

*Status: Point in time view as at 06/04/2014.**Changes to legislation: Patents Act 1977 is up to date with all changes known to be in force on or before 30 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULES

[^{F1}SCHEDULE A1

Section 60(5)(g)

DEROGATION FROM PATENT PROTECTION IN
RESPECT OF BIOTECHNOLOGICAL INVENTIONS**Textual Amendments****F1** Sch. A1 inserted (28.7.2000) by S.I. 2000/2037, reg. 8(1), **Sch. 1***Interpretation*

1 In this Schedule—

“Council Regulation” means Council Regulation (EC) No. 2100/94 of 27th July 1994 on Community plant variety rights;

“farmer’s own holding” means any land which a farmer actually exploits for plant growing, whether as his property or otherwise managed under his own responsibility and on his own account;

“the gazette” means the gazette published under section 34 of the Plant Variety and Seeds Act 1964 ^{F2};

“protected material” means plant propagating material which incorporates material subject to a patent;

“relevant activity” means the use by a farmer of the product of his harvest for propagation or multiplication by him on his own holding, where the product of the harvest constitutes or contains protected material;

“relevant rights holder” means the proprietor of a patent to which protected material is subject;

“seed” includes seed potatoes;

“seed year” means the period from 1st July in one year to 30th June in the following year, both dates inclusive.

Textual Amendments**F2** 1964 c. 14.*Specified species*

2 Section 60(5)(g) applies only to varieties of the following plant species and groups:

<i>Name</i>	<i>Common Name</i>
Fodder plants	
<i>Cicer arietinum</i> L.	Chickpea milkvetch

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<i>Lupinus luteus</i> L.	Yellow lupin
<i>Medicago sativa</i> L.	Lucerne
<i>Pisum sativum</i> L. (partim)	Field pea
<i>Trifolium alexandrinum</i> L.	Berseem/Egyptian clover
<i>Trifolium resupinatum</i> L.	Persian clover
<i>Vicia faba</i>	Field bean
<i>Vicia sativa</i> L.	Common vetch
Cereals	
<i>Avena sativa</i>	Oats
<i>Hordeum vulgare</i> L.	Barley
<i>Oryza sativa</i> L.	Rice
<i>Phalaris canariensis</i> L.	Canary grass
<i>Secale cereale</i> L.	Rye
<i>X Triticosecale</i> Wittm.	Triticale
<i>Triticum aestivum</i> L. emend. Fiori et Paol.	Wheat
<i>Triticum durum</i> Desf.	Durum wheat
<i>Triticum spelta</i> L.	Spelt wheat
Potatoes	
<i>Solanum tuberosum</i>	Potatoes
Oil and fibre plants	
<i>Brassica napus</i> L. (partim)	Swede rape
<i>Brassica rapa</i> L. (partim)	Turnip rape
<i>Linum usitatissimum</i>	Linseed with the exclusion of flax

Liability to pay equitable remuneration

- 3 (1) If a farmer's use of protected material is authorised by section 60(5)(g), he shall, at the time of the use, become liable to pay the relevant rights holder equitable remuneration.
- (2) That remuneration must be sensibly lower than the amount charged for the production of protected material of the same variety in the same area with the holder's authority.
- (3) Remuneration is to be taken to be sensibly lower if it would be taken to be sensibly lower within the meaning of Article 14(3) fourth indent of the Council Regulation.

Exemption for small farmers

- 4 (1) Paragraph 3 does not apply to a farmer who is considered to be a small farmer for the purposes of Article 14(3) third indent of the Council Regulation.

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(2) It is for a farmer who claims to be a small farmer to prove that he is such a farmer.

Information to be supplied by farmer

- 5 (1) At the request of a relevant rights holder (“H”), a farmer must tell H—
- (a) his name and address;
 - (b) whether he has performed a relevant activity; and
 - (c) if he has performed such an activity, the address of the holding on which he performed it.
- (2) If the farmer has performed such an activity, he must tell H whether he is—
- (a) liable to pay remuneration as a result of paragraph 3; or
 - (b) not liable because he is a small farmer.
- (3) If the farmer has told H that he is liable to pay remuneration as a result of paragraph 3, he must tell H—
- (a) the amount of the protected material used;
 - (b) whether the protected material has been processed for planting; and
 - (c) if it has, the name and address of the person who processed it.
- (4) The farmer must comply with sub-paragraphs (2) and (3) when complying with sub-paragraph (1).
- (5) If the farmer has told H that he is liable to pay remuneration as a result of paragraph 3, he must (if H asks him to do so) tell H—
- (a) whether he used any protected material with the authority of H within the same seed year; and
 - (b) if he did, the amount used and the name and address of the person who supplied it.

Information to be supplied by seed processor

- 6 (1) On the request of a relevant rights holder, a seed processor shall supply the following information—
- (a) the name and address of the seed processor;
 - (b) the address of the seed processor’s principal place of business; and
 - (c) whether the seed processor has processed seed of a species specified in paragraph 2 above.
- (2) If the seed processor has processed seed of a species specified in paragraph 2 above he shall also supply the following information with the information referred to in sub-paragraph (1)—
- (a) the name and address of the person for whom the processing was carried out;
 - (b) the amount of seed resulting from the processing;
 - (c) the date processing commenced;
 - (d) the date processing was completed;
 - (e) the place where processing was carried out.

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Information to be supplied by relevant rights holder

- 7 On the request of a farmer or a seed processor a relevant rights holder shall supply the following information—
- (a) his name and address; and
 - (b) the amount of royalty charged for certified seed of the lowest certification category for seed containing that protected material.

Period in respect of which inquiry may be made

- 8 A request may be made under paragraphs 5, 6 and 7 in respect of the current seed year and the three preceding seed years.

