

SCHEDULES

SCHEDULE 5

SPECIAL TRANSITIONAL PROVISIONS WITH RESPECT TO PATENTS FOR INVENTIONS AND REGISTERED DESIGNS

PART I

INTERPRETATION

- 1 [F1In this Schedule “agreement to which this Schedule applies” means an agreement in the case of which rights and liabilities thereunder, having vested in the Post Office by virtue of the 1969 Act, are transferred to the Corporation by this Act.]

Textual Amendments

- F1** Sch. 5 para. 1 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\), s. 411\(2\), Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/1900, arts. 1\(2\), 2\(1\), Sch. 1](#) (with [art. 3](#)) (as amended by [S.I. 2003/3142, art. 1\(3\)](#))

PART II

PATENTS FOR INVENTIONS

- 2 F2

Textual Amendments

- F2** Sch. 5 para. 2 repealed by [Telecommunications Act 1984 \(c. 12, SIF 96\), s. 109, Sch. 7 Pt. I](#)

- 3 [F3(1) Where an agreement to which this Schedule applies contains provision—
- (a) conferring authority under section 46(1) of the ^{M1}Patents Act 1949 for the making, use or exercise of an invention for a purpose referable to the functions of the Post Office; or
 - (b) providing for the conferring by the Post Office on a person of such an authority under that section,
- then, on and after the appointed day—
- (i) the authority conferred by the agreement, and any authority conferred before that day in pursuance of such a provision as is mentioned in head(b), shall continue in force and shall have effect so as to authorise the making, use and exercise of the invention for a purpose referable to the functions of the Corporation, being a purpose corresponding to that mentioned in head (a); and

Status: Point in time view as at 25/07/2003.

Changes to legislation: There are currently no known outstanding effects for the British Telecommunications Act 1981, SCHEDULE 5. (See end of Document for details)

- (ii) the provision described in head (b) shall have effect as if it provided for the conferring by the Corporation of an authority having such effect as is mentioned in head (i).
- (2) For the purpose of fulfilling obligations imposed on it by virtue of this paragraph, the Corporation shall, on and after the appointed day, have power to confer such an authority as is mentioned in head (ii) of sub-paragraph (1).
- (3) Nothing in the Patents Act 1949 shall be taken to prevent the use by the Corporation, for a purpose referable to its functions, of any articles made and supplied to it in the exercise of an authority continued in force by, or conferred by virtue of, this paragraph.]

Textual Amendments

F3 Sch. 5 paras. 3-22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))

Modifications etc. (not altering text)

C1 Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

Marginal Citations

M1 1949 c. 87.

- 4 [F³Where by an agreement to which this Schedule applies, being an agreement made in pursuance of subsection (3) of section 46 of the Patents Act 1949 and continued in force by paragraph 3 of Schedule 10 to the 1969 Act, terms are agreed upon which use of an invention may be made by virtue of that paragraph for the manufacture of articles by the Post Office or the manufacture and supply to the Post Office of articles by a person authorised by it,—
- (a) the agreement shall (so far as it relates to the use of the invention by, or with the authority of, the Post Office) have effect as from the appointed day as if, for any reference to use by virtue of that paragraph for any purpose referable to functions of the Post Office, there were substituted a reference to use by virtue of this paragraph for any purpose referable to functions of the Corporation corresponding to a purpose referable to functions of the Post Office, being a purpose in the case of which use of the invention therefor fell within the agreement;
- (b) the Corporation shall have power to use the invention for the manufacture of articles on the terms of the agreement as it has effect by virtue of this paragraph, and any person authorised by the Corporation in writing shall have power to use the invention for manufacture and supply to the Corporation on such terms, and the Corporation shall accordingly, have power to use, for purposes referable to its functions, articles so manufactured by, or supplied to, it.]

Textual Amendments

F3 Sch. 5 paras. 3-22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))

Status: Point in time view as at 25/07/2003.

