

*Status: Point in time view as at 01/04/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Paragraph 7. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 5

#### PATENTS: MISCELLANEOUS AMENDMENTS

##### *Application for restoration of lapsed patent*

7 After that section insert—

##### **“28A Effect of order for restoration of patent.**

- (1) The effect of an order for the restoration of a patent is as follows.
- (2) Anything done under or in relation to the patent during the period between expiry and restoration shall be treated as valid.
- (3) Anything done during that period which would have constituted an infringement if the patent had not expired shall be treated as an infringement—
  - (a) if done at a time when it was possible for the patent to be renewed under section 25(4), or
  - (b) if it was a continuation or repetition of an earlier infringing act.
- (4) If after it was no longer possible for the patent to be so renewed, and before publication of notice of the application for restoration, a person—
  - (a) began in good faith to do an act which would have constituted an infringement of the patent if it had not expired, or
  - (b) made in good faith effective and serious preparations to do such an act,  
he has the right to continue to do the act or, as the case may be, to do the act, notwithstanding the restoration of the patent; but this right does not extend to granting a licence to another person to do the act.
- (5) If the act was done, or the preparations were made, in the course of a business, the person entitled to the right conferred by subsection (4) may—
  - (a) authorise the doing of that act by any partners of his for the time being in that business, and
  - (b) assign that right, or transmit it on death (or in the case of a body corporate on its dissolution), to any person who acquires that part of the business in the course of which the act was done or the preparations were made.
- (6) Where a product is disposed of to another in exercise of the rights conferred by subsection (4) or (5), that other and any person claiming through him may deal with the product in the same way as if it had been disposed of by the registered proprietor of the patent.

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- (7) The above provisions apply in relation to the use of a patent for the services of the Crown as they apply in relation to infringement of the patent.”.

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