Restriction on movement for processing from the holding

- 9 No person shall remove or cause to be removed from a holding protected material in order to process it unless—
- (a) he has the permission of the relevant rights holder in respect of that protected material;
 - (b) he has taken measures to ensure that the same protected material is returned from processing as is sent for processing and the processor has undertaken to him that the processor has taken measures to ensure that the same protected material is returned from processing as is sent for processing; or
 - (c) he has the protected material processed by a seed processor on the list of processors referred to in the gazette as being permitted to process seed away from a holding.

Confidentiality

- 10 (1) A person who obtains information pursuant to this Schedule shall owe an obligation of confidence in respect of the information to the person who supplied it.
- (2) Sub-paragraph (1) shall not have effect to restrict disclosure of information—
- (a) for the purposes of, or in connection with, establishing the amount to be paid to the holder of rights pursuant to paragraph 3 and obtaining payment of that amount,
 - (b) for the purposes of, or in connection with, establishing whether a patent has been infringed, or
 - (c) for the purposes of, or in connection with, any proceedings for the infringement of a patent.

Formalities

- 11 (1) A request for information under this Schedule, and any information given in response to such a request, must be in writing.
- (2) Information requested under this Schedule must be given—
- (a) within 28 days; or
 - (b) if the request specifies a longer period, within the specified period.

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Remedies

- 12 (1) If, in response to a request under this Schedule, a person—
- (a) knowingly fails to provide information which he is required by this Schedule to give, or
 - (b) refuses to provide any such information,
- the court may order him to provide it.
- (2) Sub-paragraph (1) does not affect any of the court's other powers to make orders.
- (3) A person who knowingly provides false information in response to a request under this Schedule is liable in damages to the person who made the request.
- (4) In any action for damages under sub-paragraph (3) the court must have regard, in particular to—
- (a) how flagrant the defendant was in providing the false information, and
 - (b) any benefit which accrued to him as a result of his providing false information,
- and shall award such additional damages as the justice of the case may require.]

[^{F3}SCHEDULE A2

Section 76A

BIOTECHNOLOGICAL INVENTIONS

Textual Amendments

F3 Sch. A2 inserted (28.7.2000) by 2000/2037, reg. 8(2), Sch. 2

- 1 An invention shall not be considered unpatentable solely on the ground that it concerns—
- (a) a product consisting of or containing biological material; or
 - (b) a process by which biological material is produced, processed or used.
- 2 Biological material which is isolated from its natural environment or produced by means of a technical process may be the subject of an invention even if it previously occurred in nature.
- 3 The following are not patentable inventions—
- (a) the human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene;
 - (b) processes for cloning human beings;
 - (c) processes for modifying the germ line genetic identity of human beings;
 - (d) uses of human embryos for industrial or commercial purposes;
 - (e) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes;
 - (f) any variety of animal or plant or any essentially biological process for the production of animals or plants, not being a micro-biological or other technical process or the product of such a process.

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- 4 Inventions which concern plants or animals may be patentable if the technical feasibility of the invention is not confined to a particular plant or animal variety.
- 5 An element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element.
- 6 The industrial application of a sequence or partial sequence of a gene must be disclosed in the patent application as filed.
- 7 The protection conferred by a patent on a biological material possessing specific characteristics as a result of the invention shall extend to any biological material derived from that biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.
- 8 The protection conferred by a patent on a process that enables a biological material to be produced possessing specific characteristics as a result of the invention shall extend to biological material directly obtained through that process and to any other biological material derived from the directly obtained biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.
- 9 The protection conferred by a patent on a product containing or consisting of genetic information shall extend to all material, save as provided for in paragraph 3(a) above, in which the product is incorporated and in which the genetic information is contained and performs its function.
- 10 The protection referred to in paragraphs 7, 8 and 9 above shall not extend to biological material obtained from the propagation or multiplication of biological material placed on the market by the proprietor of the patent or with his consent, where the multiplication or propagation necessarily results from the application for which the biological material was marketed, provided that the material obtained is not subsequently used for other propagation or multiplication.
- 11 In this Schedule:
- “essentially biological process” means a process for the production of animals and plants which consists entirely of natural phenomena such as crossing and selection;
 - “microbiological process” means any process involving or performed upon or resulting in microbiological material;
 - “plant variety” means a plant grouping within a single botanical taxon of the lowest known rank, which grouping can be:
 - (a) defined by the expression of the characteristics that results from a given genotype or combination of genotypes; and
 - (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics; and
 - (c) considered as a unit with regard to its suitability for being propagated unchanged.]

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SCHEDULE 1

Section 127.

APPLICATION OF 1949 ACT TO EXISTING PATENTS AND APPLICATIONS

- 1 (1) The provisions of the 1949 Act referred to in sub-paragraph (2) below shall continue to apply on and after the appointed day in relation to existing patents and applications (but not in relation to patents and applications for patents under this Act).
- (2) The provisions are sections 1 to 10, 11(1) and (2), 12, 13, 15 to 17, 19 to 21, 22(1) to (3), 23 to 26, 28 to 33, 46 to 53, 55, 56, 59 to 67, 69, 76, 80, 87(2), 92(1), 96, 101, 102(1) and 103 to 107.
- (3) Sub-paragraph (1) above shall have effect subject to the following provisions of this Schedule, paragraph 2(b) of Schedule 3 below and the provisions of Schedule 4 below.
- 2 (1) In section 6 of the 1949 Act, at the end of the proviso to subsection (3) (post-dating of application) there shall be inserted

“and—

- (c) no application shall, on or after the appointed day, be postdated under this subsection to a date which is that of the appointed day or which falls after it”

and there shall be inserted at the end of subsection (4) “; but no application shall on or after the appointed day be post-dated under this subsection to a date which is that of the appointed day or which falls after it”.

