 and 23.
1985 c. 21.	Films Act 1985.	Section 7(2).
1985 c. 41.	Copyright (Computer Software) Amendment Act 1985.	The whole Act.
1985 c. 61.	Administration of Justice Act 1985.	Section 60.
1986 c. 39.	Patents, Designs and Marks Act 1986.	In Schedule 2, paragraph 1(2)(a), in paragraph 1(2)(k) the words “subsection (1) (j) of section 396 and” and in paragraph 1(2)(1) the words “subsection (2)(i) of section 93”.
1988 c. 1.	Income and Corporation Taxes Act 1988.	In Schedule 29, paragraph 5.

#### Textual Amendments

**F28** In Sch. 8 entry relating to the Malta Independence Act 1964 repealed (5.11.1993) by [1993 c. 50 s. 1\(1\)](#), Sch. 1 Pt.XVI

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