

*Status: Point in time view as at 01/12/1996.*

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

## SCHEDULES

### SCHEDULE 7

Section 303(1).

#### CONSEQUENTIAL AMENDMENTS: GENERAL

##### *British Mercantile Marine Uniform Act 1919 (c.62)*

- 1 For section 2 of the British Mercantile Marine Uniform Act 1919 (copyright in distinctive marks of uniform) substitute—

##### **“2 Right in registered design of distinctive marks of uniform.**

The right of the Secretary of State in any design forming part of the British mercantile marine uniform which is registered under the Registered Designs Act 1949 is not limited to the period prescribed by section 8 of that Act but shall continue to subsist so long as the design remains on the register.”.

##### *Chartered Associations (Protection of Names and Uniforms) Act 1926 (c.26)*

- 2 In section 1(5) of the Chartered Associations (Protection of Names and Uniforms) Act 1926 for “the copyright in respect thereof” substitute “ the right in the registered design ”.

##### *Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 (c.107)*

- 3 (1) The Patents, Designs, Copyright and Trade Marks (Emergency) Act 1939 is amended as follows.
- (2) In section 1 (effect of licence where owner is enemy or enemy subject)—
- (a) in subsection (1) after “a copyright” and “the copyright” insert “ or design right ”;
  - (b) in subsection (2) after “the copyright” insert “ or design right ” and for “or copyright” substitute “ , copyright or design right ”.
- (3) In section 2 (power of comptroller to grant licences)—
- (a) in subsection (1) after “a copyright”, “the copyright” (twice) and “the said copyright” insert “ or design right ” and for “or copyright” (twice) substitute “ , copyright or design right ”;
  - (b) in subsections (2) and (3) for “ , or copyright” substitute “ , copyright or design right ”;
  - (c) in subsection (4) and in subsection (5) (twice), after “the copyright” insert “ or design right ”;
  - (d) in subsection (8)(c) for “or work in which copyright subsists” substitute “ work in which copyright subsists or design in which design right subsists ”.
- (4) In section 5 (effect of war on international arrangements)—

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- (a) in subsection (1) for “section twenty-nine of the Copyright Act 1911” substitute “ section 159 or 256 of the Copyright, Designs and Patents Act 1988 (countries enjoying reciprocal copyright or design right protection) ”;
  - (b) in subsection (2) after “copyright” (four times) insert “ or design right ” and for “the Copyright Act 1911” (twice) substitute “ Part I or III of the Copyright, Designs and Patents Act 1988 ”.
- (5) In section 10(1) (interpretation) omit the definition of “copyright”, and for the definitions of “design”, “invention”, “patent” and “patentee” substitute—
- ““design” has in reference to a registered design the same meaning as in the Registered Designs Act 1949, and in reference to design right the same meaning as in Part III of the Copyright, Designs and Patents Act 1988;
- “invention” and “patent” have the same meaning as in the Patents Act 1977.”.

*Crown Proceedings Act 1947 (c.44)*

- 4 (1) In the Crown Proceedings Act 1947 for section 3 (provisions as to industrial property) substitute—

**“3 Infringement of intellectual property rights.**

- (1) Civil proceedings lie against the Crown for an infringement committed by a servant or agent of the Crown, with the authority of the Crown, of—
    - (a) a patent,
    - (b) a registered trade mark or registered service mark,
    - (c) the right in a registered design,
    - (d) design right, or
    - (e) copyright;
 but save as provided by this subsection no proceedings lie against the Crown by virtue of this Act in respect of an infringement of any of those rights.
  - (2) Nothing in this section, or any other provision of this Act, shall be construed as affecting—
    - (a) the rights of a government department under section 55 of the Patents Act 1977, Schedule 1 to the Registered Designs Act 1949 or section 240 of the Copyright, Designs and Patents Act 1988 (Crown use of patents and designs), or
    - (b) the rights of the Secretary of State under section 22 of the Patents Act 1977 or section 5 of the Registered Designs Act 1949 (security of information prejudicial to defence or public safety).”.
- (2) In the application of sub-paragraph (1) to Northern Ireland—
- (a) the reference to the Crown Proceedings Act 1947 is to that Act as it applies to the Crown in right of Her Majesty’s Government in Northern Ireland, as well as to the Crown in right of Her Majesty’s Government in the United Kingdom, and
  - (b) in the substituted section 3 as it applies in relation to the Crown in right of Her Majesty’s Government in Northern Ireland, subsection (2)(b) shall be omitted.

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*Patents Act 1949 (c.87)*

- 5 In section 47 of the Patents Act 1949 (rights of third parties in respect of Crown use of patent), in the closing words of subsection (1) (which relate to the use of models or documents), after “copyright” insert “ or design right ”.