- (2) At the end of subsection (5) of that section (ante-dating) there shall be inserted “; but a fresh application or specification may not be filed on or after the appointed day in accordance with this subsection and those rules unless the comptroller agrees that he will direct that the application or specification shall be ante-dated to a date which falls before the appointed day”.

Modifications etc. (not altering text)

- C1** The text of ss. 127(5), 132(6),(7); Sch. 1 para. 2(1),(2), 5, 7(1)(2), 8; Sch. 3; Sch. 5 paras 4, 5(1), (2), (3), 6; Sch. 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

- 3 (1) This paragraph and paragraph 4 below shall have effect with respect to the duration of existing patents after the appointed day, and in those paragraphs—
- (a) “old existing patent” means an existing patent the date of which fell eleven years or more before the appointed day and also any patent of addition where the patent for the main invention is, or was at any time, an old existing patent by virtue of the foregoing provision;
- (b) “new existing patent” means any existing patent not falling within paragraph (a) above; and
- (c) any reference to the date of a patent shall, in relation to a patent of addition, be construed as a reference to the date of the patent for the main invention.
- (2) Sections 23 to 25 of the 1949 Act (extension of patents on grounds of inadequate remuneration and war loss) shall not apply to a new existing patent.

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- (3) The period for which the term of an old existing patent may be extended under section 23 or 24 of that Act shall not exceed in the aggregate four years, except where an application for an order under the relevant section has been made before the appointed day and has not been disposed of before that day.
- 4 (1) The term of every new existing patent under section 22(3) of the 1949 Act shall be twenty instead of sixteen years from the date of the patent, but—
- (a) the foregoing provision shall have effect subject to section 25(3) to (5) above; and
 - (b) on and after the end of the sixteenth year from that date a patent shall not be renewed under section 25(3) to (5) above except by or with the consent of the proprietor of the patent.
- (2) Where the term of a new existing patent is extended by this paragraph,—
- (a) any licence in force under the patent from immediately before the appointed day until the end of the sixteenth year from the date of the patent shall, together with any contract relating to the licence, continue in force so long as the patent remains in force (unless determined otherwise than in accordance with this sub-paragraph), but, if it is an exclusive licence, it shall after the end of that year be treated as a non-exclusive licence;
 - (b) notwithstanding the terms of the licence, the licensee shall not be required to make any payment to the proprietor for working the invention in question after the end of that year;
 - (c) every such patent shall after the end of that year be treated as endorsed under section 35 of the 1949 Act (licences of right) [^{F4}, but subject to paragraph 4A below].
- (3) Where the term of a new existing patent is extended by this paragraph and any government department or any person authorised by a government department—
- (a) has before the appointed day, used the invention in question for the services of the Crown; and
 - (b) continues to so use it until the end of the sixteenth year from the date of the patent,
- any such use of the invention by any government department or person so authorised, after the end of that year, may be made free of any payment to the proprietor of the patent.
- (4) Without prejudice to any rule of law about the frustration of contracts, where any person suffers loss or is subjected to liability by reason of the extension of the term of a patent by this paragraph, the court may on the application of that person determine how and by whom the loss or liability is to be borne and make such order as it thinks fit to give effect to the determination.

Textual Amendments

F4 Words inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\), s. 293](#)

- [^{F5}4A (1) If the proprietor of a patent for an invention which is a product files a declaration with the Patent Office in accordance with this paragraph, the licences to which persons are entitled by virtue of paragraph 4(2)(c) above shall not extend to a use of the product which is excepted by or under this paragraph.

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- (2) Pharmaceutical use is excepted, that is—
- (a) use as a medicinal product within the meaning of the Medicines Act 1968, and
 - (b) the doing of any other act mentioned in section 60(1)(a) above with a view to such use.
- (3) The Secretary of State may by order except such other uses as he thinks fit; and an order may—
- (a) specify as an excepted use any act mentioned in section 60(1)(a) above, and
 - (b) make different provision with respect to acts done in different circumstances or for different purposes.
- (4) For the purposes of this paragraph the question what uses are excepted, so far as that depends on—
- (a) orders under section 130 of the Medicines Act 1968 (meaning of “medicinal product”), or
 - (b) orders under sub-paragraph (3) above,
- shall be determined in relation to a patent at the beginning of the sixteenth year of the patent.
- (5) A declaration under this paragraph shall be in the prescribed form and shall be filed in the prescribed manner and within the prescribed time limits.
- (6) A declaration may not be filed—
- (a) in respect of a patent which has at the commencement of section 293 of the Copyright, Designs and Patents Act 1988 passed the end of its fifteenth year; or
 - (b) if at the date of filing there is—
 - (i) an existing licence for any description of excepted use of the product, or
 - (ii) an outstanding application under section 46(3)(a) or (b) above for the settlement by the comptroller of the terms of a licence for any description of excepted use of the product,and, in either case, the licence took or is to take effect at or after the end of the sixteenth year of the patent.
- (7) Where a declaration has been filed under this paragraph in respect of a patent—
- (a) section 46(3)(c) above (restriction of remedies for infringement where licences available as of right) does not apply to an infringement of the patent in so far as it consists of the excepted use of the product after the filing of the declaration; and
 - (b) section 46(3)(d) above (abatement of renewal fee if licences available as of right) does not apply to the patent.]

Textual Amendments

F5 Sch. 1 para. 4A inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 293

[^{F6}4B (1) An application under section 46(3)(a) or (b) above for the settlement by the comptroller of the terms on which a person is entitled to a licence by virtue of

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paragraph 4(2)(c) above is ineffective if made before the beginning of the sixteenth year of the patent.

- (2) This paragraph applies to applications made after the commencement of section 294 of the Copyright, Designs and Patents Act 1988 and to any application made before the commencement of that section in respect of a patent which has not at the commencement of that section passed the end of its fifteenth year.]
- (5) No order shall be made on an application under sub-paragraph (4) above which has the effect of imposing a liability on any person other than the applicant unless notification of the application is given to that person.