Changes to legislation: There are currently no known outstanding effects for the British Telecommunications Act 1981, SCHEDULE 5. (See end of Document for details)

Modifications etc. (not altering text)

C2 Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

- 5 ^{F3}(1) Subject to sub-paragraph (3) where, on or after the appointed day, use of an invention is begun under an authority continued in force by, or conferred by virtue of, paragraph 3, the Corporation shall notify the patentee as soon as practicable after the use is begun.
- (2) Subject as aforesaid, the Corporation shall furnish the patentee with such information as he may from time to time require as to the extent of use, if any, of the invention after the beginning of the appointed day under such an authority as is mentioned in sub-paragraph (1) or by virtue of paragraph 4.
- (3) Nothing in the foregoing provisions of this paragraph shall impose on the Corporation an obligation to give notification or furnish information if the Secretary of State notifies it that it is contrary to the public interest to do so.]

Textual Amendments

F3 Sch. 5 paras. 3–22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Modifications etc. (not altering text)

C3 Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

- 6 ^{F3}Where, in the case of an invention, an authority for its use is continued in force by, or is conferred by virtue of, paragraph 3, then—
- (a) if and so far as the invention has, before the priority date of the relevant claim of the complete specification, been duly recorded by or tried by or on behalf of a government department otherwise than in consequence of the communication thereof, directly or indirectly, by the patentee or a person from whom he derives title, any use of the invention by virtue of paragraph 3 may be made free of any royalty or other payment to the patentee;
- (b) if and so far as the invention has not been so recorded or tried as aforesaid, any use of the invention by virtue of paragraph 3 at any time after the acceptance of the complete specification in respect of the patent or in consequence of any such communication as aforesaid, shall—
- (i) except where an agreement as to terms for the use of the invention was made before 1st October 1969 under section 46(3) of the ^{M2}Patents Act 1949 or before the appointed day under paragraph 5 of Schedule 10 to the 1969 Act, or a determination as to those terms was made by the court before that date under section 48 of the said Act of 1949 or before that date under paragraph 9 of the said Schedule, be made upon such terms as may be agreed upon, either before or after the use, between the Corporation and the patentee, or as may, in default of such an agreement, be determined by the court on a reference under paragraph 10;
- (ii) in the said excepted case, be made upon the terms of the said agreement or determination.]

Status: Point in time view as at 25/07/2003.

Changes to legislation: There are currently no known outstanding effects for the British Telecommunications Act 1981, SCHEDULE 5. (See end of Document for details)

Textual Amendments

- F3** Sch. 5 paras. 3–22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by S.I. 2003/3142, art. 1(3))

Modifications etc. (not altering text)

- C4** Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

Marginal Citations

- M2** 1949 c. 87.

- 7 [F³The authority of the Corporation in respect of an invention may be given under paragraph 3 or 4 either before or after the patent is granted and either before or after the acts in respect of which the authority is given are done, but not so as to authorise the doing before the appointed day of any act; and such authority may be given to any person whether or not he is authorised, directly or indirectly, by the patentee to make, use, exercise or vend the invention.]

Textual Amendments

- F3** Sch. 5 paras. 3–22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by S.I. 2003/3142, art. 1(3))

Modifications etc. (not altering text)

- C5** Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

- 8 [F³(1) The Corporation shall have the power to use, for a purpose referable to its functions, any article vested in it and made before 1st October 1969, in the exercise of the powers conferred by section 46 of the ^{M3}Patents Act 1949, by a government department, or a person authorised by a government department.
- (2) In the case of articles described in sub-paragraph (1) and articles vested in the Corporation and—
- (a) made on or after 1st October 1969 under an authority continued in force by virtue of, paragraph 2 of Schedule 10 to the 1969 Act; or
 - (b) made on or after the appointed day under an authority continued in force by, or conferred by virtue of, paragraph 3,
- the Corporation, if the circumstances are such that their supply to the government of a country outside the United Kingdom is, by virtue of section 46(6) of the Patents Act 1949, included among the services of the Crown, shall have the power to sell them to that government, and if the circumstances are such that their supply to the United Nations is, by virtue of that section, so included, shall have power to sell them to that organisation.
- (3) In the case of articles mentioned in sub-paragraph (2) and articles vested in the Corporation and—
- (a) made on or after 1st October 1969 by virtue of paragraph 3 of Schedule 10 to the 1969 Act; or
 - (b) made on or after the appointed day by virtue of paragraph 4,

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the Corporation shall have power to sell to any person such, if any, of them as are not required for a purpose referable to functions of the Corporation.