*Public Libraries (Scotland) Act 1955 (c.27)*

F16 .....

**Textual Amendments**

F1 Sch. 7 para. 6 repealed (1.12.1996) by S.I. 1996/2967, reg. 11(7) (with Pt. III)

*London County Council (General Powers) Act 1958 (c.xxi)*

- 7 In section 36 of the London County Council (General Powers) Act 1958 (power as to libraries: provision and repair of things other than books) for subsection (5) substitute—

“(5) Nothing in this section shall be construed as authorising an infringement of copyright.”.

*Public Libraries and Museums Act 1964 (c.75)*

F28 .....

**Textual Amendments**

F2 Sch. 7 para. 8 repealed (1.12.1996) by S.I. 1996/2967, reg. 11(7) (with Pt. III)

*Marine, &c., Broadcasting (Offences) Act 1967 (c.41)*

- 9 In section 5 of the Marine, &c., Broadcasting (Offences) Act 1967 (provision of material for broadcasting by pirate radio stations)—

- (a) in subsection (3)(a) for the words from “cinematograph film” to “in the record” substitute “ film or sound recording with intent that a broadcast of it ”; and
- (b) in subsection (6) for the words from “and references” to the end substitute “ and “film”, “sound recording”, “literary, dramatic or musical work” and “artistic work” have the same meaning as in Part I of the Copyright, Designs and Patents Act 1988 (copyright) ”.

*Medicines Act 1968 (c.67)*

- 10 (1) Section 92 of the Medicines Act 1968 (scope of provisions restricting promotion of sales of medicinal products) is amended as follows.

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- (2) In subsection (1) (meaning of “advertisement”) for the words from “or by the exhibition” to “service” substitute “ or by means of a photograph, film, sound recording, broadcast or cable programme, ”.
- (3) In subsection (2) (exception for the spoken word)—
- (a) in paragraph (a) omit the words from “or embodied” to “film”; and
  - (b) in paragraph (b) for the words from “by way of” to the end substitute “ or included in a cable programme service ”.
- (4) For subsection (6) substitute—
- “(6) In this section “film”, “sound recording”, “broadcast”, “cable programme”, “cable programme service”, and related expressions, have the same meaning as in Part I of the Copyright, Designs and Patents Act 1988 (copyright).”.

*Post Office Act 1969 (c.48)*

- 11 In Schedule 10 to the Post Office Act 1969 (special transitional provisions relating to use of patents and registered designs), in the closing words of paragraphs 8(1) and 18(1) (which relate to the use of models and documents), after “copyright” insert “ or design right ”.

*Merchant Shipping Act 1970 (c.36)*

- 12 In section 87 of the Merchant Shipping Act 1970 (merchant navy uniform), for subsection (4) substitute—
- “(4) Where any design forming part of the merchant navy uniform has been registered under the Registered Designs Act 1949 and the Secretary of State is the proprietor of the design, his right in the design is not limited to the period prescribed by section 8 of that Act but shall continue to subsist so long as the design remains registered.”.

*Taxes Management Act 1970 (c.9)*

- 13 In section 16 of the Taxes Management Act 1970 (returns to be made in respect of certain payments)—
- (a) in subsection (1)(c), and
  - (b) in subsection (2)(b),
- for “or public lending right” substitute “ , public lending right, right in a registered design or design right ”.

*Tribunals and Inquiries Act 1971 (c.62)*

F3 14 .....

**Textual Amendments**

**F3** Sch. 7 para. 14 repealed (1.10.1992) by Tribunals and Inquiries Act 1992 (c. 53), ss. 18(2), 19(2), Sch. 4 Pt.I

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*Fair Trading Act 1973 (c.41)*

- 15 In Schedule 4 to the Fair Trading Act 1973 (excluded services), for paragraph 10 (services of patent agents) substitute—

“10 The services of registered patent agents (within the meaning of Part V of the Copyright, Designs and Patents Act 1988) in their capacity as such.”;  
and in paragraph 10A (services of European patent attorneys) for “section 84(7) of the Patents Act 1977” substitute “Part V of the Copyright, Designs and Patents Act 1988”.

*House of Commons Disqualification Act 1975 (c.24)*

- 16 In Part II of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert “ The Copyright Tribunal ”.

*Northern Ireland Assembly Disqualification Act 1975 (c.25)*

- 17 In Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert “ The Copyright Tribunal ”.

