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STATUTORY INSTRUMENTS

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**2019 No. 801**

**The Patents (Amendment) (EU Exit) Regulations 2019**

**PART 6**

**SUPPLEMENTARY PROTECTION CERTIFICATES FOR PLANT PROTECTION PRODUCTS – AMENDMENTS TO REGULATION (EC) No 1610/96**

**19.** 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 is amended as set out in this Part.

**Commencement Information**

- II** Reg. 19 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1

**20.—**(1) Article 1 (definitions) is amended as follows.

(2) In paragraph 1(c), omit “Council or Commission”.

(3) After paragraph 10, insert—

“**11.** ‘comptroller’ means the Comptroller-General of Patents, Designs and Trade Marks;

[<sup>F1</sup>**12.** ‘court’ means—

- (a) as respects England and Wales, the High Court;
- (b) as respects Scotland, the Court of Session;
- (c) as respects Northern Ireland, the High Court in Northern Ireland];

**13.** ‘EEA authorization’ means an authorization to place a plant protection product on the market which has effect in an EEA state in accordance with Regulation (EC) No 1107/2009;

**14.** ‘patent’ means a patent which has effect in the United Kingdom;

<sup>F2</sup>**15.** .....”.

*Status: Point in time view as at 31/12/2020. This version of this part contains provisions that are prospective.*

**Changes to legislation:** There are currently no known outstanding effects for the *The Patents (Amendment) (EU Exit) Regulations 2019, PART 6.* (See end of Document for details)

**Textual Amendments**

- F1** Words in reg. 20(3) substituted (31.12.2020 immediately before IP completion day) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), **31**
- F2** Words in reg. 20(3) omitted (31.12.2020 immediately before IP completion day) by virtue of [The Supplementary Protection Certificates \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1471\)](#), regs. 1(2), **2(3)** (with reg. 7)

**Commencement Information**

- I2** Reg. 20 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see reg. 1

PROSPECTIVE

<sup>F3</sup>**21.** . . . . .

**Textual Amendments**

- F3** [Reg. 21](#) omitted (31.12.2020 immediately before IP completion day) by virtue of [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), **32**

**22.** For Article 2, substitute—

*“Article 2*

*Scope*

A plant protection product may, under the terms and conditions provided for in this Regulation, be the subject of a certificate if it is—

- (a) protected by a patent; and
- (b) the subject of a [<sup>F4</sup>GB or NI] authorization prior to being placed on the market as a plant protection product.”.

**Textual Amendments**

- F4** Words in [reg. 22](#) substituted (31.12.2020 immediately before IP completion day) by [The Supplementary Protection Certificates \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1471\)](#), regs. 1(2), **2(4)** (with reg. 7)

**Commencement Information**

- I3** Reg. 22 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see reg. 1

**23.** For Article 3(1), substitute—

“1. Where an application is submitted under Article 7, a certificate shall be granted if at the date of submission of the application—

- (a) the product is protected by a basic patent in force;
- (b) there is a valid [<sup>F5</sup>GB or NI] authorization to place the product on the market;
- (c) the product has not already been the subject of a certificate;
- (d) the authorization referred to in (b) is the first <sup>F6</sup>... authorization to place the product on the market as a plant protection product [<sup>F7</sup>in the territory of England and Wales and Scotland or the territory of Northern Ireland as the case may be].”.

#### Textual Amendments

- F5** Words in reg. 23 substituted (31.12.2020 immediately before IP completion day) by The Supplementary Protection Certificates (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1471), regs. 1(2), 2(5)(a) (with reg. 7)
- F6** Word in reg. 23 omitted (31.12.2020 immediately before IP completion day) by virtue of The Supplementary Protection Certificates (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1471), regs. 1(2), 2(5)(b)(i) (with reg. 7)
- F7** Words in reg. 23 inserted (31.12.2020 immediately before IP completion day) by The Supplementary Protection Certificates (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1471), regs. 1(2), 2(5)(b)(ii) (with reg. 7)

#### Commencement Information

- I4** Reg. 23 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, Sch. 5 para. 1(1)), see reg. 1

24.—(1) Article 8 (contents of the application for a certificate) is amended as follows.

(2) For paragraph 1(a)(iv), substitute—

“(iv) the number and date of the [<sup>F8</sup>GB or NI authorisation or both GB and NI authorisations] as referred to in Article 3(1)(b) [<sup>F9</sup>and (d)]; and

(v) the number and date of the earliest EEA authorization, the granting of which predates the granting of the [<sup>F10</sup>GB or NI] authorization [<sup>F11</sup>as referred to in Article 3(1)(b) and (d)];”.

