

SCHEDULE 2

Article 2(2)

**TRANSITIONAL MODIFICATIONS OF THE REGISTERED
DESIGNS ACT 1949 AS IT HAS EFFECT IN THE ISLE OF MAN**

Pending applications

1.—(1) This paragraph applies to applications for registration under the 1949 Act which have been made but not finally determined before the coming into force of this Order (“pending applications”).

(2) The 1949 Act as it has effect in the Isle of Man immediately before the coming into force of this Order shall continue to apply in relation to pending applications so far as it relates to the determination of such applications.

(3) Accordingly the modifications and revocations made by this Order shall not apply in relation to the determination of such applications.

Transitional registrations

2.—(1) This paragraph applies to any registration under the 1949 Act which results from the determination of a pending application (within the meaning of paragraph 1 above).

(2) This 1949 Act as it has effect in the Isle of Man immediately before the coming into force of this Order shall continue to apply in relation to registrations to which this paragraph applies (“transitional registrations”) so far as that Act relates to the cancellation or invalidation of such registrations (other than cancellation by virtue of section 11(3) of that Act).

(3) Accordingly the modifications made by Schedule 1 to this Order shall, so far as they relate to the cancellation or invalidation of registrations, not apply in relation to transitional registrations.

(4) Those modifications shall otherwise (and subject to subparagraphs (5) to (9) and paragraph 5 of this Schedule) apply in relation to transitional registrations.

(5) In the application by virtue of subparagraph (4) of sections 7 and 7A of the 1949 Act (as substituted by Schedule 1 to this Order), the fact that transitional registrations are in respect of any articles, or sets of articles, shall be disregarded.

(6) Sections 3 to 3D of the 1949 Act (as substituted by Schedule 1 to this Order) shall not operate so as to determine the dates of registration of designs to which transitional registrations apply; and these dates shall be determined by reference to the 1949 Act as it has effect in the Isle of Man immediately before the coming into force of this Order.

(7) Where—

(a) any such date of registration for the purposes of calculating the period for which the right in a registered design subsists, or any extension of that period, under section 8 of the 1949 Act is determined by virtue of section 14(2) of that Act; and

(b) that date is earlier than the date which would otherwise have been the date of registration for those purposes;

the difference between the two dates shall be added to the first period of five years for which the right in the registered design is to subsist.

(8) Any reference in section 8 of the 1949 Act to a period of five years shall, in the case of any such period which is extended by virtue of paragraph (7), be treated as a reference to the extended period.

(9) The omission by this Order of the proviso to section 4(1) of the 1949 Act and of the reference to it in section 8 of that Act shall not apply to the right in a design to which a transitional registration applies.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Post-1989 registrations

3.—(1) This paragraph applies to—

- (a) any registration under the 1949 Act which—
 - (i) has resulted from an application made on or after 1st August 1989 and before the coming into force of this Order; and
 - (ii) has given rise to a right in a registered design which is in force at the coming into force of this Order;
- (b) any registration under the 1949 Act which—
 - (i) has resulted from an application made on or after 1st August 1989 and before the coming into force of this Order; and
 - (ii) has given rise to a right in a registered design which is not in force at the coming into force of this Order but which is capable of being treated as never having ceased to be in force by virtue of section 8(4) of the 1949 Act or of being restored by virtue of sections 8A and 8B of that Act; and
- (c) any registration which subsequently ceases to fall within paragraph (b) because the right in the registered design has been treated or restored as mentioned in paragraph (ii) of that sub-paragraph.

(2) The 1949 Act as it has effect in the Isle of Man immediately before the coming into force of this Order shall continue to apply in relation to registrations to which this paragraph applies (“post-1989 registrations”) so far as the Act relates to the cancellation or invalidation of such registrations (other than cancellation by virtue of section 11(3) of that Act and by reference to an expiry of copyright occurring on or after the coming into force of this Order).

(3) Accordingly the modifications made by Schedule 1 to this Order shall, so far as they relate to the cancellation or invalidation of registrations, not apply in relation to post-1989 registrations.

(4) The modifications made by Schedule 1 to this Order shall otherwise apply (subject to subparagraphs (5) to (9) and paragraph 5 of this Schedule) in relation to post-1989 registrations.

