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STATUTORY INSTRUMENTS

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**2002 No. 247**

**The Patents and Plant Variety Rights  
(Compulsory Licensing) Regulations 2002**

PART IV

APPEALS AND GENERAL PROVISIONS

**Appeals**

**17.**—(1) An appeal lies from a decision of the controllers or Comptroller General of Patents under these Regulations.

(2) Where a decision of the controllers relates to a compulsory patent licence or cross licence ordered to be granted under regulation 7(2) or 7(3), or where a decision of the Comptroller General of Patents relates to a cross licence ordered to be granted under regulation 15(3), an appeal may be brought to the court.

(3) Where a decision of the controllers relates to a compulsory plant variety licence or cross licence of a patent for a biotechnological invention granted under regulation 14(2), an appeal may be brought to the Tribunal as if the decision of the controllers were one made by the Controller of Plant Variety Rights under section 17, and referred to in section 26(1)(c), of the 1997 Act and section 45 of the 1997 Act shall apply accordingly.

**18.** The Secretary of State shall draw up and from time to time revise a panel of persons who have specialised knowledge of biotechnological inventions.

**19.**—(1) Subject to paragraph (2), appeals to the Tribunal under regulation 17(3) shall be governed by the provisions of Part II of the 1997 Act and Breeders' regulations.

(2) The provisions of Schedule 3 to the 1997 Act shall apply to appeals under regulation 17(3) with the following modifications—

- (a) paragraph 1(b) of Schedule 3 shall be treated as if it referred to a member of the panel constituted under regulation 18; and
- (b) the panels referred to in paragraph 8(1) of Schedule 3 to the 1997 Act shall be treated as including the panel constituted under regulation 18.

**Extension of powers to make rules and regulations**

**20.** The power of the Secretary of State to make rules under section 123 of the 1977 Act shall be extended so as to permit her to make rules regulating the business of the Patent Office in respect of—

- (a) applications for the grant of licences under regulations 3(1) and 15(1),
- (b) applications under regulations 8 and 16(4) for variation and under regulations 9 and 16(5) for revocation of compulsory patent licences and cross licences,

- (c) proceedings before the controllers or the Comptroller General of Patents as the case may be in relation to applications in sub-paragraphs (a) and (b),
  - (d) fees, and
  - (e) other matters related to or arising under these Regulations,
- and section 124 of the 1977 Act shall apply accordingly.

**21.** The powers of the Ministers to make regulations under sections 24, 26(2)(a), 28, 29, 44, and 48(1) of the 1997 Act shall be extended so as to permit them to make regulations in respect of—

- (a) applications for the grant of licences under regulation 11(1),
- (b) applications under regulation 16(1) for variation and under regulation 16(2) for revocation of compulsory plant variety licences and cross licences,
- (c) proceedings before the controllers in relation to applications in sub-paragraphs (a) and (b),
- (d) appeals from the decisions of the controllers in relation to such applications,
- (e) fees, and
- (f) other matters related to or arising under these Regulations,

and section 48(2) to (5) of the 1997 Act shall apply accordingly.

#### **Application of existing rules and regulations**

**22.**—(1) Subject to the exercise by the Secretary of State of her powers under section 123 of the 1977 Act as extended by regulation 20, the Patents Rules in respect of—

- (a) applications for the grant and revocation of compulsory licences under section 48(1) of the 1977 Act including forms,
- (b) proceedings before the Comptroller General of Patents in relation to—
  - (i) the grant of such applications, and
  - (ii) the revocation of compulsory licences granted under section 48(1) of the 1977 Act, and
- (c) other matters provided for in the Patents Rules related to applications and proceedings in respect of such compulsory licences,

shall, subject to paragraph (2), extend and apply to and be taken to make corresponding provision in respect of applications for the grant of licences under regulation 3(1), proceedings before the controllers in relation to the grant of such applications, the variation or revocation of compulsory patent licences and cross licences under regulations 7(2), 7(3) and 15(3), and other matters related to or arising under these Regulations.

(2) For the purposes of paragraph (1), the Patents Rules shall have effect as if a reference to the Comptroller General of Patents in the Patents Rules were to the controllers, other than in rule 71(1) of the Patents Rules and in relation to an application under regulation 15(1), and with any other necessary modifications.