- (4) 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 patent were held by or on behalf of the Corporation.]

Textual Amendments

F3 Sch. 5 paras. 3-22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Modifications etc. (not altering text)

C6 Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

Marginal Citations

M3 1949 c. 87.

- 9 [F3(1) In relation to any use of a patented invention or an invention in respect of which an application for a patent is pending, being a use made on or after the appointed day for purposes referable to functions of the Corporation—

- (a) by the Corporation under any power conferred by, or by virtue of, the foregoing provisions of this Act, or by its using articles supplied to it by the patentees or applicant for the patent under an agreement to which this Schedule applies;
- (b) by a person authorised by an authority continued in force by paragraph 3 or conferred by virtue of that paragraph or paragraph 4; or
- (c) by the patentee or applicant for the patent, for the purpose of satisfying a liability under an agreement to which this Schedule applies,

the provisions of any licence, assignment or agreement made—

- (i) before 1st October 1969, between the patentee or applicant for the patent or any person who derives title from him or from whom he derives title, and any person other than a government department;
- (ii) on or after 1st October 1969, between the patentee or applicant for the patent or any person who derives title from him or from whom he derives title, and any person other than the Post Office; or
- (iii) on or after the appointed day, between the patentee or applicant for the patent or any person who derives title from him or from whom he derives title, and any person other than the Corporation,

shall be of no effect so far as those provisions restrict or regulate the use of the invention, 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 [F4 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 invention is in force under the patent, then—
- (a) in relation to any use of the invention which, but for the provisions of this paragraph and paragraph 3, would constitute an infringement of the rights

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- of the licensee, paragraph 6 shall have effect as if for the reference in sub-paragraph (b) thereof to the patentee there were substituted a reference to the licensee; and
- (b) in relation to any use of the invention by the licensee by virtue of an authority continued in force by, or conferred by virtue of, paragraph 3, paragraph 6 shall have effect as if sub-paragraph (b) were omitted.
- (3) Subject to the provisions of sub-paragraph (2), where the patent, or the right to apply for or obtain the patent, has been assigned to the patentee in consideration of royalties or other benefits determined by reference to the use of the invention, then—
- (a) in relation to any use of the invention by virtue of paragraph 3, paragraph 6 shall have effect as if, in sub-paragraph (b), the reference to the patentee included a reference to the assignor, and any sum payable by virtue of that paragraph or an agreement referred to in paragraph 4 shall—
- (i) except where an agreement as to the proportions in which any sum payable in relation to the use of the invention should be divided was made before 1st October 1969 under section 47(3) of the ^{M4}Patents Act 1949 or before the appointed day under paragraph 8(3) of Schedule 10 to the 1969 Act, or a determination as to those proportions was made by the court before that date under section 48 of the said Act of 1949 or before that day under paragraph 9 of the said Schedule, be divided between the patentee and the assignor in such proportions as may be agreed between them or as may, in default of such agreement, be determined by the court on a reference under paragraph 10;
- (ii) in the said excepted case, be divided in such proportions as may be provided for by the said agreement or determination; and
- (b) in relation to any use of the invention made after the beginning of the appointed day, being use referable to the functions of the Corporation and made by the patentee for the purpose mentioned in sub-paragraph (1)(c), paragraph 6(b) shall have effect as if that use were made by virtue of an authority continued in force by paragraph 3.
- (4) Where, under paragraph 6 or such an agreement as is referred to in paragraph 4, payments are required to be made by the Corporation to a patentee in respect of any use of an invention, any person, being the holder of an exclusive licence under the patent (not being such a licence as is mentioned in sub-paragraph (2)) authorising him to make that use of the invention, shall—
- (a) except where an agreement as to the recovery from the patentee of a part of the payments made under section 46(3) of the ^{M5}Patents Act 1949 in respect of the use of the invention was made before 1st October 1969 under section 47(4) of that Act or before the appointed day under paragraph 8(4) of Schedule 10 to the 1969 Act, or a determination as to such recovery was made by the court before that date under section 48 of the said Act of 1949 or before that day under paragraph 9 of the said Schedule, be entitled to recover from the patentee such part (if any) of those payments as may be agreed upon between that person and the patentee or as may, in default of such agreement, be determined by the court on a reference under paragraph 10 to be just having regard to any expenditure incurred by that person—
- (i) in developing the said invention, or