Textual Amendments

F6 Sch. 1 para. 4B inserted by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 294

- 5 In section 26(3) of the 1949 Act (no patent of addition unless date of filing of complete specification was the same as or later than the date of filing of complete specification in respect of main invention) after “main invention” there shall be inserted “and was earlier than the date of the appointed day”.

Modifications etc. (not altering text)

C2 The text of ss. 127(5), 132(6),(7); Sch. 1 para. 2(1),(2), 5, 7(1)(2), 8; Sch. 3; Sch. 5 paras 4, 5(1), (2), (3), 6; Sch. 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

- 6 Notwithstanding anything in section 32(1)(j) of the 1949 Act (ground for revocation that patent was obtained on a false suggestion or representation), it shall not be a ground of revoking a patent under that subsection that the patent was obtained on a false suggestion or representation that a claim of the complete specification of the patent had a priority date earlier than the date of filing the application for the patent, but if it is shown—
- (a) on a petition under that section or an application under section 33 of that Act; or
- (b) by way of defence or on a counterclaim on an action for infringement;
- that such a suggestion or representation was falsely made, the priority date of the claim shall be taken to be the date of filing the application for that patent.
- 7 (1) In section 33 of the 1949 Act (revocation of patent by comptroller), in subsection (1) for the words preceding the proviso there shall be substituted—
- “(1) Subject to the provisions of this Act, a patent may, on the application of any person interested, be revoked by the comptroller on any of the grounds set out in section 32(1) of this Act.”
- (2) At the end of the said section 33 there shall be added the following subsection:—
- “(5) A decision of the comptroller or on appeal from the comptroller shall not estop any party to civil proceedings in which infringement of a patent is in issue from alleging that any claim of the specification is invalid on any of the grounds set out in section 32(1) of this Act, whether or not any of the issues involved were decided in that decision.”

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Modifications etc. (not altering text)

- C3** The text of ss. 127(5), 132(6),(7); Sch. 1 para. 2(1),(2), 5, 7(1)(2), 8; Sch. 3; Sch. 5 paras 4, 5(1), (2), (3), 6; Sch. 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

- 8 In section 101(1) of the 1949 Act (interpretation) there shall be inserted in the appropriate place—

““appointed day” means the day appointed under section 132 of the Patents Act 1977 for the coming into operation of Schedule 1 to that Act;”

Modifications etc. (not altering text)

- C4** The text of ss. 127(5), 132(6),(7); Sch. 1 para. 2(1),(2), 5, 7(1)(2), 8; Sch. 3; Sch. 5 paras 4, 5(1), (2), (3), 6; Sch. 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

SCHEDULE 2

Section 127.

APPLICATION OF THIS ACT TO EXISTING PATENTS AND APPLICATIONS

- 1 (1) Without prejudice to those provisions of Schedule 4 below which apply (in certain circumstances) provisions of this Act in relation to existing patents and applications, the provisions of this Act referred to in sub-paragraph (2) below shall apply in relation to existing patents and applications on and after the appointed day subject to the following provisions of this Schedule and the provisions of Schedule 4 below.
- (2) The provisions are sections 22, 23, 25(3) to (5), 28 to 36, 44 to 54, 86, [F796], 98, 99, 101 to 105, 107 to 111, 113 to 116, 118(1) to (3), 119 to 124, 130 and 132(2), (3) and (4).

Textual Amendments

- F7** The reference to section 96 is repealed (E.W.) by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), s. 152(4), [Sch. 7](#)

- 2 In those provisions as they apply by virtue of this Schedule—
- (a) a reference to this Act includes a reference to the 1949 Act;
 - (b) a reference to a specified provision of this Act other than one of those provisions shall be construed as a reference to the corresponding provision of the 1949 Act (any provision of that Act being treated as corresponding to a provision of this Act if it was enacted for purposes which are the same as or similar to that provision of this Act);
 - (c) a reference to rules includes a reference to rules under the 1949 Act;
 - (d) references to a patent under this Act and to an application for such a patent include respectively a reference to an existing patent and application;
 - (e) references to the grant of a patent under this Act includes a reference to the sealing and grant of an existing patent;

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- (f) a reference to a patented product and to a patented invention include respectively a reference to a product and invention patented under an existing patent;
- (g) references to a published application for a patent under this Act, and to publication of such an application, include respectively references to a complete specification which has been published under the 1949 Act and to publication of such a specification (and a reference to an application for a patent under this Act which has not been published shall be construed accordingly);
- (h) a reference to the publication in the journal of a notice of the grant of a patent includes a reference to the date of an existing patent;
- (i) a reference to the priority date of an invention includes a reference to the priority date of the relevant claim of the complete specification.

SCHEDULE 3

Section 127.

REPEALS OF PROVISIONS OF 1949 ACT

Modifications etc. (not altering text)

C5 The text of ss. 127(5), 132(6),(7); Sch. 1 para. 2(1),(2), 5, 7(1)(2), 8; Sch. 3; Sch. 5 paras 4, 5(1), (2), (3), 6; Sch. 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

- 1 Subject to the provisions of Schedule 4 below, the provisions of the 1949 Act referred to in paragraph 2 below (which have no counterpart in the new law of patents established by this Act in relation to future patents and applications) shall cease to have effect.
- 2 The provisions are:—
 - (a) section 14 (opposition to grant of patent) ;
 - (b) section 32(3) (revocation for refusal to comply with Crown request to use invention) ;
 - (c) section 41 (inventions relating to food or medicine, etc.) ;
 - (d) section 42 (comptroller’s power to revoke patent after expiry of two years from grant of compulsory licence);
 - (e) section 71 (extension of time for certain convention applications) ;
 - (f) section 72 (protection of inventions communicated under international agreements).

Status: Point in time view as at 06/04/2014.

