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## SCHEDULES

### [<sup>F1</sup>SCHEDULE A1

#### GROUND FOR REFUSAL OF REGISTRATION IN RELATION TO EMBLEMS ETC.

##### Textual Amendments

- F1** Sch. A1 (paras. 1-5) inserted (9.12.2001) by S.I. 2001/3949, reg. 3 (with transitional provisions in regs. 10-14)

#### *Grounds for refusal in relation to certain emblems etc.*

- 1 (1) A design shall be refused registration under this Act if it involves the use of—
- the Royal arms, or any of the principal armorial bearings of the Royal arms, or any insignia or device so nearly resembling the Royal arms or any such armorial bearing as to be likely to be mistaken for them or it;
  - a representation of the Royal crown or any of the Royal flags;
  - a representation of Her Majesty or any member of the Royal family, or any colourable imitation thereof; or
  - words, letters or devices likely to lead persons to think that the applicant either has or recently has had Royal patronage or authorisation;
- unless it appears to the registrar that consent for such use has been given by or on behalf of Her Majesty or (as the case may be) the relevant member of the Royal family.
- (2) A design shall be refused registration under this Act if it involves the use of—
- the national flag of the United Kingdom (commonly known as the Union Jack); or
  - the flag of England, Wales, Scotland, Northern Ireland or the Isle of Man, and it appears to the registrar that the use would be misleading or grossly offensive.
- (3) A design shall be refused registration under this Act if it involves the use of—
- arms to which a person is entitled by virtue of a grant of arms by the Crown; or
  - insignia so nearly resembling such arms as to be likely to be mistaken for them;
- unless it appears to the registrar that consent for such use has been given by or on behalf of the person concerned and the use is not in any way contrary to the law of arms.
- (4) A design shall be refused registration under this Act if it involves the use of a controlled representation within the meaning of the Olympic Symbol etc. (Protection) Act 1995 unless it appears to the registrar that—
- the application is made by the person for the time being appointed under section 1(2) of the Olympic Symbol etc. (Protection) Act 1995 (power of

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- Secretary of State to appoint a person as the proprietor of the Olympics association right); or
- (b) consent for such use has been given by or on behalf of the person mentioned in paragraph (a) above.

*Grounds for refusal in relation to emblems etc. of Paris Convention countries*

- 2 (1) A design shall be refused registration under this Act if it involves the use of the flag of a Paris Convention country unless—
- (a) the authorisation of the competent authorities of that country has been given for the registration; or
- (b) it appears to the registrar that the use of the flag in the manner proposed is permitted without such authorisation.
- (2) A design shall be refused registration under this Act if it involves the use of the armorial bearings or any other state emblem of a Paris Convention country which is protected under the Paris Convention unless the authorisation of the competent authorities of that country has been given for the registration.
- (3) A design shall be refused registration under this Act if—
- (a) the design involves the use of an official sign or hallmark adopted by a Paris Convention country and indicating control and warranty;
- (b) the sign or hallmark is protected under the Paris Convention; and
- (c) the design could be applied to or incorporated in goods of the same, or a similar, kind as those in relation to which the sign or hallmark indicates control and warranty;
- unless the authorisation of the competent authorities of that country has been given for the registration.
- (4) The provisions of this paragraph as to national flags and other state emblems, and official signs or hallmarks, apply equally to anything which from a heraldic point of view imitates any such flag or other emblem, or sign or hallmark.
- (5) Nothing in this paragraph prevents the registration of a design on the application of a national of a country who is authorised to make use of a state emblem, or official sign or hallmark, of that country, notwithstanding that it is similar to that of another country.

*Grounds for refusal in relation to emblems etc. of certain international organisations*

- 3 (1) This paragraph applies to—
- (a) the armorial bearings, flags or other emblems; and
- (b) the abbreviations and names,
- of international intergovernmental organisations of which one or more Paris Convention countries are members.
- (2) A design shall be refused registration under this Act if it involves the use of any such emblem, abbreviation or name which is protected under the Paris Convention unless—
- (a) the authorisation of the international organisation concerned has been given for the registration; or

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- (b) it appears to the registrar that the use of the emblem, abbreviation or name in the manner proposed—
  - (i) is not such as to suggest to the public that a connection exists between the organisation and the design; or
  - (ii) is not likely to mislead the public as to the existence of a connection between the user and the organisation.
- (3) The provisions of this paragraph as to emblems of an international organisation apply equally to anything which from a heraldic point of view imitates any such emblem.
- (4) Nothing in this paragraph affects the rights of a person whose *bona fide* use of the design in question began before 4th January 1962 (when the relevant provisions of the Paris Convention entered into force in relation to the United Kingdom).

*Paragraphs 2 and 3: supplementary*

- 4 (1) For the purposes of paragraph 2 above state emblems of a Paris Convention country (other than the national flag), and official signs or hallmarks, shall be regarded as protected under the Paris Convention only if, or to the extent that—
  - (a) the country in question has notified the United Kingdom in accordance with Article 6ter(3) of the Convention that it desires to protect that emblem, sign or hallmark;
  - (b) the notification remains in force; and
  - (c) the United Kingdom has not objected to it in accordance with Article 6ter(4) or any such objection has been withdrawn.
- (2) For the purposes of paragraph 3 above the emblems, abbreviations and names of an international organisation shall be regarded as protected under the Paris Convention only if, or to the extent that—
  - (a) the organisation in question has notified the United Kingdom in accordance with Article 6ter(3) of the Convention that it desires to protect that emblem, abbreviation or name;
  - (b) the notification remains in force; and
  - (c) the United Kingdom has not objected to it in accordance with Article 6ter(4) or any such objection has been withdrawn.
- (3) Notification under Article 6ter(3) of the Paris Convention shall have effect only in relation to applications for the registration of designs made more than two months after the receipt of the notification.

