

SCHEDULES

SCHEDULE 3

TRANSITIONAL PROVISIONS

Claim to priority from overseas application

- 13 Section 35 of this Act (claim to priority of Convention application) applies to an application for registration under this Act made after the commencement of this Act notwithstanding that the Convention application was made before commencement.
- 14 (1) Where before the commencement of this Act a person has duly filed an application for protection of a trade mark in a relevant country within the meaning of section 39A of the 1938 Act which is not a Convention country (a “relevant overseas application”), he, or his successor in title, has a right to priority, for the purposes of registering the same trade mark under this Act for some or all of the same goods or services, for a period of six months from the date of filing of the relevant overseas application.
- (2) If the application for registration under this Act is made within that six-month period—
- (a) the relevant date for the purposes of establishing which rights take precedence shall be the date of filing of the relevant overseas application, and
 - (b) the registrability of the trade mark shall not be affected by any use of the mark in the United Kingdom in the period between that date and the date of the application under this Act.
- (3) Any filing which in a relevant country is equivalent to a regular national filing, under its domestic legislation or an international agreement, shall be treated as giving rise to the right of priority.
- A “regular national filing” means a filing which is adequate to establish the date on which the application was filed in that country, whatever may be the subsequent fate of the application.
- (4) A subsequent application concerning the same subject as the relevant overseas application, filed in the same country, shall be considered the relevant overseas application (of which the filing date is the starting date of the period of priority), if at the time of the subsequent application—
- (a) the previous application has been withdrawn, abandoned or refused, without having been laid open to public inspection and without leaving any rights outstanding, and
 - (b) it has not yet served as a basis for claiming a right of priority.
- The previous application may not thereafter serve as a basis for claiming a right of priority.
- (5) Provision may be made by rules as to the manner of claiming a right to priority on the basis of a relevant overseas application.

Status: This is the original version (as it was originally enacted).

- (6) A right to priority arising as a result of a relevant overseas application may be assigned or otherwise transmitted, either with the application or independently.

The reference in sub-paragraph (1) to the applicant's "successor in title" shall be construed accordingly.

- (7) Nothing in this paragraph affects proceedings on an application for registration under the 1938 Act made before the commencement of this Act (see paragraph 10 above).