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SCHEDULE 4

Section 127.

TRANSITIONAL PROVISIONS

General

- 1 In so far as any instrument made or other thing done under any provision of the 1949 Act which is repealed by virtue of this Act could have been made or done under a corresponding provision of this Act, it shall not be invalidated by the repeals made by virtue of this Act but shall have effect as if made or done under that corresponding provision.

Use of patented invention for services of the Crown

- 2 (1) Any question whether—
- (a) an act done before the appointed day by a government department or a person authorised in writing by a government department amounts to the use of an invention for the services of the Crown; or
 - (b) any payment falls to be made in respect of any such use (whether to a person entitled to apply for a patent for the invention, to the patentee or to an exclusive licensee);
- shall be determined under sections 46 to 49 of that Act and those sections shall apply accordingly.
- (2) Sections 55 to 59 above shall apply to an act so done on or after the appointed day in relation to an invention—
- (a) for which an existing patent has been granted or an existing application for a patent has been made; or
 - (b) which was communicated before that day to a government department or any person authorised in writing by a government department by the proprietor of the patent or any person from whom he derives title;
- and shall so apply subject to sub-paragraph (3) below, the modifications contained in paragraph 2 of Schedule 2 above and the further modification that sections 55(5) (b) and 58(10) above shall not apply in relation to an existing application.
- (3) Where an act is commenced before the appointed day and continues to be done on or after that day, then, if it would not amount to the use of an invention for the services of the Crown under the 1949 Act, its continuance on or after that day shall not amount to such use under this Act.

Infringement

- 3 (1) Any question whether an act done before the appointed day infringes an existing patent or the privileges or rights arising under a complete specification which has been published shall be determined in accordance with the law relating to infringement in force immediately before that day and, in addition to those provisions of the 1949 Act which continue to apply by virtue of Schedule 1 above, section 70 of that Act shall apply accordingly.
- (2) Sections 60 to 71 above shall apply to an act done on or after the appointed day which infringes an existing patent or the privileges or rights arising under a complete specification which has been published (whether before, on or after the appointed day) as they apply to infringements of a patent under this Act or the rights conferred

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by an application for such a patent, and shall so apply subject to sub-paragraph (3) below, the modifications contained in paragraph 2 of Schedule 2 above and the further modification that section 69(2) and (3) above shall not apply in relation to an existing application.

- (3) Where an act is commenced before the appointed day and continues to be done on or after that day, then, if it would not, under the law in force immediately before that day, amount to an infringement of an existing patent or the privileges or rights arising under a complete specification, its continuance on or after that day shall not amount to the infringement of that patent or those privileges or rights.

Notice of opposition

- 4 (1) Where notice of opposition to the grant of a patent has been given under section 14 of the 1949 Act before the appointed day, the following provisions shall apply:—
- (a) if issue has been joined on the notice before the appointed day, the opposition, any appeal from the comptroller's decision on it and any further appeal shall be prosecuted under the old law, but as if references in the 1949 Act and rules made under it to the Appeal Tribunal were references to the Patents Court;
- (b) in any other case, the notice shall be taken to have abated immediately before the appointed day.
- (2) Sub-paragraph (1)(a) above shall have effect subject to paragraph 12(2) below.

Secrecy

- 5 (1) Where directions given under section 18 of the 1949 Act in respect of an existing application (directions restricting publication of information about inventions) are in force immediately before the appointed day, they shall continue in force on and after that day and that section shall continue to apply accordingly.
- (2) Where sub-paragraph (1) above does not apply in the case of an existing application section 18 of the 1949 Act shall not apply to the application but section 22 of this Act shall.
- (3) Where the comptroller has before the appointed day served a notice under section 12 of the ^{M1}Atomic Energy Act 1946 (restrictions on publication of information about atomic energy etc.) in respect of an existing application that section shall continue to apply to the application on and after that day; but where no such notice has been so served that section shall not apply to the application on and after that day.

Marginal Citations

M1 1946 c. 80.

Revocation

- 6 (1) Where before the appointed day an application has been made under section 33 of the 1949 Act for the revocation of a patent (the original application), the following provisions shall apply:—
- (a) if issue has been joined on the application before the appointed day, the application, any appeal from the comptroller's decision on it and any further

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appeal shall be prosecuted under the old law, but as if references in the 1949 Act and rules made under it to the Appeal Tribunal were references to the Patents Court;

- (b) if issue has not been so joined, the original application shall be taken to be an application under section 33 of the 1949 Act for the revocation of the patent on whichever of the grounds referred to in section 32(1) of that Act corresponds (in the comptroller’s opinion) to the ground on which the original application was made, or, if there is no ground which so corresponds, shall be taken to have abated immediately before the appointed day.

(2) Sub-paragraph (1)(a) above shall have effect subject to paragraph 11(3) below.

- 7 (1) This paragraph applies where an application has been made before the appointed day under section 42 of the 1949 Act for the revocation of a patent.
- (2) Where the comptroller has made no order before that day for the revocation of the patent under that section, the application shall be taken to have abated immediately before that day.
- (3) Where the comptroller has made such an order before that day, then, without prejudice to [^{F8}section 16(1) or section 17(2)(a) of the ^{M2}Interpretation Act 1978], section 42 shall continue to apply to the patent concerned on and after that day as if this Act had not been enacted.

Textual Amendments

F8 Words substituted by virtue of [Interpretation Act 1978 \(c. 30\), s. 25\(2\)](#)

Marginal Citations

M2 [1978 c. 30.](#)

Licences of right and compulsory licences

- 8 (1) Sections 35 to 41 and 43 to 45 of the 1949 Act shall continue to apply on and after the relevant day—
- (a) to any endorsement or order made or licence granted under sections 35 to 41 which is in force immediately before that day; and
- (b) to any application made before that day under sections 35 to 41.
- (2) Any appeal from a decision or order of the comptroller instituted under sections 35 to 41 or 43 to 45 on or after the relevant day (and any further appeal) shall be prosecuted under the old law, but as if references in the 1949 Act and rules made under it to the Appeal Tribunal were references to the Patents Court.
- (3) In this paragraph “the relevant day” means, in relation to section 41, the date of the passing of this Act and, in relation to sections 35 to 40 and 43 to 45, the appointed day.

