

Defence Contracts Act, 1958

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ARRANGEMENT OF SECTIONS

Section

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CHAPTER 38

An Act to amend the enactments authorising the use of patented inventions and registered designs for the services of the Crown in respect of articles required for defence and similar purposes by the Governments of allied or associated countries or the United Nations; to make permanent provision with respect to the use for defence and similar purposes of other technical information protected by contractual arrangements; to repeal certain emergency provisions relating to inventions and designs; and for purposes connected with the matters aforesaid.

[7th July, 1958]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

- 1.—(1) The following shall be substituted for subsection (6) of section forty-six of the Patents Act, 1949 (which section relates to the use of patented inventions for the services of the Crown):—
- “(6) For the purposes of this and the next following section ‘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
- Amendments of statutory provisions for use of patented inventions and registered designs for services of the Crown. 12, 13 & 14, Geo. 6. c. 87.

(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;

- (b) the supply to the United Nations, or to 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 section to make, use and exercise an invention shall include power to sell to any such government or to the said organisation any articles the supply of which is authorised by this subsection, and to sell to any person any articles made in the exercise of the powers conferred by this section which are no longer required for the purpose for which they were made."

(2) Where any models, documents or information relating to an invention are used in connection with any such use of the invention as is described in subsection (1) of section forty-seven of the Patents Act, 1949, subsection (3) of section forty-six of that Act (which regulates in certain cases the terms on which inventions may be used for the services of the Crown under that section) shall, whether or not it applies to the use of the invention, apply to the use of the models, documents or information as if for the reference therein to the patentee there were substituted a reference to the person entitled to the benefit of any provision of an agreement which is rendered inoperative by the said section forty-seven in relation to that use; and in section forty-eight of that Act (which provides for the determination of disputes) the references to terms for the use of an invention shall be construed accordingly.

(3) Nothing in section forty-seven of the Patents Act, 1949, shall be construed as authorising the disclosure to a Government department or any other person of any model, document or information to the use of which that section applies in contravention of any such licence, assignment or agreement as is therein mentioned.

(4) The foregoing provisions of this section shall apply in relation to registered designs as they apply in relation to patented inventions, and accordingly—

- (a) references to section forty-six of the Patents Act, 1949, to subsections (3) and (6) of that section, to section forty-seven of that Act and to subsection (1) of that

section shall include references to paragraph 1 of the First Schedule to the Registered Designs Act, 1949, to sub-paragraphs (3) and (6) of that paragraph, to paragraph 2 of that Schedule and to sub-paragraph (1) of that paragraph, as the case may be; and

12, 13 & 14
Geo. 6. c. 88.

- (b) in relation to registered designs, subsection (1) of this section shall have effect as if for the words "the next following section" there were substituted the words "the next following paragraph" and for the words "make, use and exercise" there were substituted the word "use".

2.—(1) For the purposes of any contract or order for the production of defence materials, any person authorised in that behalf by a competent authority may make use of any technical information to which this section applies of which he is in possession, and supply articles produced by means of the use of any such information, discharged—

Provision for
use of other
technical
information
by Crown
contractors for
production
and supply
of defence
materials.

- (a) from any restriction imposed by any agreement to which he is party (whether made before or after the commencement of this Act); and

- (b) from any obligation to make payments to any other person in pursuance of any such agreement in respect of the use or supply.

(2) Any authorisation given for the purposes of subsection (1) of this section shall be given in writing, and shall—

- (a) describe the defence materials in connection with which the authorisation is given; and

- (b) identify the restrictions or obligations from which the person to whom the authorisation is given is thereby discharged;

and so much of any agreement (whether made before or after the commencement of this Act) as restricts the disclosure of terms of that or any other agreement shall be of no effect in relation to the disclosure to a competent authority of information required by that authority for the purpose of compliance with paragraph (b) of this subsection.

(3) An authorisation given for the purposes of subsection (1) of this section may apply to things done before as well as after the date on which it is given.