*Restrictive Trade Practices Act 1976 (c.34)*

- 18 (1) The Restrictive Trade Practices Act 1976 is amended as follows.  
(2) In Schedule 1 (excluded services) for paragraph 10 (services of patent agents) substitute—  
“10 The services of registered patent agents (within the meaning of Part V of the Copyright, Designs and Patents Act 1988) in their capacity as such.”;  
and in paragraph 10A (services of European patent attorneys) for “section 84(7) of the Patents Act 1977” substitute “ Part V of the Copyright, Designs and Patents Act 1988 ”.  
(3) In Schedule 3 (excepted agreements), after paragraph 5A insert—

*“ Design right*

- 5B (1) This Act does not apply to—  
(a) a licence granted by the owner or a licensee of any design right,  
(b) an assignment of design right, or  
(c) an agreement for such a licence or assignment,  
if the licence, assignment or agreement is 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 articles made to the design; but subject to the following provisions.

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- (2) Sub-paragraph (1) does not exclude a licence, assignment or agreement which is a design pooling agreement or is granted or made (directly or indirectly) in pursuance of a design pooling agreement.
- (3) In this paragraph a “design pooling agreement” means an agreement—
- (a) to which the parties are or include at least three persons (the “principal parties”) each of whom has an interest in one or more design rights, and
  - (b) by which each principal party agrees, in respect of design right in which he has, or may during the currency of the agreement acquire, an interest to grant an interest (directly or indirectly) to one or more of the other principal parties, or to one or more of those parties and to other persons.
- (4) In this paragraph—
- “assignment”, in Scotland, means assignation; and
- “interest” means an interest as owner or licensee of design right.
- (5) This paragraph applies to an interest held by or granted to more than one person jointly as if they were one person.
- (6) References in this paragraph to the granting of an interest to a person indirectly are to its being granted to a third person for the purpose of enabling him to make a grant to the person in question.”.

*Resale Prices Act 1976 (c. 53)*

- 19 In section 10(4) of the Resale Prices Act 1976 (patented articles: articles to be treated in same way), in paragraph (a) after “protected” insert “ by design right or ”.

*Patents Act 1977 (c. 37)*

- 20 In section 57 of the Patents Act 1977 (rights of third parties in respect of Crown use of patent), in the closing words of subsection (1) (which relate to the use of models or documents), after “copyright” insert “ or design right ”.
- 21 In section 105 of the Patents Act 1977 (privilege in Scotland for communications relating to patent proceedings), omit “within the meaning of section 104 above”, make the existing text subsection (1) and after it insert—
- “(2) In this section—
- “patent proceedings” means proceedings under this Act or any of the relevant conventions, before the court, the comptroller or the relevant convention court, whether contested or uncontested and including an application for a patent; and
- “the relevant conventions” means the European Patent Convention, the Community Patent Convention and the Patent Co-operation Treaty.”.
- 22 In section 123(7) of the Patents Act 1977 (publication of case reports by the comptroller)—
- (a) for “and registered designs” substitute “ registered designs or design right ”,

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(b) for “and copyright” substitute “ , copyright and design right ”.

23 In section 130(1) of the Patents Act 1977 (interpretation), in the definition of “court”, for paragraph (a) substitute—

“(a) as respects England and Wales, the High Court or any patents county court having jurisdiction by virtue of an order under section 287 of the Copyright, Designs and Patents Act 1988;”.

*Unfair Contract Terms Act 1977 (c. 50)*

24 In paragraph 1 of Schedule 1 to the Unfair Contract Terms Act 1977 (scope of main provisions: excluded contracts), in paragraph (c) (contracts relating to grant or transfer of interest in intellectual property) after “copyright” insert “ or design right ”.

*Judicature (Northern Ireland) Act 1978 (c. 23)*

25 In section 94A of the Judicature (Northern Ireland) Act 1978 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property), in subsection (5) (meaning of “intellectual property”) after “copyright” insert “ or design right ”.

*Capital Gains Tax Act 1979 (c. 14)*

F<sup>4</sup>26 .....

**Textual Amendments**

**F4** Sch. 7 para. 26 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch.12 (with s. 201(3), Sch. 11 paras. 22, 26(2), 27)

*British Telecommunications Act 1981 (c. 38)*

27 In Schedule 5 to the British Telecommunications Act 1981 (special transitional provisions relating to use of patents and registered designs), in the closing words of paragraphs 9(1) and 19(1) (which relate to the use of models and documents), after “copyright” insert “ or design right ”.

*Supreme Court Act 1981 (c. 54)*

28 (1) The Supreme Court Act 1981 is amended as follows.

(2) In section 72 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property), in subsection (5) (meaning of “intellectual property”) after “copyright” insert “ , design right ”.