Convention countries

- 9 (1) Without prejudice to paragraph 1 above, an Order in Council declaring any country to be a convention country for all purposes of the 1949 Act or for the purposes of section 1(2) of that Act and in force immediately before the appointed day shall be

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treated as an Order in Council under section 90 above declaring that country to be a convention country for the purposes of section 5 above.

- (2) Where an Order in Council declaring any country to be a convention country for all purposes of the 1949 Act or for the purposes of section 70 of that Act is in force immediately before the appointed day, a vessel registered in that country (whether before, on or after that day) shall be treated for the purposes of section 60 above, as it applies by virtue of paragraph 3(2) above to an existing patent or existing application, as a relevant ship and an aircraft so registered and a land vehicle owned by a person ordinarily resident in that country shall be so treated respectively as a relevant aircraft and a relevant vehicle.

Appeals from court on certain petitions for revocation

- 10 Where the court has given judgment on a petition under section 32(1)(j) of the 1949 Act before the appointed day, any appeal from the judgment (whether instituted before, on or after that day) shall be continued or instituted and be disposed of under the old law.

Appeals from comptroller under continuing provisions of 1949 Act

- 11 (1) In this paragraph “the continuing 1949 Act provisions” means the provisions of the 1949 Act which continue to apply on and after the appointed day as mentioned in paragraph 1 of Schedule 1 above.
- (2) This paragraph applies where—
- (a) the comptroller gives a decision or direction (whether before or on or after the appointed day) under any of the continuing 1949 Act provisions, and
 - (b) an appeal lies under those provisions from the decision or direction;
- but this paragraph applies subject to the foregoing provisions of this Schedule.
- (3) Where such an appeal has been instituted before the Appeal Tribunal before the appointed day, and the hearing of the appeal has begun but has not been completed before that day, the appeal (and any further appeal) shall be continued and disposed of under the old law.
- (4) Where such an appeal has been so instituted, but the hearing of it has not begun before the appointed day, it shall be transferred by virtue of this sub-paragraph to the Patents Court on that day and the appeal (and any further appeal) shall be prosecuted under the old law, but as if references in the 1949 Act and rules made under it to the Appeal Tribunal were references to the Patents Court.
- (5) Any such appeal instituted on or after the appointed day shall lie to the Patents Court or, where the proceedings appealed against were held in Scotland, the Court of Session; and accordingly, the reference to the Appeal Tribunal in section 31(2) of the 1949 Act shall be taken to include a reference to the Patents Court or (as the case may be) the Court of Session.
- (6) Section 97(3) of this Act shall apply to any decision of the Patents Court on an appeal instituted on or after the appointed day from a decision or direction of the comptroller under any of the continuing 1949 Act provisions as it applies to a decision of that Court referred to in that subsection, except that for references to the sections mentioned in paragraph (a) of that subsection there shall be substituted references to sections 33, 55 and 56 of the 1949 Act.

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Appeals from comptroller under repealed provisions of 1949 Act

- 12 (1) This paragraph applies where an appeal to the Appeal Tribunal has been instituted before the appointed day under any provision of the 1949 Act repealed by this Act.
- (2) Where the hearing of such an appeal has begun but has not been completed before that day, the appeal (and any further appeal) shall be continued and disposed of under the old law.
- (3) Where the hearing of such an appeal has not begun before that day, it shall be transferred by virtue of this sub-paragraph to the Patents Court on that day and the appeal (and any further appeal) shall be prosecuted under the old law, but as if references in the 1949 Act and rules made under it to the Appeal Tribunal were references to the Patents Court.

Appeals from Appeal Tribunal to Court of Appeal

- 13 Section 87(1) of the 1949 Act shall continue to apply on and after the appointed day to any decision of the Appeal Tribunal given before that day, and any appeal by virtue of this paragraph (and any further appeal) shall be prosecuted under the old law.

Rules

- 14 The power to make rules under section 123 of this Act shall include power to make rules for any purpose mentioned in section 94 of the 1949 Act.

Supplementary

- 15 Section 97(2) of this Act applies to—
- (a) any appeal to the Patents Court by virtue of paragraph 4(1)(a), 6(1)(a), 8(2) or 11(5) above, and
 - (b) any appeal which is transferred to that Court by virtue of paragraph 11(4) or 12(3) above,
- as it applies to an appeal under that section; and section 97 of this Act shall apply for the purposes of any such appeal instead of section 85 of the 1949 Act.
- 16 In this Schedule “the old law” means the 1949 Act, any rules made under it and any relevant rule of law as it was or they were immediately before the appointed day.
- 17 For the purposes of this Schedule—
- (a) issue is joined on a notice of opposition to the grant of a patent under section 14 of the 1949 Act when the applicant for the patent files a counter-statement fully setting out the grounds on which the opposition is contested;
 - (b) issue is joined on an application for the revocation of a patent under section 33 of that Act when the patentee files a counter-statement fully setting out the grounds on which the application is contested.
- 18 (1) Nothing in the repeals made by this Act in sections 23 and 24 of the 1949 Act shall have effect as respects any such application as is mentioned in paragraph 3(3) of Schedule 1 above.
- (2) Nothing in the repeal by this Act of the ^{M3}Patents Act 1957 shall have effect as respects existing applications.

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- (3) Section 69 of the 1949 Act (which is not repealed by this Act) and section 70 of that Act (which continues to have effect for certain purposes by virtue of paragraph 3 above) shall apply as if section 68 of that Act has not been repealed by this Act and as if paragraph 9 above had not been enacted.