(4) Where any person is discharged by virtue of an authorisation under this section from the obligation to make payments in respect of the use of any technical information or the supply of any articles, so much of any agreement (whether made before or after the commencement of this Act) as provides for the making by any other person of payments in respect of the use of the information or the supply of articles of that description shall be of no effect in relation to any use or supply in respect of which the first-mentioned person is so discharged.

(5) Nothing in this section shall affect any restriction or obligation imposed by an agreement to which any Government department are party.

(6) Nothing in this section or in any authorisation given thereunder shall be construed as authorising the disclosure to a competent authority or any other person of any technical information to which this section applies in contravention of any agreement.

(7) The technical information to which this section applies is any specification or design for articles, and any process or technique used in the production of articles (not being in any case a patented invention or registered design), and any drawing, model, plan, document or other information relating to the application or operation of any such specification, design, process or technique; and references in this Act to the use of technical information include references—

- (a) to the production of articles to any such specification or design, or by means of any such process or technique, as aforesaid; and
- (b) to the reproduction of any such drawing, model, plan or document as aforesaid.

Procedure in connection with authorisations under s. 2.

3.—(1) Subject to subsection (3) of this section, a competent authority shall, before giving to any person an authorisation under section two of this Act in respect of any restriction or obligation, serve on that person a notice in writing requesting him to treat with the party entitled to enforce that restriction or obligation for such waiver or modification as will enable the technical information to be used or the articles supplied upon terms approved by the competent authority; and the authorisation shall not be given unless either—

- (a) at the expiration of such period, not being less than three months beginning with the date of the service of the notice, as may be specified therein, no agreement for such waiver or modification as aforesaid has been concluded to the satisfaction of the competent authority; or
- (b) before the expiration of the said period, the person on whom the notice was served has given notice in writing to the competent authority that no such agreement is likely to be concluded within that period.

(2) Where an authorisation is given under the said section two in respect of any restriction or obligation, the competent authority shall, subject to subsection (3) of this section, give notice to that effect to the person who, apart from the authorisation, would be

entitled to enforce that restriction or obligation, and to such other persons (if any) as appear to the authority, after making such enquiries as are reasonably practicable in the circumstances, to be persons whose interests are affected by the authorisation.

(3) An authorisation under the said section two may be given by a competent authority without compliance with subsection (1) of this section in any case where it appears to the authority, and is certified in the authorisation, that the disclosure of the production or supply of the defence materials concerned would be prejudicial to the safety of the State; and in any such case—

- (a) the competent authority shall not be required to give notice of the authorisation in pursuance of subsection (2) of this section unless and until they are satisfied that the disclosure would no longer be prejudicial as aforesaid; and
- (b) unless and until the competent authority, being satisfied as aforesaid, otherwise direct, the person to whom the authorisation is given shall be discharged thereby from any obligation to which he would otherwise be subject by virtue of any agreement to give information to any other person in respect of the use of the information or the supply of articles to which the authorisation relates.

4.—(1) A competent authority by whom an authorisation is given under section two of this Act shall pay to the person entitled to the benefit of any restriction or obligation in respect of which the authorisation is given, or of any such provision of an agreement as is mentioned in subsection (4) of that section (whether or not he would himself be entitled, apart from the authorisation, to enforce the restriction, obligation or provision by legal proceedings) such sum (if any) as may be agreed upon between him and the competent authority with the approval of the Treasury or as may, in default of such agreement, be determined by the court under this section to be just having regard—

Payments
for use and
determination
of disputes.

- (a) to the extent of the use made in pursuance of the authorisation;
- (b) to the value of any services performed by that person in connection with the conception, development, improvement or adaptation of any specification, design, process or technique used in pursuance of the authorisation;
- (c) 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 any technical information so used; and
- (d) to any other relevant circumstances.

(2) Any dispute between a competent authority and any other person as to the exercise of powers conferred by section two of this Act, as to the making of a payment under this section, or as to the amount of any such payment, shall be determined by the court upon a reference made by either party to the dispute in such manner as may be prescribed by rules of court.

