

SCHEDULES

SCHEDULE 3

Section 28.

EXCEPTED AGREEMENTS

Agreements for statutory purposes

- 1 (1) This Act does not apply to an agreement which is expressly authorised by an enactment, or by any scheme, order or other instrument made under an enactment.
- (2) This Act does not apply to an agreement which constitutes or forms part of a scheme certified by the Secretary of State under Chapter V of Part XIV of the Income and Corporation Taxes Act 1970 (which relates to schemes for rationalising industry).
- (3) Sub-paragraphs (1) and (2) above have effect in relation to any agreement notwithstanding any order under section 11 or section 12 above.

Exclusive dealing

- 2 This Act does not apply to an agreement for the supply of goods between two persons, neither of whom is a trade association, being an agreement to which no other person is party and under which no such restrictions as are described in section 6(1) above are accepted or no such information provisions as are described in section 7(1) above are made other than restrictions accepted or provision made for the furnishing of information—
- (a) by the party supplying the goods, in respect of the supply of goods of the same description to other persons : or
 - (b) by the party acquiring the goods, in respect of the sale, or acquisition for sale, of other goods of the same description.

Know-how about goods

- 3 This Act does not apply to an agreement between two persons (neither of whom is a trade association) for the exchange of information relating to the operation of processes of manufacture (whether patented or not) where—
- (a) no other person is party to the agreement; and
 - (b) no such restrictions as are described in section 6(1) above are accepted or no such information provisions as are described in section 7(1) above are made under the agreement except in respect of the descriptions of goods to be produced by those processes or to which those processes are to be applied.

Trade marks

- 4 (1) This Act does not apply to an agreement made in accordance with regulations approved by the Secretary of State under section 37 of the Trade Marks Act 1938 (which makes provision as to certification trade marks) authorising the use of such a

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trade mark, being an agreement under which no such restrictions as are described in section 6(1) above are accepted or no such information provisions as are described in section 7(1) above are made other than restrictions or information provisions permitted by those regulations.

- (2) This Act does not apply to an agreement—
- (a) between the registered proprietor of a trade mark (other than a certification trade mark) and a person authorised by the agreement to use the mark subject to registration as a registered user under section 28 of the Trade Marks Act 1938 (which makes provision as to registered users); and
 - (b) under which no such restrictions as are described in section 6(1) are accepted or no such information provisions as are described in section 7(1) are made except in respect of—
 - (i) the descriptions of goods bearing the mark which are to be produced or supplied ; or
 - (ii) the processes of manufacture to be applied to such goods or to goods to which the mark is to be applied.

Patents and registered designs

- 5 (1) Subject to sub-paragraphs (4) to (8) below, this Act does not apply—
- (a) to a licence granted by the proprietor or a licensee of a patent or registered design, or by a person who has applied for a patent or for the registration of a design ;
 - (b) to an assignment of a patent or registered design, or of the right to apply for a patent or for the registration of a design ; or
 - (c) to an agreement for such a licence or assignment;
- being a licence, assignment or agreement such as is described in sub-paragraph (2) or sub-paragraph (3) below.
- (2) The licence, assignment or agreement referred to in sub-paragraph (1) above is in relation to Part II of this Act one under which no such restrictions as are described in section 6(1) above are accepted or no such information provisions as are described in section 7(1) above are made except in respect of—
- (a) the invention to which the patent or application for a patent relates, or articles made by the use of that invention ; or
 - (b) articles in respect of which the design is or is proposed to be registered and to which it is applied ;
- as the case may be.
- (3) The licence, assignment or agreement referred to in sub-paragraph (1) above is in relation to Part III of this Act one under which—
- (a) in the case of an order under section 11 above, no restrictions in respect of matters specified in the order for the purposes of subsection (1)(b) of that section are accepted except in respect of the invention to which the patent or application for a patent relates ; or
 - (b) in the case of an order under section 12 above, no information provision with respect to matters specified in the order for the purposes of subsection (1)(b) of that section is made except in respect of that invention.
- (4) No licence, assignment or agreement is by virtue of sub-paragraph (1) above precluded from being an agreement to which this Act applies if—

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- (a) it is a patent or design pooling agreement; or
- (b) it is a licence, assignment or agreement granted or made in pursuance (directly or indirectly) of a patent or design pooling agreement.

(5) In this paragraph, subject to sub-paragraph (8) below, " patent or design pooling agreement" means an agreement—

- (a) to which the parties are or include at least three persons (in this and the following sub-paragraph the " principal parties") each of whom has an interest in one or more patents or registered designs, and
- (b) by which each of the principal parties agrees, in respect of patents or registered designs in which he has an interest, or in respect of patents or registered designs in which he has or may during the currency of the agreement acquire an interest, to grant such an interest as is mentioned in sub-paragraph (6) below.