(3) For paragraph 8(1)(b) and (c), substitute—

“(b) a copy of the [<sup>F12</sup>GB or NI authorisation or both GB and NI authorisations] to place the product on the market, as referred to in Article 3(1)(b) [<sup>F13</sup>and (d)], in which the product is identified, containing in particular the number and date of the authorization and the summary of the product characteristics listed in Commission Regulation 283/2013, [<sup>F14</sup>Part A section 1, points 1.1 to 1.7 or Part B, Section 1 points 1.1 to 1.4.3];

(c) where the product is the subject of one or more EEA authorizations granted prior to the [<sup>F15</sup>GB or NI] authorization referred to in Article 3(1)(b) [<sup>F16</sup>and (d)], the applicant must provide in relation to the earliest of any such EEA authorizations—

- (i) information regarding the identity of the product thus authorised;
- (ii) information regarding the legal provision under which the authorization procedure took place; and
- (iii) a copy of the notice publishing the authorization in the appropriate official publication or, failing such a notice, any other document proving that the

authorization has been issued, the date on which it was issued and the identity of the product authorized.”.

(4) Omit paragraph 2.

#### Textual Amendments

- F8** Words in [reg. 24\(2\)](#) substituted (31.12.2020 immediately before IP completion day) by [The Supplementary Protection Certificates \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1471\)](#), regs. 1(2), [2\(6\)\(a\)\(i\)](#) (with [reg. 7](#))
- F9** Words in [reg. 24\(2\)](#) inserted (31.12.2020 immediately before IP completion day) by [The Supplementary Protection Certificates \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1471\)](#), regs. 1(2), [2\(6\)\(a\)\(ii\)](#) (with [reg. 7](#))
- F10** Words in [reg. 24\(2\)](#) substituted (31.12.2020 immediately before IP completion day) by [The Supplementary Protection Certificates \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1471\)](#), regs. 1(2), [2\(6\)\(b\)\(i\)](#) (with [reg. 7](#))
- F11** Words in [reg. 24\(2\)](#) inserted (31.12.2020 immediately before IP completion day) by [The Supplementary Protection Certificates \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1471\)](#), regs. 1(2), [2\(6\)\(b\)\(ii\)](#) (with [reg. 7](#))
- F12** Words in [reg. 24\(3\)](#) substituted (31.12.2020 immediately before IP completion day) by [The Supplementary Protection Certificates \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1471\)](#), regs. 1(2), [2\(7\)\(a\)\(i\)](#) (with [reg. 7](#))
- F13** Words in [reg. 24\(3\)](#) inserted (31.12.2020 immediately before IP completion day) by [The Supplementary Protection Certificates \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1471\)](#), regs. 1(2), [2\(7\)\(a\)\(ii\)](#) (with [reg. 7](#))
- F14** Words in [reg. 24\(3\)](#) substituted (31.12.2020 immediately before IP completion day) by [The Intellectual Property \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1050\)](#), regs. 1(2), [33](#)
- F15** Words in [reg. 24\(3\)](#) substituted (31.12.2020 immediately before IP completion day) by [The Supplementary Protection Certificates \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1471\)](#), regs. 1(2), [2\(7\)\(b\)\(i\)](#) (with [reg. 7](#))
- F16** Words in [reg. 24\(3\)](#) inserted (31.12.2020 immediately before IP completion day) by [The Supplementary Protection Certificates \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1471\)](#), regs. 1(2), [2\(7\)\(b\)\(ii\)](#) (with [reg. 7](#))

#### Commencement Information

- I5** Reg. 24 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1](#)

**25.—**(1) Article 9 (lodging of an application for a certificate) is amended as follows.

(2) For paragraph 1, substitute—

“**1.** An application for a certificate shall be lodged with the comptroller.”

(3) In the introductory words of paragraph 2, for “authority referred to in paragraph 1” substitute “comptroller”.

(4) For sub-paragraphs (d) and (e) of paragraph 2, substitute—

[<sup>F17c</sup>(d) the number and date of the GB or NI authorisation or both a GB and a NI authorisation provided under Article 8(1)(b), the product identified in the authorisation and the territory in respect of which the authorisation has been granted or has effect as if granted;]

- (e) where there are EEA authorizations granted before [<sup>F18</sup>any GB or NI authorisation provided under Article 8(1)(b)], the number and date of the earliest EEA authorization;”.

**Textual Amendments**

- F17** Words in reg. 25(4) substituted (31.12.2020 immediately before IP completion day) by [The Supplementary Protection Certificates \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1471\)](#), regs. 1(2), **2(8)(a)** (with reg. 7)
- F18** Words in reg. 25(4) substituted (31.12.2020 immediately before IP completion day) by [The Supplementary Protection Certificates \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1471\)](#), regs. 1(2), **2(8)(b)** (with reg. 7)

**Commencement Information**

- I6** Reg. 25 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1

- 26.**—(1) Article 10 (grant of the certificate or rejection of the application) is amended as follows.
- (2) In paragraphs 1 to 3, for “the authority referred to in Article 9(1)”, substitute “ the comptroller ”.
- (3) In paragraph 2, after “in this Regulation”, insert “ or any prescribed fee is not paid ”.
- (4) In paragraph 3, after “Article 8”, insert “ or the prescribed fee relating to the application has not been paid ”.
- (5) Omit paragraph 5.
- (6) At the end of the Article, insert—

<sup>F19</sup>“**6.** . . . . .”.