(3) In Schedule 1 (distribution of business in the High Court), in paragraph 1(i) (business assigned to the Chancery Division: causes and matters relating to certain intellectual property) for “or copyright” substitute “ , copyright or design right ”.

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F<sup>5</sup>29, 30. ....

#### Textual Amendments

**F5** Sch. 7 paras. 29, 30 repealed by Broadcasting Act 1990 (c. 42, SIF 96), s. 203(3), Sch. 21 (the repeal being in force subject, as to para. 29, as mentioned in S.I. 1990/2347 art. 3(3))

#### *Companies Act 1985 (c. 6)*

- [F<sup>6</sup>31 (1) Part XII of the Companies Act 1985 (registration of charges) is amended as follows.
- (2) In section 396 (registration of charges in England and Wales: charges which must be registered), in subsection (1)(j) for the words from “on a patent” to the end substitute “or on any intellectual property”, and after subsection (3) insert—
- “(3A) The following are “intellectual property” for the purposes of this section—
- (a) any patent, trade mark, service mark, registered design, copyright or design right;
  - (b) any licence under or in respect of any such right.”.
- (3) In section 410 (registration of charges in Scotland: charges which must be registered), in subsection (4)(c) (incorporeal moveable property) after subparagraph (vi) insert—
- “(vii) a registered design or a licence in respect of such a design,  
(viii) a design right or a licence under a design right.”.]

#### Textual Amendments

**F6** Sch. 7 para. 31 repealed (*prosp.*) by Companies Act 1989 (c. 40, SIF 27), ss. 212, 215(2), Sch. 24

#### *Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73)*

- 32 In section 15 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (withdrawal of privilege against self-incrimination in certain proceedings relating to intellectual property), in subsection (5) (meaning of “intellectual property”) after “copyright” insert “ or design right ”.

#### *Atomic Energy Authority Act 1986 (c. 3)*

- 33 In section 8(2) of the Atomic Energy Authority Act 1986 (powers of Authority as to exploitation of research: meaning of “intellectual property”), after “copyrights” insert “ , design rights ”.

#### *Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I.3))*

F<sup>7</sup>34 .....

#### Textual Amendments

**F7** Sch. 7 para. 34 repealed (16.1.1994) by S.I. 1993/2810 (N.I. 12), arts. 1(2), 50(2), Sch.5 and expressed to be repealed (1.12.1996) by S.I. 1996/2967, reg. 11(7) (with Pt. III)

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*Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I.6))*

[<sup>F8</sup>35 In Article 403 of the Companies (Northern Ireland) Order 1986 (registration of charges: charges which must be registered), in paragraph (1)(j) for the words from “on a patent” to the end substitute “ or on any intellectual property ”, and after paragraph (3) insert—

“(3A) The following are “intellectual property” for the purposes of this Article—

- (a) any patent, trade mark, service mark, registered design, copyright or design right;
- (b) any licence under or in respect of any such right.”.]

**Textual Amendments**

**F8** Sch. 7 para. 35 repealed (prosp.) by S.I. 1990/1504 (N.I. 10), arts. 1, 113, Sch. 6

*Income and Corporation Taxes Act 1988 (c. 1)*

- 36 (1) The Income and Corporation Taxes Act 1988 is amended as follows.
- (2) In section 83 (fees and expenses deductible in computing profits and gains of trade) for “the extension of the period of copyright in a design” substitute “ an extension of the period for which the right in a registered design subsists ”.
  - (3) In section 103 (charge on receipts after discontinuance of trade, profession or vocation), in subsection (3) (sums to which the section does not apply), after paragraph (b) insert—
    - “(bb) a lump sum paid to the personal representatives of the designer of a design in which design right subsists as consideration for the assignment by them, wholly or partially, of that right.”.
  - (4) In section 387 (carry forward as losses of certain payments made under deduction of tax), in subsection (3) (payments to which the section does not apply), in paragraph (e) (copyright royalties) after “applies” insert “ or royalties in respect of a right in a design to which section 537B applies ”.
  - (5) In section 536 (taxation of copyright royalties where owner abroad), for the definition of “copyright” in subsection (2) substitute—
    - ““copyright” does not include copyright in—
    - (i) a cinematograph film or video recording, or
    - (ii) the sound-track of such a film or recording, so far as it is not separately exploited; and”.
  - (6) In Chapter I of Part XIII (miscellaneous special provisions: intellectual property), after section 537 insert—