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- (ii) in making payments to the patentee, other than royalties or other payments determined by reference to the use of the invention, in consideration of the licence;
- (b) in the said excepted case, be entitled to recover such part, if any, of the payments as may be provided for by the said agreement or determination; and if that person, at any time before the amount of any such payment has been settled, gives to the Corporation notice in writing of his interest, any agreement as to the amount of that payment shall be of no effect unless it is made with his consent; and, for the purposes of this sub-paragraph, a notice given before 1st October 1969 to the department of the Postmaster General in pursuance of section 47(4) of the Patents Act 1949 or before the appointed day to the Post Office in pursuance of paragraph 8 of Schedule 10 to the 1969 Act shall have effect as if it had been given to the Corporation.
- (5) 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 sub-paragraph (1), paragraph 6 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 a licence, assignment or agreement which is rendered inoperative by sub-paragraph (1) in relation to that use.
- (6) Nothing in this paragraph shall be construed as authorising the disclosure to the Corporation or any person of any model, document or information to the use of which this paragraph applies in contravention of any such licence, assignment or agreement as aforesaid.]

Textual Amendments

- F3** Sch. 5 paras. 3-22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))
- F4** Words inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(1), [Sch. 7 para. 27](#)

Modifications etc. (not altering text)

- C7** Sch. 5 paras. 3-22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1-14](#)

Marginal Citations

- M4** 1949c. 87.
M5 1949 c. 87.

- 10 ^{F3}(1) Any dispute as to the exercise by the Corporation or a person authorised by it of powers subsisting by virtue of the foregoing provisions of this Part, or as to terms for use thereunder of an invention or any models, documents or information relating to an invention, or as to the right of any person to receive any part of a payment made in pursuance of paragraph 6 or any such agreement as is referred to in paragraph 4 may be referred to the court by either party to the dispute in such manner as is prescribed by the rules for the time being in force for the purposes of section 48(1) of the ^{M6}Patents Act 1949.
- (2) Subsections (2) to (5) of section 48 of the Patents Act 1949 shall have effect in relation to proceedings under sub-paragraph (1) and disputes that may be determined

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thereunder as they do in relation to proceedings and disputes that may be determined under subsection (1) of the said section 48, but subject to the modifications that—

- (a) in subsection (2), for references to a government department there shall be substituted references to the Corporation;
- (b) in subsection (3), for the references to section 46 of that Act and to the opinion of the government department there shall be substituted respectively references to paragraph 6(a) and to the opinion of the Secretary of State stated in a certificate signed by him; and
- (c) in subsection (4), for the first reference to a government department there shall be substituted a reference to the Corporation, for the second such reference there shall be substituted a reference to the department of the Postmaster General, the Post Office or the Corporation, and the reference to the services of the Crown shall include a reference to the purposes of the Corporation.

- (3) Any proceedings under paragraph 9 of Schedule 10 to the 1969 Act which are in progress immediately before the appointed day, being proceedings to which the Post Office is a party and which, if they had been commenced on or after that day, would have been commenced under this paragraph, may be continued with the substitution of the Corporation for the Post Office.]

Textual Amendments

- F3** Sch. 5 paras. 3-22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3))

Modifications etc. (not altering text)

- C8** Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

Marginal Citations

- M6** 1949 c. 87.

- 11 [F³(1) Where, in pursuance of an agreement to which this Schedule applies, being an agreement made in relation to an invention claimed under a complete specification, communication of the invention is made to the Corporation or a person authorised by it to investigate the invention or its merits, the invention shall not be deemed to have been anticipated by reason only of that communication or of anything done in consequence thereof for the purposes of the investigation.
- (2) An authorisation to investigate an invention given under subsection (1) or section 51 of the ^{M7}Patents Act 1949 which is in force immediately before the appointed day and has effect as if given by the Post Office shall, so far as may be necessary in consequence of the enactment of Part I of this Act, have effect on and after that day as if given by the Corporation and, in relation to that invention, the said subsection (1) shall have effect as if references to a government department included references to the Corporation.]