**Textual Amendments**

- F19** Words in [reg. 26\(6\)](#) omitted (31.12.2020) by virtue of [The Supplementary Protection Certificates \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1471\)](#), regs. 1(2), **2(9)** (with reg. 7)

**Commencement Information**

- I7** Reg. 26 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see reg. 1

- 27.**—(1) Article 11 (publication) is amended as follows.
- (2) In paragraphs 1 and 2, for “the authority referred to in Article 9(1)” substitute “ the comptroller ”.
- (3) In paragraph 1—
- <sup>F20</sup>(a) . . . . .
- (b) for sub-paragraph (e), substitute—
- “<sup>F21</sup>(e) where there are EEA authorizations granted before [<sup>F21</sup>any authorisation provided under Article 8(1)(b)], the number and date of the earliest EEA authorization;”.

*Status: Point in time view as at 31/12/2020. This version of this part contains provisions that are prospective.*

**Changes to legislation:** There are currently no known outstanding effects for the The Patents (Amendment) (EU Exit) Regulations 2019, PART 6. (See end of Document for details)

**Textual Amendments**

- F20** Reg. 27(3)(a) omitted (31.12.2020 immediately before IP completion day) by virtue of [The Supplementary Protection Certificates \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1471\)](#), regs. 1(2), **2(10)** (with reg. 7)
- F21** Words in reg. 27(3)(b) substituted (31.12.2020 immediately before IP completion day) by [The Supplementary Protection Certificates \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1471\)](#), regs. 1(2), **2(11)** (with reg. 7)

**Commencement Information**

- I8** Reg. 27 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see reg. 1

**28.** Omit Article 12 (annual fees).

**Commencement Information**

- I9** Reg. 28 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see reg. 1

**29.** In paragraph 1 of Article 13 (duration of the certificate), for “the Community”, substitute “the area comprising the European Economic Area and the United Kingdom”.

**Commencement Information**

- I10** Reg. 29 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see reg. 1

**30.—**(1) Article 14 (expiry of the certificate) is amended as follows.

(2) The existing text is numbered as paragraph 1.

(3) For sub-paragraphs (c) and (d) of the renumbered paragraph 1, substitute—

“(c) if the prescribed annual fee is not paid in time; [<sup>F22</sup>or]

(d) if and as long as the product covered by the certificate may no longer be placed on the market following the withdrawal of [<sup>F23</sup>all] authorizations to place on the market in accordance with Article 28 of Regulation 1107/2009. The comptroller may decide on the lapse of the certificate either of the comptroller's own motion or at the request of a third party.”.

<sup>F24</sup>(4) .....

**Textual Amendments**

- F22** Word in reg. 30(3) inserted (31.12.2020 immediately before IP completion day) by [The Supplementary Protection Certificates \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1471\)](#), regs. 1(2), **2(12)(a)** (with reg. 7)

**F23** Word in reg. 30(3) substituted (31.12.2020 immediately before IP completion day) by The Supplementary Protection Certificates (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1471), regs. 1(2), **2(12)(b)** (with reg. 7)

**F24** Reg. 30(4) omitted (31.12.2020 immediately before IP completion day) by virtue of The Supplementary Protection Certificates (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1471), regs. 1(2), **2(13)** (with reg. 7)

#### Commencement Information

**I11** Reg. 30 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

**31.** In paragraph (2) of Article 15 (invalidity of certificate), for “the body responsible under national law for the revocation of the corresponding basic patent” substitute “ the comptroller or the court ”.

#### Commencement Information

**I12** Reg. 31 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

**32.** In Article 16 (notification of lapse or invalidity), for “the authority referred to in Article 9(1)”, substitute “ the comptroller ”.

#### Commencement Information

**I13** Reg. 32 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

**33.** In Article 17 (appeals), omit paragraph 1.

#### Commencement Information

**I14** Reg. 33 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

**34.** In Article 18 (procedure), for paragraph 1 substitute—

“**1.** In the absence of procedural provisions in this Regulation, the procedural provisions applicable to the corresponding basic patent (as modified by section 128B of, and Schedule 4A to, the Patents Act 1977) shall apply to the certificate.”.

#### Commencement Information

**I15** Reg. 34 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

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*Status: Point in time view as at 31/12/2020. This version of this part contains provisions that are prospective.*

**Changes to legislation:** *There are currently no known outstanding effects for the The Patents (Amendment) (EU Exit) Regulations 2019, PART 6. (See end of Document for details)*

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**35.** Omit Articles 19 and 20 (transitional provisions).

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**Commencement Information**

**I16** Reg. 35 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

**36.** After Article 21 (entry into force), omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

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**Commencement Information**

**I17** Reg. 36 in force at 31.12.2020 on IP completion day (in accordance with 2020 c. 1, **Sch. 5 para. 1(1)**), see reg. 1

**Status:**

Point in time view as at 31/12/2020. This version of this part contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the The Patents (Amendment) (EU Exit) Regulations 2019, PART 6.