(3) Without prejudice to any rule of law enabling a court to sit in camera, the court may make such orders for the exclusion of the public from proceedings under this section, and for prohibiting the publication of any technical information to which section two of this Act applies so far as disclosed or recorded in such proceedings, as appear to the court to be necessary or expedient in the public interest or in the interests of any parties to the proceedings.

(4) In this section "the court" has the same meaning as in the Patents Act, 1949; and subsection (1) of section eighty-four of that Act (which provides for the allocation to a selected judge of certain proceedings under that Act) shall apply to references to the court under this section as it applies to references under that Act.

Expenses.

5. There shall be defrayed out of moneys provided by Parliament any increase attributable to section one of this Act in the sums required for making payments on behalf of a Government department under section forty-six of the Patents Act, 1949, or under paragraph 1 of the First Schedule to the Registered Designs Act, 1949, and any sums required by a competent authority for making payments under section four of this Act.

Interpretation,
etc.

6.—(1) In this Act the following expressions have the meaning hereby respectively assigned to them, that is to say:—

"agreement" includes a licence, assignment or assignation;

"article" includes any substance or material, and any plant, machinery or apparatus, whether affixed to land or not;

"competent authority" means a Secretary of State, the Admiralty, the Minister of Supply or the Minister of Defence;

"defence materials" means—

(a) articles required for the armed forces of the Crown, or for any such supply to the governments of countries outside the United Kingdom, or to the United Nations, as is authorised by the enactments amended by section one of this Act, being articles designed or adapted for the use of armed forces or components of articles so designed or adapted;

(b) articles required for purposes of civil defence within the meaning of the Civil Defence Act, 1948, ^{12, 13 & 14} being articles designed or adapted for use for those ^{Geo. 6. c. 5.} purposes or components of articles so designed or adapted;

(c) articles required by the Admiralty or the Minister of Supply for the production of any such articles as aforesaid;

“production” includes repair, maintenance, testing and development.

(2) This Act shall apply in relation to restrictions subsisting by reason of the existence of copyright in any work as it applies in relation to restrictions imposed by an agreement.

7.—(1) The Defence (Patents, Trade Marks, etc.) Regulations, 1941, and any Order in Council in force at the commencement of this Act under subsection (2) of section forty-nine of the Patents Act, 1949, or sub-paragraph (2) of paragraph 4 of the First Schedule to the Registered Designs Act, 1949, are hereby repealed. Repeal and transitional provisions.

(2) Any authorisation given before the commencement of this Act under section forty-six of the Patents Act, 1949, as extended by section forty-nine of that Act, or under paragraph 1 of the First Schedule to the Registered Designs Act, 1949, as extended by paragraph 4 of that Schedule, shall, if in force immediately before the commencement of this Act, and so far as it could be given under the said section forty-six or the said paragraph 1 as amended by section one of this Act, continue in force and have effect as if so given.

(3) Any authorisation in force under paragraph (5) of Regulation 3 of the said Regulations immediately before the commencement of this Act shall, in so far as it relates to the production or supply of defence materials, continue in force and have effect as if duly given under section two of this Act in respect of all such restrictions and obligations as are mentioned in subsection (1) of that section; and that section and section four of this Act shall apply accordingly in relation to anything done after the commencement of this Act in pursuance of such authorisation.

8.—(1) This Act may be cited as the Defence Contracts Act, 1958. Citation, construction, commencement and extent.

(2) Section one of this Act, so far as it amends the Patents Act, 1949, shall be construed as one with that Act and may be cited together with that Act as the Patents Acts, 1949 and 1958; and so far as it amends the Registered Designs Act, 1949, shall

be construed as one with that Act and may be cited together with that Act as the Registered Designs Acts, 1949 and 1958.

(3) This Act shall come into operation at the expiration of the period of one month beginning with the date on which it is passed.

(4) This Act shall extend to the Isle of Man; and it is hereby declared that this Act extends to Northern Ireland.

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