Status: Point in time view as at 25/07/2003.

Changes to legislation: There are currently no known outstanding effects for the British Telecommunications Act 1981, SCHEDULE 5. (See end of Document for details)

Textual Amendments

F3 Sch. 5 paras. 3–22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Modifications etc. (not altering text)

C9 Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

Marginal Citations

M7 1949 c. 87.

12 [F³Expressions to which meanings are assigned by the M⁸Patents Act 1949 for the purposes of that Act have those meanings also for the purposes of this Part.]

Textual Amendments

F3 Sch. 5 paras. 3–22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Modifications etc. (not altering text)

C10 Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

Marginal Citations

M8 1949 c. 87.

PART III

REGISTERED DESIGNS

13 [F³(1) Where an agreement to which this Schedule applies contains provision—

- (a) conferring authority under paragraph 1(1) of Schedule 1 to the M⁹Registered Designs Act 1949 for the use of a registered design for a purpose referable to the functions of the Post Office; or
- (b) providing for the conferring by the Post Office on a person of such an authority under that paragraph,

then, on and after the appointed day,—

- (i) the authority conferred by the Agreement, and any authority conferred before that day in pursuance of such a provision as is mentioned in head (b), shall continue in force and shall have effect so as to authorise the use of the design for a purpose referable to the functions of the Corporation, being a purpose corresponding to that mentioned in head (a); and
- (ii) the provision described in head (b) shall have effect as if it provided for the conferring by the Corporation of an authority having such effect as is mentioned in head (i).

(2) For the purpose of fulfilling obligations imposed on it by virtue of this paragraph, the Corporation shall, on and after the appointed day, have power to confer such an authority as is mentioned in head (ii) of sub-paragraph (1).]

Status: Point in time view as at 25/07/2003.

Changes to legislation: There are currently no known outstanding effects for the British Telecommunications Act 1981, SCHEDULE 5. (See end of Document for details)

Textual Amendments

F3 Sch. 5 paras. 3–22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Modifications etc. (not altering text)

C11 Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

Marginal Citations

M9 1949 c. 88.

- 14 ^{F3}Where, by an agreement to which this Schedule applies, being an agreement made in pursuance of sub-paragraph (3) of paragraph 1 of Schedule 1 to the ^{M10}Registered Designs Act 1949 and continued in force by paragraph 13 of Schedule 10 to the 1969 Act, terms are agreed upon which use of a design may be made by virtue of the said paragraph 13 for the manufacture of articles by the Post Office, or the manufacture and supply to the Post Office of articles by a person authorised by it,—
- (a) the agreement shall (so far as it relates to the use of the design by, or with the authority of the Post Office) have effect as from the appointed day as if, for any reference to use by virtue of the said paragraph 13 for any purpose referable to functions of the Post Office, there were substituted a reference to use by virtue of this paragraph for any purpose referable to functions of the Corporation corresponding to a purpose referable to functions of the Post Office, being a purpose in the case of which use of the design therefor fell within the agreement;
 - (b) the Corporation shall have power to use the design for the manufacture of articles on the terms of the agreement as it has effect by virtue of this paragraph, and any person authorised by the Corporation in writing shall have power to use the design for manufacture and supply to the Corporation on such terms.]

Textual Amendments

F3 Sch. 5 paras. 3–22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Modifications etc. (not altering text)

C12 Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

Marginal Citations

M10 1949 c. 88.

- 15 ^{F3}(1) Subject to sub-paragraph (3), where, on or after the appointed day, use of a registered design is begun under an authority continued in force by, or conferred by virtue of, paragraph 13, the Corporation shall notify the registered proprietor as soon as practicable after the use is begun.

Status: Point in time view as at 25/07/2003.