Marginal Citations

M3 1957 c. 13.

[^{F9}SCHEDULE 4A

SUPPLEMENTARY PROTECTION CERTIFICATES

Textual Amendments

F9 Sch. 4A inserted (17.12.2007) by [The Patents \(Compulsory Licensing and Supplementary Protection Certificates\) Regulations 2007 \(S.I. 2007/3293\)](#), regs. 1(2), **2(3)**

References to patents etc

1. (1) In the application to supplementary protection certificates of the provisions of this Act listed in sub-paragraph (2)—
 - (a) references to a patent are to a supplementary protection certificate;
 - (b) references to an application or the applicant for a patent are to an application or the applicant—
 - (i) for a supplementary protection certificate, or
 - (ii) for an extension of the duration of a supplementary protection certificate;
 - (c) references to the proprietor of a patent are to the holder of a supplementary protection certificate;
 - (d) references to the specification of a patent are to the text of a supplementary protection certificate;
 - (e) references to a patented product or an invention (including a patented invention) are to a product for which a supplementary protection certificate has effect;
 - (f) references to a patent having expired or having been revoked are to a supplementary protection certificate having lapsed or having been declared invalid;
 - (g) references to proceedings for the revocation of a patent are to proceedings—
 - (i) for a decision that a supplementary protection certificate has lapsed, or
 - (ii) for a declaration that a supplementary protection certificate is invalid;
 - (h) references to the issue of the validity of a patent include the issue of whether a supplementary protection certificate has lapsed or is invalid.
- (2) The provisions referred to in sub-paragraph (1) are—

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- section 14(1), (9) and (10) (making of application);
 - section 19(1) (general power to amend application before grant);
 - sections 20A and 20B (reinstatement of applications);
 - section 21 (observations by third party on patentability);
 - section 27 (general power to amend specification after grant);
 - section 29 (surrender of patents);
 - sections 30 to 36, 37(1) to (3) and (5) to (9) and 38 (property in patents and applications, and registration);
 - sections 39 to 59 (employees' inventions, licences of right and compulsory licences and use of patented inventions for services of the Crown);
 - sections 60 to 71 (infringement);
 - section 74(1) and (7) (proceedings in which validity of patent may be put in issue);
 - section 75 (amendment of patent in infringement or revocation proceedings);
 - sections 103 and 105 (privilege for communications relating to patent proceedings);
 - section 108 (licences granted by order of comptroller);
 - sections 110 and 111 (unauthorised claim of patent rights or that patent has been applied for);
 - section 116 (immunity of department as regards official acts);
 - sections 117 to 118 (administrative provisions);
 - section 123 (rules);
 - section 130 (interpretation).
2. (1) In the case of the provisions of this Act listed in sub-paragraph (2), paragraph 1 applies in relation to an application for a supplementary protection certificate only if the basic patent expires before the certificate is granted.
- (2) The provisions referred to in sub-paragraph (1) are—
- section 20B(3) to (6A) (effect of reinstatement under section 20A);
 - section 55(5) and (7) (use of patented inventions for services of the Crown);
 - section 58(10) (disputes as to Crown use);
 - section 69 (infringement of rights conferred by publication of application);
 - section 117A(3) to (7) (effect of resuscitating a withdrawn application under section 117).

References to this Act etc

3. (1) In the provisions of this Act listed in sub-paragraph (2)—
- (a) references to this Act include the Medicinal Products Regulation and the Plant Protection Products Regulation, and
 - (b) references to a provision of this Act include any equivalent provision of the Medicinal Products Regulation and the Plant Protection Products Regulation.
- (2) The provisions referred to in sub-paragraph (1) are—
- sections 20A and 20B (reinstatement of applications);
 - section 21 (observations by third party on patentability);
 - section 69 (infringement of rights conferred by publication of application);

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section 74(1) and (7) (proceedings in which validity of patent may be put in issue);
sections 97 to 99B, 101 to 103, 105 and 107 (legal proceedings);
section 116 (immunity of department as regards official acts);
sections 117 and 118 to 121 (administrative provisions);
section 122 (Crown's right to sell forfeited articles);
section 123 (rules);
section 124A (use of electronic communications);
section 130 (interpretation).

Other references

4. (1) In the application of section 21(1) (observations by third party on patentability) to supplementary protection certificates, the reference to the question whether the invention is a patentable invention is to the question whether the product is one for which a supplementary protection certificate may have effect.
- (2) In the application of section 69(2) (conditions for infringement of rights conferred by publication of application) to supplementary protection certificates, the condition in paragraph (b) is that the act would, if the certificate had been granted on the date of the publication of the application, have infringed not only the certificate as granted but also the certificate for which the application was made.

Fees

5. A supplementary protection certificate does not take effect unless—
 - (a) the prescribed fee is paid before the end of the prescribed period, or
 - (b) the prescribed fee and any prescribed additional fee are paid before the end of the period of six months beginning immediately after the prescribed period.

Interpretation

6. (1) Expressions used in this Act that are defined in the Medicinal Products Regulation or the Plant Protection Products Regulation have the same meaning as in that Regulation.
 - (2) References in this Act to, or to a provision of, the Medicinal Products Regulation or the Plant Protection Products Regulation are to that Regulation or that provision as amended from time to time.
7. In this Act—
 - (a) “the Medicinal Products Regulation” means [Council Regulation \(EEC\) No 1768/92](#) of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products, and
 - (b) “the Plant Protection Products Regulation” means [Regulation \(EC\) No 1610/96](#) of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.]

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SCHEDULE 5

Section 132.

CONSEQUENTIAL AMENDMENTS

1, 2. F10

Textual Amendments

F10 Sch. 5 paras 1, 2 repealed by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(2), **Sch. 8**

[^{F113} In sections 42 and 44(1) of the Registered Designs Act 1949, for “the Patents Act 1949” there shall be substituted, in each case, “the Patents Act 1977”.]