(6) The grant referred to in sub-paragraph (5) above is—

- (a) of an interest in one or more such patents or registered designs to one or more of the other principal parties, or to one or more of those parties and to other persons ; or
- (b) of an interest in at least one such patent or registered design to a third person for the purpose of enabling that person to grant an interest in it to one or more of the other principal parties, or to one or more of those parties and to other persons ;

and " interest", in relation to a patent or registered design, means an interest as proprietor or licensee of the patent or registered design or an interest consisting of such rights as a person has by virtue of having applied for a patent or for the registration of a design or by virtue of having acquired the right to apply for a patent or for the registration of a design.

(7) For the purposes of sub-paragraphs (4) to (6) above, a licence, assignment or agreement—

- (a) shall be taken to be granted or made directly in pursuance of a patent or design pooling agreement if it is granted or made in pursuance of provisions of that agreement such as are mentioned in sub-paragraph (6)(a) ; and
- (b) shall be taken to be granted or made indirectly in pursuance of a patent or design pooling agreement if it is granted or made by a third person to whom an interest has been granted in pursuance of provisions of that agreement such as are mentioned in sub-paragraph (6)(b).

(8) In relation to any interest held by or granted to any two or more persons jointly, sub-paragraphs (5) and (6) apply as if those persons were one person by whom the interest is held or to whom it is granted, and accordingly those persons shall be treated for the purposes of those sub-paragraphs as together constituting one party.

(9) In this paragraph, references—

- (a) to an assignment mean, in relation to Scotland, an assignation ;
- (b) to the registration of designs have effect only in relation to Part II.

Agreements as to goods with overseas operation

- 6 (1) This Act does not apply to an agreement in the case of which all such restrictions as are described in section 6(1) above, or all such information provisions as are described in section 7(1) above, relate exclusively—

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- (a) to the supply of goods by export from the United Kingdom ;
- (b) to the production of goods, or the application of any process of manufacture to goods, outside the United Kingdom;
- (c) to the acquisition of goods to be delivered outside the United Kingdom and not imported into the United Kingdom for entry for home use ; or
- (d) to the supply of goods to be delivered outside the United Kingdom otherwise than by export from the United Kingdom ;

and subsections (2) and (4) of section 8 above do not apply in relation to recommendations relating exclusively to those matters.

- (2) The Court's jurisdiction mentioned in section 1(3) above does not extend to restrictions or to information provisions in respect of matters described in paragraphs (b) to (d) of sub-paragraph (1) above.

Exclusive supply of services

- 7 This Act does not apply to an agreement to which there are no parties other than one person who agrees to supply services and another person for whom they are to be supplied, where neither of those persons is, in relation to any order under Part III of this Act, a services supply association and, except in respect of the supply of services of the same description to, or obtaining services of the same description from, other persons—

- (a) in the case of an order under section 11 above, no restrictions are accepted under the agreement by those parties in respect of matters specified in the order for the purposes of subsection (1)(b) of that section ; or
- (b) in the case of an order under section 12 above, no information provision is made under the agreement with respect to matters specified in the order for the purposes of subsection (1)(b) of that section.

Know-how about services

- 8 This Act does not apply to an agreement between two persons (neither of whom is a services supply association) for the exchange of information relating to techniques or processes to be applied in the provision of designated services where—

- (a) no other person is party to the agreement; and
- (b) all such restrictions as are mentioned in section 11(1)(b) above which are accepted under the agreement relate exclusively to the form or manner in which services incorporating those techniques or processes are to be made available or supplied.

Agreements for supplying services with overseas operation

- 9 (1) This Act does not apply to an agreement where—
- (a) in the case of an order under section 11 above, all such restrictions as are accepted under the agreement in respect of matters specified in the order for the purposes of subsection (1)(b) of that section (or, in a case falling within section 16(3) above, all the recommendations referred to in that subsection) relate to the supply of services outside the United Kingdom or to the supply of services to persons or in relation to property (of any description, whether movable or immovable) outside the United Kingdom; or

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- (b) in the case of an order under section 12 above, all such provision as is made under the agreement for or in relation to the furnishing of information with respect to matters specified in the order for the purposes of subsection (1) (b) of that section (or, in a case falling within section 16(5), every such recommendation as is referred to in that subsection) relates to the supply of services as mentioned in paragraph (a) above.
- (2) The Court's jurisdiction mentioned in section 1(3) above does not extend to restrictions or to information provisions—
- (a) in respect of the supply of services outside the United Kingdom; or
 - (b) in respect of the supply of services to persons or in relation to property (of any description, whether movable or immovable) outside the United Kingdom.