Changes to legislation: There are currently no known outstanding effects for the British Telecommunications Act 1981, SCHEDULE 5. (See end of Document for details)

- (2) Subject as aforesaid, the Corporation shall furnish the registered proprietor with such information as he may from time to time require as to the extent of use, if any, of the registered design after the beginning of the appointed day under such an authority as is mentioned in sub-paragraph (2) or by virtue of paragraph 14.
- (3) Nothing in the foregoing provisions of this paragraph shall impose on the Corporation an obligation to give notification or furnish information if the Secretary of State notifies it that it is contrary to the public interest to do so.]

Textual Amendments

F3 Sch. 5 paras. 3-22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Modifications etc. (not altering text)

C13 Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

- 16 [F3]Where, in the case of a design, an authority for its use is continued in force by, or is conferred by virtue of, paragraph 13, then—
- (a) 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 a person from whom he derives title, any use of the design by virtue of paragraph 13 may be made free of any royalty or other payment to the registered proprietor;
- (b) if and so far as the design has not been so recorded or applied as aforesaid, any use of the design by virtue of paragraph 13 at any time after the date of registration thereof or in consequence of any such communication as aforesaid, shall—
- (i) except in a case where an agreement as to terms for the use of the design was made before 1st October 1969 under paragraph 1(3) of Schedule 1 to the^{M11}Registered Designs Act 1949 or before the appointed day under paragraph 15 of Schedule 10 to the 1969 Act, or a determination as to those terms was made by the court before that date under paragraph 3 of the said Schedule 1 or before that day under paragraph 19 of the said Schedule 10, be made upon such terms as may be agreed upon, either before or after the use, between the Corporation and the registered proprietor or as may, in default of such an agreement, be determined by the court on a reference under paragraph 20;
- (ii) in the said excepted case, be made upon the terms of the said agreement or determination.]

Textual Amendments

F3 Sch. 5 paras. 3-22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Status: Point in time view as at 25/07/2003.

Changes to legislation: There are currently no known outstanding effects for the British Telecommunications Act 1981, SCHEDULE 5. (See end of Document for details)

Modifications etc. (not altering text)

C14 Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

Marginal Citations

M11 1949c. 88.

- 17 [^{F3}The authority of the Corporation in respect of a design may be given under paragraph 13 or 14 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, but not so as to authorise the doing before the appointed day of any act; and such authority may be given to any person whether or not he is authorised, directly or indirectly, by the registered proprietor to use the design.]

Textual Amendments

F3 Sch. 5 paras. 3–22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Modifications etc. (not altering text)

C15 Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

- 18 [^{F3}(1) In the case of articles vested in the Corporation and—
- (a) made before 1st October 1969, in the exercise of powers conferred by paragraph 1 of Schedule 1 to the Registered Designs Act 1949;
 - (b) made before the appointed day, under an authority continued in force by, or conferred by virtue of, paragraph 12 of Schedule 10 to the 1969 Act; or
 - (c) made on or after the appointed day, under an authority continued in force by, or conferred by virtue of, paragraph 13,
- the Corporation, if the circumstances are such that their supply to the government of a country outside the United Kingdom is, by virtue of paragraph 1(6) of the said Schedule 1 included among the services of the Crown, shall have power to sell them to that government, and if the circumstances are such that their supply to the United Nations is, by virtue of that paragraph, so included, shall have power to sell them to that organisation.
- (2) In the case of articles mentioned in sub-paragraph (1) and articles vested in the Corporation and—
- (a) made on or after 1st October 1969 by virtue of paragraph 13 of Schedule 10 to the 1969 Act; or
 - (b) made on or after the appointed day by virtue of paragraph 14,
- the Corporation shall have power to sell to any person such, if any, of them as are not required for a purpose referable to functions of the Corporation.
- (3) 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 by or on behalf of the Corporation.]

Status: Point in time view as at 25/07/2003.

