

SCHEDULES

SCHEDULE 5

PATENTS: MISCELLANEOUS AMENDMENTS

Crown use: compensation for loss of profit

16 (1) In the Patents Act 1977, after section 57 insert—

“57A Compensation for loss of profit

- (1) Where use is made of an invention for the services of the Crown, the government department concerned shall pay—
 - (a) to the proprietor of the patent, or
 - (b) if there is an exclusive licence in force in respect of the patent, to the exclusive licensee,compensation for any loss resulting from his not being awarded a contract to supply the patented product or, as the case may be, to perform the patented process or supply a thing made by means of the patented process.
- (2) Compensation is payable only to the extent that such a contract could have been fulfilled from his existing manufacturing or other capacity; but is payable notwithstanding the existence of circumstances rendering him ineligible for the award of such a contract.
- (3) In determining the loss, regard shall be had to the profit which would have been made on such a contract and to the extent to which any manufacturing or other capacity was under-used.
- (4) No compensation is payable in respect of any failure to secure contracts to supply the patented product or, as the case may be, to perform the patented process or supply a thing made by means of the patented process, otherwise than for the services of the Crown.
- (5) The amount payable shall, if not agreed between the proprietor or licensee and the government department concerned with the approval of the Treasury, be determined by the court on a reference under section 58, and is in addition to any amount payable under section 55 or 57.
- (6) In this section “the government department concerned”, in relation to any use of an invention for the services of the Crown, means the government department by whom or on whose authority the use was made.
- (7) In the application of this section to Northern Ireland, the reference in subsection (5) above to the Treasury shall, where the government department concerned is a department of the Government of Northern Ireland, be construed as a reference to the Department of Finance and Personnel.”.

Status: This is the original version (as it was originally enacted).

- (2) In section 58 of the Patents Act 1977 (reference of disputes as to Crown use), for subsection (1) substitute—
- “(1) Any dispute as to—
- (a) the exercise by a government department, or a person authorised by a government department, of the powers conferred by section 55 above,
 - (b) terms for the use of an invention for the services of the Crown under that section,
 - (c) the right of any person to receive any part of a payment made in pursuance of subsection (4) of that section, or
 - (d) the right of any person to receive a payment under section 57A,
- may be referred to the court by either party to the dispute after a patent has been granted for the invention.”;
- and in subsection (4) for “under this section” substitute “under subsection (1)(a), (b) or (c) above”.
- (3) In section 58(11) of the Patents Act 1977 (exclusion of right to compensation for Crown use if relevant transaction, instrument or event not registered), after “section 57(3) above)” insert “, or to any compensation under section 57A above,”.
- (4) The above amendments apply in relation to any use of an invention for the services of the Crown after the commencement of this section, even if the terms for such use were settled before commencement.