Draft Regulations laid before Parliament under section 2(2) of, and paragraph 2(2) of Schedule 2 to, the European Communities Act 1972 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2001 No.

DESIGNS

The Registered Designs Regulations 2001

Made - - - -	*2001*
Coming into force - -	*2001*

Whereas a draft of the following Regulations has been approved by resolution of each House of Parliament:

Now, therefore, the Secretary of State, being designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to the legal protection of designs, in exercise of the powers conferred on her by the said section 2(2) hereby makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Registered Designs Regulations 2001 and shall come into force on the day after the day on which they are made.

(2) Subject to paragraph (3), these Regulations extend to England and Wales, Scotland and Northern Ireland.

(3) The amendments made by these Regulations to the Chartered Associations (Protection of Names and Uniforms) Act 1926 do not extend to Northern Ireland.

Designs registrable under the 1949 Act

2. For section 1 of the Registered Designs Act 1949(**3**) (designs registrable under Act) there shall be substituted—

(**1**) S.I.2000/1813.
(**2**) 1972 c. 68.
(**3**) 1949 c. 88. Section 1 as originally enacted was substituted by section 265 of the Copyright, Designs and Patents Act 1988 (c. 48) ("the 1988 Act") but not in relation to applications for registration made before 1st August 1989. Subsection (6) was added by section 13(1) of the Olympic Symbol etc. (Protection) Act 1995 (c. 32) in relation to applications for registration made on or after 20th September 1995.

"**Registration of designs.**

1.—(1) A design may, subject to the following provisions of this Act, be registered under this Act on the making of an application for registration.

(2) In this Act "design" means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product or its ornamentation.

(3) In this Act—

"complex product" means a product which is composed of at least two replaceable component parts permitting disassembly and reassembly of the product; and

"product" means any industrial or handicraft item other than a computer program; and, in particular, includes packaging, get-up, graphic symbols, typographic type-faces and parts intended to be assembled into a complex product.

Substantive grounds for refusal of registration.

1A.—(1) The following shall be refused registration under this Act—

(a) anything which does not fulfil the requirements of section 1(2) of this Act;

(b) designs which do not fulfil the requirements of sections 1B to 1D of this Act;

(c) designs to which a ground of refusal mentioned in Schedule A1 to this Act applies.

(2) A design ("the later design") shall be refused registration under this Act if it is not new or does not have individual character when compared with 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 by virtue of registration under this Act or an application for such registration.

(3) In subsection (2) above "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.

Requirement of novelty and individual character.

1B.—(1) A design shall be protected by a right in a registered design to the extent that the design is new and has individual character.

(2) For the purposes of subsection (1) above, a design is new if no identical design or no design whose features differ only in immaterial details has been made available to the public before the relevant date.

(3) For the purposes of subsection (1) above, a design has individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public before the relevant date.

(4) In determining the extent to which a design has individual character, the degree of freedom of the author in creating the design shall be taken into consideration.

(5) For the purposes of this section, a design has been made available to the public before the relevant date if—

(a) it has been published (whether following registration or otherwise), exhibited, used in trade or otherwise disclosed before that date; and

(b) the disclosure does not fall within subsection (6) below.

(6) A disclosure falls within this subsection if—

(a) it could not reasonably have become known before the relevant date in the normal course of business to persons carrying on business in the European Economic Area and specialising in the sector concerned;

(b) it was made to a person other than the designer, or any successor in title of his, under conditions of confidentiality (whether express or implied);

(c) it was made by the designer, or any successor in title of his, during the period of 12 months immediately preceding the relevant date;

(d) it was made by a person other than the designer, or any successor in title of his, during the period of 12 months immediately preceding the relevant date in consequence of information provided or other action taken by the designer or any successor in title of his; or

(e) it was made during the period of 12 months immediately preceding the relevant date as a consequence of an abuse in relation to the designer or any successor in title of his.

(7) In subsections (2), (3), (5) and (6) above "the relevant date" means the date on which the application for the registration of the 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.

(8) For the purposes of this section, a design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character—

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the complex product; and

(b) to the extent that those visible features of the component part are in themselves new and have individual character.

(9) In subsection (8) above "normal use" means use by the end user; but does not include any maintenance, servicing or repair work in relation to the product.

Designs dictated by their technical function.

1C.—(1) A right in a registered design shall not subsist in features of appearance of a product which are solely dictated by the product's technical function.

(2) A right in a registered design shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions so as to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to, or placed in, around or against, another product so that either product may perform its function.

(3) Subsection (2) above does not prevent a right in a registered design subsisting in a design serving the purpose of allowing multiple assembly or connection of mutually interchangeable products within a modular system.

Designs contrary to public policy or morality.

1D. A right in a registered design shall not subsist in a design which is contrary to public policy or to accepted principles of morality."

Designs registrable under the 1949 Act: emblems etc.

3. Before Schedule 1 to the Registered Designs Act 1949 there shall be inserted—

"SCHEDULE A1

Grounds for refusal of registration in relation to emblems etc.

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—

(a) 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;

(b) a representation of the Royal crown or any of the Royal flags;

(c) a representation of Her Majesty or any member of the Royal family, or any colourable imitation thereof; or

(d) 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—

(a) the national flag of the United Kingdom (commonly known as the Union Jack); or

(b) 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—

(a) arms to which a person is entitled by virtue of a grant of arms by the Crown; or

(b) 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—

(a) 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 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

(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 6*ter*(3) of the Convention that it desires to protect that emblem, sign or hallmark;

(b) the notification remains in force; and