*Changes to legislation: There are currently no known outstanding effects for the British
Telecommunications Act 1981, SCHEDULE 5. (See end of Document for details)*

Textual Amendments

F3 Sch. 5 paras. 3–22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Modifications etc. (not altering text)

C16 Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

- 19 ^{F3}(1) In relation to any use of a registered design or a design in respect of which an application for registration is pending, being a use made on or after the appointed day for purposes referable to functions of the Corporation—
- (a) by the Corporation under any power conferred by or by virtue of the foregoing provisions of this Act;
 - (b) by a person authorised by an authority continued in force by paragraph 13 or conferred by virtue of that paragraph or paragraph 14; or
 - (c) by the registered proprietor or applicant for registration for the purpose of satisfying a liability under an agreement to which this Part applies,
- the provisions of any licence, assignment or agreement made,—
- (i) before 1st October 1969, 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;
 - (ii) on or after 1st October 1969, 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 the Post Office; or
 - (iii) on or after the appointed day 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 the Corporation,
- 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 ^{F5}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 paragraph and paragraph 13 would constitute an infringement of the rights of the licensee, paragraph 16 shall have effect as if for the reference in sub-paragraph (b) thereof 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 continued in force by, or conferred by virtue of, paragraph 13, paragraph 16 shall have effect as if sub-paragraph (b) were omitted.
- (3) Subject to the provisions of sub-paragraph (2), 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 13, paragraph 16 shall have effect as if, in sub-paragraph (b), the reference to the registered proprietor included a reference to the assignor, and any sum payable by virtue of that paragraph or an agreement referred to in paragraph 14 shall—
- (i) except in a case where an agreement as to the proportions in which any sum payable in relation to the use of the design should be divided was made before 1st October 1969 under paragraph 2(3) of Schedule 1 to the ^{M12}Registered Designs Act 1949 or before the appointed day under paragraph 18(3) of Schedule 10 to the 1969 Act, or a determination as to those proportions was made by the court before that date under paragraph 3 of the said Schedule 1 or before that day under paragraph 19 of the said Schedule 10, be divided between them in such proportions as may be agreed between them or as may in default of agreement be determined by the court on a reference under paragraph 20;
 - (ii) in the said excepted case, be divided in such proportions as may be provided for by the said agreement or determination; and
- (b) in relation to any use of the design made after the beginning of the appointed day, being use referable to the functions of the Corporation and made by the registered proprietor for the purpose mentioned in sub-paragraph (1)(c), paragraph 16(b) shall have effect as if that use were made by virtue of an authority continued in force by paragraph 13.
- (4) Where, under paragraph 16 or such an agreement as is referred to in paragraph 14, payments are required to be made by the Corporation 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)) authorising him to make that use of the design, shall—
- (a) except where an agreement as to the recovery from the registered proprietor of a part of the payments made under paragraph 1(3) of Schedule 1 to the ^{M13}Registered Designs Act 1949 in respect of the use of the design was made before 1st October 1969 under paragraph 2(4) of that Schedule or before the appointed day under paragraph 18(4) of Schedule 10 to the 1969 Act, or a determination as to such recovery was made by the court before that date under paragraph 3 of the said Schedule 1 or before the appointed day under paragraph 19 of the said Schedule 10, 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 on a reference under paragraph 20 to be just having regard to any expenditure incurred by that person—
 - (i) in developing the said design; or
 - (ii) 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;
 - (b) in the said excepted case, be entitled to recover such part, if any, of the payments as may be provided for by the said agreement or determination;
- and if, at any time before the amount of any such payment has been settled, that person gives to the Corporation notice in writing of his interest, any agreement as to the amount of that payment shall be of no effect unless it is made with his consent; and for the purposes of this sub-paragraph, a notice given before 1st October 1969 to the department of the Postmaster General in pursuance of paragraph 2(4) of the said

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Schedule 1 or before the appointed day to the Post Office in pursuance of paragraph 18 of the said Schedule 10 shall have effect as if it had been given to the Corporation.

- (5) Where any models, documents or information relating to a registered design are used in connection with any such use of the design as is described in sub-paragraph (1), paragraph 16 shall, whether or not it applies to the use of the design, apply to the use of the models, documents or information as if for the reference therein to the registered proprietor there were substituted a reference to the person entitled to the benefit of any provision of a licence, assignment or agreement which is rendered inoperative by sub-paragraph (1) in relation to that use.
- (6) Nothing in this paragraph shall be construed as authorising the disclosure to the Corporation or any other person of any model, document or information to the use of which this paragraph applies in contravention of any such licence, assignment or agreement as aforesaid.]