(5) In the application by virtue of subparagraph (4) of sections 7 and 7A of the 1949 Act (as substituted by Schedule 1 to this Order), the fact that post-1989 registrations are in respect of any articles, or sets of articles, shall be disregarded.

(6) Sections 3 to 3D of the 1949 Act (as substituted by Schedule 1 to this Order) shall not operate so as to alter the dates of registration of designs to which post-1989 registrations apply.

(7) Where—

- (a) any such date of registration for the purposes of calculating the period for which the right in a registered design subsists, or any extension of that period, under section 8 of the 1949 Act was determined by virtue of section 14(2) of that Act; and
- (b) that date is earlier than the date which would otherwise have been the date of registration for those purposes;

the difference between the two dates shall be added to any period of five years which is current on the coming into force of this Order or, if no such period is current but a subsequent extension or restoration is effected under section 8, or sections 8A and 8B, of the 1949 Act, to the period resulting from that extension or restoration.

(8) Any reference in section 8 of the 1949 Act to a period of five years shall, in the case of any such period which is extended by virtue of subparagraph (7), be treated as a reference to the extended period.

(9) The omission by this Order of the proviso in section 4(1) of the 1949 Act and the reference to it in section 8 of that Act shall not apply to the right in a design to which a post-1989 registration applies.

Pre-1989 registrations

4.—(1) This paragraph applies to—

- (a) any registration under the 1949 Act which—
 - (i) has resulted from an application made before 1st August 1989; and
 - (ii) has given rise to a copyright in a registered design which is in force at the coming into force of this Order;
- (b) any registration under the 1949 Act which—
 - (i) has resulted from an application made before 1st August 1989; and
 - (ii) has given rise to a copyright in a registered design which is not in force at the coming into force of this Order but which would be capable of coming back into force by virtue of an extension of the period of copyright under section 8(2) of the 1949 Act if that provision were amended as set out in paragraph (8); and
- (c) any registration which subsequently ceases to fall within paragraph (b) because the copyright in the registered design has come back into force by virtue of an extension of the period of copyright under section 8(2) of the 1949 Act as amended by subparagraph (8).

(2) Subject as follows, the amendments and repeals made by this Order shall not apply to any provision of the 1949 Act which only has effect in relation to applications for registration made before 1st August 1989 or any registrations resulting from such applications.

(3) Any such provision and any other provision of the 1949 Act as it has effect immediately before the coming into force of this Order in relation to registrations which fall within subparagraph (1) (“pre-1989 registrations”) shall continue to apply so far as it relates to the cancellation or invalidation of pre-1989 registrations (other than cancellation by virtue of section 11(3) of that Act and by reference to an expiry of copyright occurring on or after the coming into force of this Order).

(4) Accordingly the modifications made by this Order shall, so far as they relate to the cancellation or invalidation of registrations, not apply in relation to pre-1989 registrations.

(5) The modifications made by this Order shall otherwise apply (subject to paragraphs (2) and (9) to (12) and paragraph 5 of this Schedule) in relation to pre-1989 registrations.

(6) Modifications corresponding to the modifications made by Schedule 1 to this Order (other than those relating to the cancellation or invalidation of registrations) shall be treated as having effect, with necessary modifications and subject to paragraph 5 of this Schedule, in relation to any provision of the 1949 Act which only has effect in relation to applications for registration made before 1st August 1989 or any registrations resulting from such applications.

(7) In the application by virtue of subparagraph (6) of modifications relating to sections 7 and 7A of the 1949 Act corresponding to those made by Schedule 1, the fact that pre-1989 registrations are in respect of any articles, or sets of articles, shall be disregarded.

(8) In section 8(2) of the 1949 Act as it has effect in the Isle of Man in relation to pre-1989 registrations (period of copyright)—

- (a) after “second period”, in the second place, insert “and for a fourth period of five years from the expiration of the third period and for a fifth period of five years from the expiration of the fourth period”;
- (b) after “second or third” insert “or fourth or fifth”; and
- (c) after “second period”, in the third place, insert “or the third period or the fourth period”.

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(9) Sections 3 to 3D of the 1949 Act (as substituted by Schedule 1 to this Order) shall not operate so as to alter the dates of registration of designs to which pre-1989 registrations apply.

