

SCHEDULE

Amendments to Regulations on Supplementary Protection Certificates

PART 1

Amendments to Regulation (EC) 1610/96

Interpretation of Part 1

1. In this Part, a reference to an Article or a paragraph is to that of Regulation (EC) 1610/96.

Article 1: definitions

2. In Article 1, after the definition of “patent” in paragraph 14, as inserted by regulation 20(3) of the Patents (Amendment) (EU Exit) Regulations 2019, insert—

“15. “GB authorisation” means an authorisation, to place a plant protection product on the market in England and Wales and Scotland, granted or having effect as if granted under Regulation (EC) 1107/2009(1);

16. “NI authorisation” means an authorisation, to place a plant protection product on the market in Northern Ireland, granted or having effect as if granted in accordance with Regulation (EC) 1107/2009 as it has effect by virtue of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;

17. “prescribed” means prescribed by rules under section 123 of the Patents Act 1977.”.

Article 4: subject matter of protection

3. In Article 4—
 - (a) for “authorizations”, substitute “GB or NI authorisation or both GB and NI authorisations”;
 - (b) after “authorized”, insert “in the United Kingdom”.

Article 5: effects of the certificate

4. In Article 5—
 - (a) the existing text is numbered as paragraph 1;
 - (b) in paragraph 1, after “Article 4”, insert “and paragraphs 2 and 3”;
 - (c) after paragraph 1, insert—

“2. The protection conferred by a certificate in accordance with paragraph 1 shall extend only to the territory in respect of which a valid GB or NI authorisation has been issued and the authorisation—

- (a) is the first authorisation for the product in the territory in accordance with Article 3(1)(b) and (d), and
- (b) has been issued before the certificate takes effect in accordance with Article 13(1).

(1) EUR 2009/1107. This is a reference to the retained version of Regulation (EC) 2009/1107. That retained version is online at <http://www.legislation.gov.uk/eur/2009/1107/contents>.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

3. Where after the submission of an application for a certificate in accordance with Article 7 and before the certificate takes effect in accordance with Article 13(1), a GB or NI authorisation is granted in respect of the same product and the authorisation would have met the requirements of Article 3(b) and (d) had it been granted on the date of submission of the application, the protection conferred by a certificate in accordance with paragraph 1 shall extend to the territory of England and Wales and Scotland or the territory of Northern Ireland as the case may be.”.

Article 7: application for a certificate

5. In Article 7, paragraph (1)—

- (a) before “authorization”, insert “GB or NI”;
- (b) after “3(1)(b)”, insert “and (d)”;
- (c) after the end of the sentence, insert—

“Where more than one such authorisation is granted before the application for a certificate is lodged, the application shall be lodged within six months of the date of grant of the earliest of such authorisations.”.

Article 11: publication

6. In Article 11, for paragraph (d), substitute—

- “(d) the number and date of the UK, GB or NI authorisation or, where there is more than one such authorisation, of each authorisation provided under Article 8(1)(b) or Article 13A(1), the product identified in the authorisation and the territory in respect of which the authorisation has been granted or has effect as if granted;”.

Article 13A: authorisation granted after submission of an application for a certificate

7. After Article 13, insert—

“Article 13A

Authorisation granted after submission of an application for a certificate

1. Where after the submission of an application under Article 7(1), but before the grant of a certificate under Article 10(1) in relation to a GB authorisation, a valid NI authorisation is granted which, at its date of grant, is the first authorisation to place the product on the market as a plant protection product in the territory of Northern Ireland, the applicant shall notify the comptroller of the grant of the NI authorisation, within six months of its date of grant and before the certificate takes effect under Article 13(1), and provide the details set out in Article 8(1)(a)(iv) and (b) on the prescribed form.

2. Where after the submission of an application under Article 7(1), but before the grant of a certificate under Article 10(1) in relation to a NI authorisation, a valid GB authorisation is granted which, at its date of grant, is the first authorisation to place the product on the market as a plant protection product in the territory of England and Wales and Scotland, the applicant shall notify the comptroller of the grant of the GB authorisation, within six months of its date of grant and before the certificate takes effect under Article 13(1), and provide the details set out in Article 8(1)(a)(iv) and (b) on the prescribed form.

3. Where after the grant of a certificate under Article 10(1) in relation to a GB authorisation, but before expiry of the basic patent, a valid NI authorisation is granted which, at its date of grant, is the first authorisation to place the product on the market as a plant

protection product in the territory of Northern Ireland, the certificate holder shall notify the comptroller of the NI authorisation, within six months of its date of grant and before the certificate takes effect under Article 13(1), and provide the details set out in Article 8(1)(a) (iv) and (b) on the prescribed form.

4. Where after the grant of a certificate under Article 10(1) in relation to a NI authorisation, but before expiry of the basic patent, a valid GB authorisation is granted which, at its date of grant, is the first authorisation to place the product on the market as a plant protection product in the territory of England and Wales and Scotland, the certificate holder shall notify the comptroller of the grant of the GB authorisation, within six months of its date of grant and before the certificate takes effect under Article 13(1), and provide the details set out in Article 8(1)(a)(iv) and (b) on the prescribed form.

5. If the applicant or certificate holder fails to notify the comptroller of the grant of an authorisation in accordance with any of paragraphs 1 to 4, the protection conferred by a certificate granted under Article 10(1) shall not extend to any additional territory covered by that authorisation.

6. On receipt of a notification under any of paragraphs 1 to 4, the comptroller shall publish:

- (a) the number and date of the authorisation,
- (b) the product identified in that authorisation, and
- (c) the relevant territory in respect of which the authorisation has been granted or has effect as if granted.”.

Article 14: expiry of the certificate

8. In Article 14, after paragraph 1, insert—

“2. Where a UK authorisation is withdrawn and replaced simultaneously with a GB authorisation and a NI authorisation, the certificate granted in respect of the UK authorisation shall not lapse.

3. Where a UK, GB or NI authorisation is withdrawn, but one or more such authorisations remain valid, the protection conferred by the certificate shall, as from the date of withdrawal, no longer extend to the territory covered by the authorisation withdrawn but shall continue in respect of the territory covered by any remaining authorisation.

4. For the purposes of paragraphs 2 and 3, “UK authorisation” means an authorisation to place a plant protection product on the market in the United Kingdom, granted or having effect as if granted, prior to IP completion day, under Regulation (EC) 1107/2009(2) of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market.”.

Article 16: notification of lapse or invalidity

9. In Article 16—

- (a) after “Article 14”, insert “(1)”;
- (b) after “Article 15,” insert “or if the territorial extent of the certificate is limited in accordance with Article 14(3),”.

(2) OJ L309, 24.11.2009, p.1.