Textual Amendments

F3 Sch. 5 paras. 3–22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by S.I. 2003/3142, art. 1(3))

F5 Words inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(1), [Sch. 7 para. 27](#)

Modifications etc. (not altering text)

C17 Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

Marginal Citations

M12 1949 c. 88

M13 1949 c. 88.

- 20 ^{F3}(1) Any dispute as to the exercise by the Corporation or a person authorised by it of powers subsisting by virtue of this Part, or as to terms for use thereunder of a design, or any models, documents or information relating to a design, or as to the right of any person to receive any part of a payment made in pursuance of paragraph 16 or any such agreement as is referred to in paragraph 14 may be referred to the court by either party to the dispute in such manner as is prescribed by the rules for the time being in force for the purposes of paragraph 3(1) of Schedule 1 to the ^{M14}Registered Designs Act 1949.
- (2) Sub-paragraphs (2) to (5) of paragraph 3 of the said Schedule shall have effect in relation to proceedings under sub-paragraph (1) and disputes that may be determined thereunder as they do in relation to proceedings and disputes that may be determined under sub-paragraph (1) of the said paragraph 3, but subject to the modifications that—
- (a) in sub-paragraph (2), for references to a government department there shall be substituted references to the Corporation;
 - (b) in sub-paragraph (3), for the references to paragraph 1 of that Schedule and to the opinion of the government department there shall be substituted respectively references to paragraph 16(a) and to the opinion of the Secretary of State stated in a certificate signed by him; and
 - (c) in sub-paragraph (4), for the first reference to a government department there shall be substituted a reference to the Post Office, for the second such reference there shall be substituted a reference to the department of the

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Postmaster General or the Post Office, and the reference to the services of the Crown shall include a reference to the purposes of the Post Office.

- (3) Any proceedings under the said paragraph 3 which are in progress immediately before the appointed day, being proceedings to which the Post Office is a party and which, if they had been commenced on or after that day, would have been commenced under this paragraph, may be continued with the substitution of the Corporation of the Post Office.]

Textual Amendments

F3 Sch. 5 paras. 3-22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Modifications etc. (not altering text)

C18 Sch. 5 paras. 3-22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1-14](#)

Marginal Citations

M14 1949 c. 88.

- 21 [F3(1) Where, in pursuance of an agreement to which this Schedule applies, being an agreement made in relation to a design, communication of the design is made to the Corporation or a person authorised by it to consider the merits of the design, an application for the registration of the design shall not be invalidated by reason only of that communication or of anything done in consequence thereof.
- (2) An authorisation to consider the merits of a design given under subsection (3) of section 6 of the ^{M15}Registered Designs Act 1949 which is in force immediately before the appointed day and has effect as if given by the Post Office shall, so far as may be necessary in consequence of the enactment of Part I of this Act, have effect on and after that day as if given by the Corporation and, in relation to that design, the said subsection (3) shall have effect as if references to a government department included references to the Corporation.]

Textual Amendments

F3 Sch. 5 paras. 3-22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Modifications etc. (not altering text)

C19 Sch. 5 paras. 3-22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1-14](#)

Marginal Citations

M15 1949 c. 88.

- 22 [F3Expressions to which meanings are assigned by the Registered Designs Act 1949 for the purposes of that Act have those meanings also for the purposes of this Part.]

Status: Point in time view as at 25/07/2003.

Changes to legislation: There are currently no known outstanding effects for the British Telecommunications Act 1981, SCHEDULE 5. (See end of Document for details)

Textual Amendments

F3 Sch. 5 paras. 3–22 repealed (25.7.2003 for specified purposes) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 19\(1\)](#) Note 1 (with [Sch. 18](#)); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

Modifications etc. (not altering text)

C20 Sch. 5 paras. 3–22 modified by [Telecommunications Act 1984 \(c.12, SIF 96\)](#), s. 109, [Sch. 6 paras. 1–14](#)

Status:

Point in time view as at 25/07/2003.

Changes to legislation:

There are currently no known outstanding effects for the British Telecommunications Act 1981, SCHEDULE 5.