(10) Where—

- (a) the date of registration for the purposes of calculating the period of copyright, or any extension of that period, under section 8(2) of the 1949 Act as it has effect in relation to pre-1989 registrations was determined by virtue of section 14(2) of that Act; and
- (b) that date is earlier than the date which would otherwise have been the date of registration for those purposes;

the difference between the two dates shall be added to any period of five years which is current on the coming into force of this Order or, if no such period is current but a subsequent extension is effected under section 8 of the 1949 Act as modified by subparagraph (8), to the period resulting from that extension.

(11) Any reference in section 8(2) of the 1949 Act as modified by subparagraph (8) to a period of five years shall, in the case of any such period which is extended by virtue of subparagraph (10), be treated as a reference to the extended period.

(12) The omission by this Order of the proviso in section 4(1) of the 1949 Act shall not apply to the right in a design to which a pre-1989 registration applies.

Other transitional modifications

5.—(1) Any licence which—

- (a) permits anything which would otherwise be an infringement under the 1949 Act of the right in a registered design or the copyright in a registered design; and
- (b) was granted by the registered proprietor of the design, or under section 10 or 11A of the 1949 Act, before the coming into force of this Order,

shall continue in force, with necessary modifications, on or after the making of this Order.

(2) In determining the effect of any such licence on or after the coming into force of this Order, regard shall be had to the purpose for which the licence was granted; and, in particular, a licence granted for the full term or extent of the right in a registered design or the copyright in a registered design shall be treated as applying, subject to its other terms and conditions, to the full term or extent of that right as extended by virtue of this Order.

(3) The right in a registered design conferred by virtue of this Order in relation to registrations to which paragraph 2, 3 or 4 of this Schedule applies shall not enable the registered proprietor to prevent any person from continuing to carry out acts begun by him before the coming into force of this Order and which, at that time, the registered proprietor or, in the case of registrations to which paragraph 2 applies, a registered proprietor would have been unable to prevent.

(4) The right in a registered design conferred by virtue of this Order in relation to registrations to which paragraph 3 or 4 of this Schedule applies shall, in particular, not apply in relation to infringements committed in relation to those registrations before the coming into force of this Order.

(5) The omission by Schedule 1 to this Order of provisions in section 5 of the 1949 Act shall not apply in relation to any evidence filed in support of an application made before the coming into force of this Order.

(6) The modifications made by Schedule 1 to this Order of section 22 of the 1949 Act (other than the amendment to the proviso in subsection (2) of that section) shall not apply in relation to any registration which has resulted from an application made before the coming into force of this Order.

(7) The modification of the proviso in section 22(2) of the 1949 Act shall not apply where—

- (a) the registration of the first-mentioned design resulted from an application made before the coming into force of this Order; and

(b) the application for the registration of the other design was also made before the coming into force of this Order.

(8) The modifications made by Schedule 1 to this Order of section 35 of the 1949 Act shall not apply in relation to any offences committed before the coming into force of this Order.

(9) The omission by Schedule 1 to this Order of provisions in section 44 of the 1949 Act which relate to the meaning of a set of articles shall not apply so far as those provisions are required for the purposes of paragraph 6(2)(a) of Schedule 1 to the Copyright Act 1991 (an Act of Tynwald)(1).

(10) Any modification by Schedule 1 to this Order of a provision in section 44 of the 1949 Act or in any enactment other than the 1949 Act shall not apply so far as that provision is required for the purposes of any other transitional provision made by this Order.

(11) The 1949 Act as it has effect in the Isle of Man immediately before the coming into force of this Order shall continue to apply in relation to former registrations, whose registration resulted from an application made before the coming into force of this Order, so far as the Act relates to the cancellation or invalidation of such registrations.

(12) Subparagraph (13) applies in relation to any registration to which paragraph 2, 3 or 4 applies which is in respect of any features of shape, configuration, pattern or ornament which do not fall within the new definition of “design” inserted into section 1 of the 1949 Act by Schedule 1 to this Order.

(13) The 1949 Act shall, so far as it applies in relation to any such registration, apply as if the features concerned were included within the new definition of “design” in that Act.

(1) 1991 c. 8 (Isle of Man).