

## SCHEDULE 1

Modifications of the Registered Designs Act 1949 in its application to the Isle of Man

16. For section 11 substitute—

### **“Cancellation of registration**

11. The registrar may, upon a request made in the prescribed manner by the registered proprietor, cancel the registration of a design.

### **Grounds for invalidity of registration**

11ZA.—(1) The registration of a design may be declared invalid—

- (a) on the ground that it does not fulfil the requirements of section 1(2) of this Act;
- (b) on the ground that it does not fulfil the requirements of sections 1B to 1D of this Act; or
- (c) where any ground of refusal mentioned in Schedule A1 to this Act applies.

(1A) The registration of a design (“the later design”) may be declared invalid if it is not new or does not have individual character when compared to a design which—

- (a) has been made available to the public on or after the relevant date; but
- (b) is protected as from a date prior to the relevant date—
  - (i) by virtue of registration under this Act or the Community Design Regulation or an application for such registration, or
  - (ii) by virtue of an international registration (within the meaning of Articles 106a to 106f of that Regulation) designating the Community.

(1B) In subsection (1A) “the relevant date” means the date on which the application for the registration of the later design was made or is treated by virtue of section 3B(2), (3) or (5) or 14(2) of this Act as having been made.

(2) The registration of a design may be declared invalid on the ground of the registered proprietor not being the proprietor of the design and the proprietor of the design objecting.

(3) The registration of a design involving the use of an earlier distinctive sign may be declared invalid on the ground of an objection by the holder of rights to the sign which include the right to prohibit in the United Kingdom such use of the sign.

(4) The registration of a design constituting an unauthorised use of a work protected by the law of copyright in the United Kingdom may be declared invalid on the ground of an objection by the owner of the copyright.

(5) In this section and sections 11ZB, 11ZC and 11ZE of this Act (other than section 11ZE(1)) references to the registration of a design include references to the former registration of a design; and these sections shall apply, with necessary modifications, in relation to such former registrations.

### **Applications for declaration of invalidity**

11ZB.—(1) Any person interested may make an application to the registrar for a declaration of invalidity under section 11ZA(1)(a) or (b) of this Act.

(2) Any person concerned by the use in question may make an application to the registrar for a declaration of invalidity under section 11ZA(1)(c) of this Act.

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

(3) The relevant person may make an application to the registrar for a declaration of invalidity under section 11ZA(1A) of this Act.

(4) In subsection (3) above “the relevant person” means, in relation to an earlier design protected by virtue of registration under this Act or the Community Design Regulation or an application for such registration, the registered proprietor of the design, the holder of the registered Community design or (as the case may be) the applicant.

(5) The person able to make an objection under subsection (2), (3) or (4) of section 11ZA of this Act may make an application to the registrar for a declaration of invalidity under that subsection.

(6) An application may be made under this section in relation to a design at any time after the design has been registered.

#### **Determination of applications for declaration of invalidity**

**11ZC.**—(1) This section applies where an application has been made to the registrar for a declaration of invalidity in relation to a registration.

(2) If it appears to the registrar that the application has not been made in accordance with any rules made under this Act, he may refuse the application.

(3) If it appears to the registrar that the application has not been made in accordance with section 11ZB of this Act, he shall refuse the application.

(4) Subject to subsections (2) and (3) above, the registrar shall make a declaration of invalidity if it appears to him that the ground of invalidity specified in the application has been established in relation to the registration.

(5) Otherwise the registrar shall refuse the application.

(6) A declaration of invalidity may be a declaration of partial invalidity.

#### **Modification of registration**

**11ZD.**—(1) Subsections (2) and (3) below apply where the registrar intends to declare the registration of a design invalid under section 11ZA(1)(b) or (c), (1A), (3) or (4) of this Act.

(2) The registrar shall inform the registered proprietor of that fact.

(3) The registered proprietor may make an application to the registrar for the registrar to make such modifications to the registration of the design as the registered proprietor specifies in his application.

(4) Such modifications may, in particular, include the inclusion on the register of a partial disclaimer by the registered proprietor.

(5) If it appears to the registrar that the application has not been made in accordance with any rules made under this Act, the registrar may refuse the application.

(6) If it appears to the registrar that the identity of the design is not retained or the modified registration would be invalid by virtue of section 11ZA of this Act, the registrar shall refuse the application.

(7) Otherwise the registrar shall make the specified modifications.

(8) A modification of a registration made under this section shall have effect, and be treated always to have had effect, from the grant of registration.

### **Effect of cancellation or invalidation of registration**

**11ZE.**—(1) A cancellation of registration under section 11 of this Act takes effect from the date of the registrar’s decision or from such other date as the registrar may direct.

(2) Where the registrar declares the registration of a design invalid to any extent, the registration shall to that extent be treated as having been invalid from the date of registration or from such other date as the registrar may direct.

### **Appeals in relation to cancellation or invalidation**

**11ZF.** An appeal lies from any decision of the registrar under section 11 to 11ZE of this Act.”.