

SCHEDULES

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.
- (6) For the purposes of this and the next following paragraph, any use of a design for the supply to the government of any country outside the United Kingdom, in pursuance of any agreement or arrangement between His Majesty's Government in the United Kingdom and the government of that country, of articles required for the defence of that country shall be deemed to be a use of the design for the services of the Crown ; 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—

- (a) to sell such articles to the government of any country in pursuance of any such agreement or arrangement as aforesaid ; and
 - (b) to sell to any person any articles made in the exercise of the powers conferred by this paragraph which are no longer required for the purpose for which they were made.
- (7) The purchaser of any articles sold in the exercise of powers conferred by this paragraph, and any person claiming through him, shall have power to deal with them in the same manner as if the rights in the registered design were hold on behalf of His Majesty.

Rights of third parties in respect of Crown use.

- 2 (1) In relation to any use of a registered design, or a design in respect of which an application for registration is pending, made for the services of the Crown—
- (a) by a Government department or a person authorised by a Government department under the last foregoing paragraph ; or
 - (b) by the registered proprietor or applicant for registration to the order of a Government department,
- the provisions of any licence, assignment or agreement made, whether before or after the commencement of this Act, between the registered proprietor or applicant for registration or any person who derives title from him or from whom he derives title and any person other than a Government department shall be of no effect so far as those provisions restrict or regulate the use of the design, or any model, document or information relating thereto, or provide for the making of payments in respect of any such use, or calculated by reference thereto ; and the reproduction or publication of any model or document in connection with the said use shall not be deemed to be an infringement of any copyright subsisting in the model or document.
- (2) Where an exclusive licence granted otherwise than for royalties or other benefits determined by reference to the use of the design is in force under the registered design then—
- (a) in relation to any use of the design which, but for the provisions of this and the last foregoing paragraph, would constitute an infringement of the rights of the licensee, sub-paragraph (3) of the last foregoing paragraph shall have effect as if for the reference to the registered proprietor there were substituted a reference to the licensee ; and
 - (b) in relation to any use of the design by the licensee by virtue of an authority given under the last foregoing paragraph, that paragraph shall have effect as if the said sub-paragraph (3) were omitted.
- (3) Subject to the provisions of the last foregoing sub-paragraph, where the registered design or the right to apply for or obtain registration of the design has been assigned to the registered proprietor in consideration of royalties or other benefits determined by reference to the use of the design, then—
- (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.

Reference of disputes as to Crown use.

- 3 (1) Any dispute as to the exercise by a Government department or a person authorised by a Government department of the powers conferred by paragraph 1 of this Schedule, or as to terms for the use of a design for the services of the Crown thereunder, or as to the right of any person to receive any part of a payment made in pursuance of sub-paragraph (3) of that paragraph, may be referred to the court by either party to the dispute in such manner as may be prescribed by rules of court.
- (2) In any proceedings under this paragraph to which a Government department are a party, the department may—
- (a) if the registered proprietor is a party to the proceedings, apply for cancellation of the registration of the design upon any ground upon which the registration of a design may be cancelled on an application to the court under section twenty of this Act;
- (b) in any case, put in issue the validity of the registration of the design without applying for its cancellation.
- (3) If in such, proceedings as aforesaid any question arises whether a design has been recorded or applied as mentioned in paragraph 1 of this Schedule, and the disclosure of any document recording the design, or of any evidence of the application thereof, would in the opinion of the department be prejudicial to the public interest, the disclosure may be made confidentially to counsel for the other party or to an independent expert mutually agreed upon.

- (4) In determining under this paragraph any dispute between a Government department and any person as to terms for the use of a design for the services of the Crown, the court shall have regard to any benefit or compensation which that person or any person from whom he derives title may have received, or may be entitled to receive, directly or indirectly from any Government department in respect of the design in question.
- (5) In any proceedings under this paragraph the court may at any time order the whole proceedings or any question or issue of fact arising therein to be referred to a special or official referee or an arbitrator on such terms as the court may direct; and references to the court in the foregoing provisions of this paragraph shall be construed accordingly.

Special provisions as to Crown use during emergency.

- 4 (1) During any period of emergency within the meaning of this paragraph, the powers exercisable in relation to a design by -a Government department, or a person authorised by a Government department under paragraph 1 of this Schedule shall include power to use the design for any purpose which appears to the department necessary or expedient—
- (a) for the efficient prosecution of any war in which His Majesty may be engaged;
 - (b) for the maintenance of supplies and services essential to the life of the community ;
 - (c) for securing a sufficiency of supplies and services essential to the well-being of the community ;
 - (d) for promoting the productivity of industry, commerce and agriculture ;
 - (e) for fostering and directing exports and reducing imports, or imports of any classes, from all or any countries and for redressing the balance of trade ;
 - (f) generally for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community ; or
 - (g) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in any part of His Majesty's dominions or any foreign countries that are in grave distress as the result of war ;
- and any reference in this Schedule to the services of the Crown shall be construed as including a reference to the purposes aforesaid.
- (2) In this paragraph the expression " period of emergency" means the period ending with the tenth day of December, nineteen hundred and fifty, or such later date as may be prescribed by Order in Council, and any other period beginning on such date as may be declared by Order in Council to be the commencement, and ending on such date as may be so declared to be the termination, of a period of emergency for the purposes of this paragraph.
- (3) A draft of any Order in Council under this paragraph shall be laid before Parliament; and the draft shall not be submitted to His Majesty except in pursuance of an Address presented by each House of Parliament praying that the Order be made.