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*“ Designs*

**537A Relief for payments in respect of designs.**

- (1) Where the designer of a design in which design right subsists assigns that right, or the author of a registered design assigns the right in the design, wholly or partially, or grants an interest in it by licence, and—
  - (a) the consideration for the assignment or grant consists, in whole or in part, of a payment to which this section applies, the whole amount of which would otherwise be included in computing the amount of his profits or gains for a single year of assessment, and
  - (b) he was engaged in the creation of the design for a period of more than 12 months,

he may, on making a claim, require that effect shall be given to the following provisions in connection with that payment.
- (2) If the period for which he was engaged in the creation of the design does not exceed 24 months, then, for all income tax purposes, one-half only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable and the remaining half shall be treated as having become receivable 12 months before that date.
- (3) If the period for which he was engaged in the creation of the design exceeds 24 months, then, for all income tax purposes, one-third only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and one-third shall be treated as having become receivable 12 months, and one-third 24 months, before that date.
- (4) This section applies to—
  - (a) a lump sum payment, including an advance on account of royalties which is not returnable, and
  - (b) any other payment of or on account of royalties or sums payable periodically which does not only become receivable more than two years after articles made to the design or, as the case may be, articles to which the design is applied are first made available for sale or hire.
- (5) A claim under this section with respect to any payment to which it applies by virtue only of subsection (4)(b) above shall have effect as a claim with respect to all such payments in respect of rights in the design in question which are receivable by the claimant, whether before or after the claim; and such a claim may be made at any time not later than 5th April next following the expiration of eight years after articles made to the design or, as the case may be, articles to which the design is applied were first made available for sale or hire.
- (6) In this section—
  - (a) “designer” includes a joint designer, and
  - (b) any reference to articles being made available for sale or hire is to their being so made available anywhere in the world by or with the licence of the design right owner or, as the case may be, the proprietor of the registered design.

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### **537B Taxation of design royalties where owner abroad.**

- (1) Where the usual place of abode of the owner of a right in a design is not within the United Kingdom, section 349(1) shall apply to any payment of or on account of any royalties or sums paid periodically for or in respect of that right as it applies to annual payments not payable out of profits or gains brought into charge to income tax.
- (2) In subsection (1) above—
  - (a) “right in a design” means design right or the right in a registered design,
  - (b) the reference to the owner of a right includes a person who, notwithstanding that he has assigned the right to some other person, is entitled to receive periodical payments in respect of the right, and
  - (c) the reference to royalties or other sums paid periodically for or in respect of a right does not include royalties or sums paid in respect of articles which are shown on a claim to have been exported from the United Kingdom for distribution outside the United Kingdom.
- (3) Where a payment to which subsection (1) above applies is made through an agent resident in the United Kingdom and that agent is entitled as against the owner of the right to deduct any sum by way of commission in respect of services rendered, the amount of the payment shall for the purposes of section 349(1) be taken to be diminished by the sum which the agent is entitled to deduct.
- (4) Where the person by or through whom the payment is made does not know that any such commission is payable or does not know the amount of any such commission, any income tax deducted by or assessed and charged on him shall be computed in the first instance on, and the account to be delivered of the payment shall be an account of, the total amount of the payment without regard being had to any diminution thereof, and in that case, on proof of the facts on a claim, there shall be made to the agent on behalf of the owner of the right such repayment of income tax as is proper in respect of the sum deducted by way of commission.
- (5) The time of the making of a payment to which subsection (1) above applies shall, for all tax purposes, be taken to be the time when it is made by the person by whom it is first made and not the time when it is made by or through any other person.
- (6) Any agreement for the making of any payment to which subsection (1) above applies in full and without deduction of income tax shall be void.”.
- (7) In section 821 (payments made under deduction of tax before passing of Act imposing income tax for that year), in subsection (3) (payments subject to adjustment) after paragraph (a) insert—
  - “(aa) any payment for or in respect of a right in a design to which section 537B applies; and”.
- (8) In Schedule 19 (apportionment of income of close companies), in paragraph 10(4) (cessation or liquidation: debts taken into account although creditor is participator

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or associate), in paragraph (c) (payments for use of certain property) for the words from “tangible property” to “extend)” substitute—

- “(i) tangible property,
- (ii) copyright in a literary, dramatic, musical or artistic work within the meaning of Part I of the Copyright, Designs and Patents Act 1988 (or any similar right under the law of a country to which that Part does not extend), or
- (iii) design right.”.

(9) In Schedule 25 (taxation of UK-controlled foreign companies: exempt activities), in paragraph 9(1)(a) (investment business: holding of property) for “patents or copyrights” substitute “or intellectual property” and after that subparagraph insert—

- “(1A) In sub-paragraph (1)(a) above “intellectual property” means patents, registered designs, copyright and design right (or any similar rights under the law of a country outside the United Kingdom).”.

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