Textual Amendments

F11 Sch. 5 para. 3 repealed in part by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), s. 303(2), **Sch. 8**

Defence Contracts Act 1958 (c. 38)

4 In subsection (4) of section 4 of the Defence Contracts Act 1958, for the words from “Patents Act 1949” to the end there shall be substituted “Patents Act 1977”.

Modifications etc. (not altering text)

C6 The text of ss. 127(5), 132(6),(7); Sch. 1 para. 2(1),(2), 5, 7(1)(2), 8; Sch. 3; Sch. 5 paras 4, 5(1), (2), (3), 6; Sch. 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Administration of Justice Act 1970 (c. 31)

5 (1) In subsections (2) and (3) of section 10 of the Administration of Justice Act 1970 for “either” there shall be substituted in each case, “the”.

(2) In subsection (4) of the said section 10, for “(as so amended)” there shall be substituted “(as amended by section 24 of the Administration of Justice Act 1969)”.

(3) For subsection (5) of the said section 10, there shall be substituted :—

“(5) In subsection (8) of the said section 28 (which confers power on the Tribunal to make rules about procedure etc.), there shall be inserted at end of the subsection the words “including right of audience”.”

Modifications etc. (not altering text)

C7 The text of ss. 127(5), 132(6),(7); Sch. 1 para. 2(1),(2), 5, 7(1)(2), 8; Sch. 3; Sch. 5 paras 4, 5(1), (2), (3), 6; Sch. 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

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Atomic Energy Authority (Weapons Group) Act 1973 (c. 4)

- 6 In section 5(2) of the Atomic Energy Authority (Weapons Group) Act 1973—
- (a) after the first “Patents Act 1949” there shall be inserted “, the Patents Act 1977” ; and
 - (b) after the second “Patents Act 1949” there shall be inserted “section 55(4) of the Patents Act 1977”.

Modifications etc. (not altering text)

C8 The text of ss. 127(5), 132(6),(7); Sch. 1 para. 2(1),(2), 5, 7(1)(2), 8; Sch. 3; Sch. 5 paras 4, 5(1), (2), (3), 6; Sch. 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

7, 8. **F12**

Textual Amendments

F12 Sch. 5 paras. 7, 8 repealed by [Copyright, Designs and Patents Act 1988 \(c. 48, SIF 67A\)](#), and Sch. 5 para. 7 expressed to be repealed (prosp.) by [Enterprise Act 2002 \(c. 40\)](#), ss. 278, 279, **Sch. 26**

SCHEDULE 6

Section 132.

ENACTMENTS REPEALED

Modifications etc. (not altering text)

C9 The text of ss. 127(5), 132(6),(7); Sch. 1 para. 2(1),(2), 5, 7(1)(2), 8; Sch. 3; Sch. 5 paras 4, 5(1), (2), (3), 6; Sch. 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Chapter	Short Title	Extent of Repeal
7 Edw. 7. c. 29. 9 & 10 Geo. 6. c. 80. 12, 13 & 14 Geo. 6. c. 87.	The Patents and Designs Act 1907. The Atomic Energy Act 1946. The Patents Act 1949.	Section 47(2). In section 12, subsections (1) to (7). Section 11(3). Section 14. Section 16(6). Section 18. Section 21(4) and (5). In section 23(1), the words from “(not exceeding” to “ten years)”. In section 24, in subsection (1), the words “(not exceeding ten years)” and, in subsection (7), the words from “but” to the end. Section 27. In section 32, subsection (3). In section 33(3), the proviso. Sections 34 to 45. Sections 54, 57 and 58. Section 68. Sections 70 to 75. Sections 77 to 79. Sections 81 to 86. Section 87(1) and (3). Sections 88 to 91. Sections 93 to 95. Sections 97 to 100. Section 102(2). Schedule 1. Schedule 3, except paragraphs 1 and 26. The whole Act, except in relation to existing applications.
5 & 6 Eliz. 2. c. 13.	The Patents Act 1957.	

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Chapter	Short Title	Extent of Repeal
9 & 10 Eliz. 2. c. 25.	The Patents and Designs (Renewals, Extensions and Fees) Act 1961.	In section 1(1), the words from "subsection (5)" to "and in". Section 2.
10 & 11 Eliz. 2. c. 30.	The Northern Ireland Act 1962.	In Schedule 1, the entry relating to section 84 of the Patents Act 1949.
1967 c. 80.	The Criminal Justice Act 1967.	In Schedule 3, in Parts I and IV, the entries relating to the Patents Act 1949.
1968. c. 64.	The Civil Evidence Act 1968.	Section 15.
1969 c. 58.	The Administration of Justice Act 1969.	In section 24, in subsection (1), the words "85 of the Patents Act 1949 and section" and "each of" in subsections (2), (3) and (4) the words "of each of those sections" and in subsection (4) the words from "as subsection (1)" to "and" and the words "in the case of the said section 28".
1970 c. 31.	The Administration of Justice Act 1970.	In section 10, in subsection (1), the words "Patents Appeal Tribunal or the" and in subsection (4), the words from "the Patents Appeal" to "and".
1971 c. 23. 1971 c. 36(N.I.)	The Courts Act 1971. The Civil Evidence Act (Northern Ireland) 1971.	Section 46. Section 11.
1973 c. 41.	The Fair Trading Act 1973.	Section 126. In Schedule 3, in paragraph 16(2), the words from "of section 40" to "Commission)" where first occurring.
1974 c. 47.	The Solicitors Act 1974.	In Schedule 12, the entry relating to the Patents Act 1949. In Schedule 3, paragraph 3.

Status:

Point in time view as at 06/04/2014.

Changes to legislation:

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