*Interpretation*

- 5 In this Schedule—
  - “a Paris Convention country” means a country, other than the United Kingdom, which is a party to the Paris Convention; and
  - “the Paris Convention” means the Paris Convention for the Protection of Industrial Property of 20th March 1883.]

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## FIRST SCHEDULE

Section 12.

### 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.
- [<sup>F2</sup>(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 [<sup>F3</sup>products] 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;
  - (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,

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of [F<sup>3</sup>products] 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 [F<sup>3</sup>products] the supply of which is authorised by this sub-paragraph, and to sell to any person any [F<sup>3</sup>products] 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 [F<sup>3</sup>products] 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.

#### Textual Amendments

**F2** Para. 1(6) substituted by [Defence Contracts Act 1958 \(c. 38\), s. 1\(1\)\(4\)](#)

**F3** Words in [Sch. 1 para. 1\(6\)\(7\)](#) substituted (9.12.2001) by [S.I. 2001/3949, reg. 9\(1\), Sch. 1 para. 15\(2\)](#) (with transitional provisions in [regs. 10-14](#))

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

**C1** [Paras. 1-3](#) extended by [S.I. 1965/1536, Sch. 3](#)

**C2** [Para. 1\(3\)](#) modified by [Atomic Energy Authority \(Weapons Group\) Act 1973 \(c. 4\), s. 5\(2\)](#)

#### *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 [F<sup>4</sup> or [F<sup>5</sup>national unregistered 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

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- (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—
- (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.

#### Textual Amendments

- F4** Words inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 272, **Sch. 3 para. 37(2)**
- F5** Words in [Sch. 1 para. 2\(1\)](#) substituted (9.12.2001) by [S.I. 2001/3949](#), reg. 9(1), **Sch. 1 para. 15(3)** (with transitional provisions in [regs. 10-14](#))

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

- C3** [Para. 2](#) amended by [Defence Contracts Act 1958 \(c. 38\)](#), s. **1(3)(4)**
- C4** [Paras. 1-3](#) extended by [S.I. 1965/1536](#), **Sch. 3**

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- C5** By S.I. 1987/1497, **reg. 9(2) para. 2** Table B it is provided that **Sch. 1 para. 2(1)** shall apply as if there were inserted at the end thereof the words, “or of any topography right”

*Compensation for loss of profit.*

- [<sup>F6</sup>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 [<sup>F7</sup>products] to which the design is [<sup>F7</sup>or in which it is incorporated].
- (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 underused.
  - (4) No compensation is payable in respect of any failure to secure contracts for the supply of [<sup>F7</sup>products] to which the design is [<sup>F7</sup>or in which it is incorporated] 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.]

**Textual Amendments**

- F6** Sch. 1 para. 2A inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), **s. 271(1)**
- F7** Words in [Sch. 1 para. 2A\(1\)\(4\)](#) substituted (9.12.2001) by [S.I. 2001/3949, reg. 9\(1\)](#), **Sch. 1 para. 15(4) (a)(b)** (with transitional provisions in [regs. 10-14](#))

*Reference of disputes as to Crown use.*

- 3 [<sup>F8</sup>(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,

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- (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 [F9 and the department are a relevant person within the meaning of section 20 of this Act], apply for [F10 invalidation] of the registration of the design upon any ground upon which the registration of a design may be [F10 declared invalid] on an application to the court under section twenty of this Act;
- (b) in any case [F11 and provided that the department would be the relevant person within the meaning of section 20 of this Act if they had made an application on the grounds for invalidity being raised], put in issue the validity of the registration of the design without applying for its [F10 invalidation].
- (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 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.

#### Textual Amendments

- F8** Sch. 1 para. 3(1) substituted by Copyright, Designs and Patents Act 1988 (c. 48, SIF 67A), s. 271(2)
- F9** Words in Sch. 1 para. 3(2)(a) inserted (9.12.2001) by S.I. 2001/3949, reg. 9(1), Sch. 1 para. 15(5)(a) (with transitional provisions in regs. 10-14)
- F10** Words in Sch. 1 para. 3(2)(a)(b) substituted (9.12.2001) by S.I. 2001/3949, reg. 9(1), Sch. 1 para. 15(5)(b)(c)(6)(b) (with transitional provisions in regs. 10-14)
- F11** Words in Sch. 1 para. 3(2)(b) substituted (9.12.2001) by S.I. 2001/3949, reg. 9(1), Sch. 1 para. 15(6)(a) (with transitional provisions in regs. 10-14)

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

- C6** Paras. 1-3 extended by S.I. 1965/1536, Sch. 3
- C7** Sch. 1 para. 3(2)–(5) extended by British Telecommunications Act 1981 (c. 38, SIF 96), s. 88, Sch. 5 para. 20(2)



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- C8** Reference to official referee to be construed (E.W.) as reference to Circuit judge discharging functions of official referee: [Courts Act 1971 \(c. 23\), s. 25\(3\)](#)

*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 [<sup>F12</sup>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.
- [<sup>F13</sup>(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.]

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**Textual Amendments**

- F12** Words substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\), s. 272, Sch. 3 para. 37\(4\)](#)
- F13** [Sch. 1 para. 4\(3\)](#) substituted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\), s. 272, Sch. 3 para. 37\(5\)](#)

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## <sup>F14</sup>SECOND SCHEDULE<sup>F14</sup>

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### Textual Amendments

**F14** Sch. 2 repealed by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#) ss. 272, 303(2), Sch. 3 para. 38, Sch. 8

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