**23.** Subject to the exercise by the Ministers of their powers under sections 24, 26(2)(a), 28, 29, 44 and 48(1) of the 1997 Act as extended by regulation 21, the Plant Breeders' Regulations in respect of—

- (a) applications for the grant, variation and revocation of compulsory licences under section 17(1) of the 1997 Act,
- (b) proceedings before the Controller of Plant Variety Rights in relation to—

- (i) the grant of such applications, and
- (ii) the variation or revocation of compulsory licences granted under section 17(1) of the 1997 Act,
- (c) appeals to the Tribunal, and
- (d) other matters provided for in the Plant Breeders' Regulations related to applications and proceedings in respect of such compulsory licences,

shall, subject to paragraphs (2) and (3), extend and apply to and be taken to make corresponding provision in respect of applications under regulation 11(1), proceedings before the controllers in relation to such applications, the variation or revocation of compulsory plant variety licences and cross licences granted under regulation 14(2), appeals to the Tribunal and other matters related to or arising under these Regulations.

(2) For the purposes of paragraph (1), the Plant Breeders' Regulations shall have effect as if a reference to the Controller of Plant Variety Rights in the regulations were to the controllers and with any other necessary modifications.

(3) Regulation 10 of the Plant Breeders' Regulations shall not extend and apply to and shall not be taken to make corresponding provision in these Regulations.

**24.** Subject to the exercise by the Secretary of State of her powers under section 123 of the 1977 Act as extended by regulation 20, the Patents (Fees) Rules in respect of—

- (a) making an application for the grant of compulsory licences under section 48(1) of the 1977 Act, and
- (b) giving a notice of opposition to an application made under section 48,

shall extend and apply to and be taken to make corresponding provision in respect of an application for a licence under regulation 3(1) or 15(1), and giving a notice of opposition under regulation 5(1).

**25.** Subject to the exercise by the Ministers of their powers under sections 29 and 48(1) of the 1997 Act as extended by regulation 21, the Plant Breeders' (Fees) Regulations in respect of—

- (a) applications for the grant of compulsory licences under section 17(1) of the 1997 Act,
- (b) applications to extend, limit, vary or revoke such licences,
- (c) making representations in writing to the Controller, and
- (d) attending to be heard by the Controller,

shall extend and apply to and be taken to make corresponding provision in respect of an application for a licence under regulation 11(1), applications to extend, limit, vary or revoke compulsory plant variety licences and cross licences granted under regulation 14(2), and proceedings before the controllers referred to in regulation 12.

#### **Application of 1977 and 1997 Acts**

**26.—**(1) Subject to paragraphs (2) and (3), the provisions of the 1977 Act in respect of—

- (a) proceedings before the Comptroller General of Patents,
- (b) decisions of the Comptroller General of Patents including orders for grant of compulsory licences,
- (c) legal proceedings in respect of appeals from the Comptroller General of Patents, and

(d) other matters,

as and to the extent they relate to compulsory licences under section 48(1), shall extend and apply to and be taken to make corresponding provision in the UK in respect of proceedings before the controllers, decisions of the controllers including orders for the grant, variation and revocation, of compulsory patent licences and cross licences ordered to be granted under regulations 7(2), 7(3) and 15(3), legal proceedings in respect of appeals from the controllers and other matters related to compulsory patent licences and cross licences ordered to be granted under regulations 7(2), 7(3) and 15(3) arising under these Regulations.

(2) An application for a licence under regulation 3(1) is additional to any application an applicant may make under section 48 of the 1977 Act but the provisions of sections 48, 48A, 48B, 49, 50 and 52 do not extend and apply to and shall not be taken to make corresponding provision in respect of compulsory patent licences and cross licences ordered to be granted under these Regulations.

(3) For the purposes of paragraph (1), the provisions of the 1977 Act shall have effect as if a reference to the Comptroller General of Patents were to the controllers, other than in relation to applications under regulations 15(1), 16(3) and 16(4), and with any other necessary modifications.

**27.—**(1) Subject to regulation 19(2) and paragraphs (2) and (3) of this regulation, the provisions of the 1997 Act in respect of—

- (a) proceedings before the Controller of Plant Variety Rights,
- (b) decisions of the Controller of Plant Variety Rights in relation to compulsory licences,
- (c) appeals from the Controller of Plant Variety Rights to the Tribunal,
- (d) appeals from the Tribunal, and
- (e) other matters,

as and to the extent they relate to compulsory licences under section 17(1), shall extend and apply to and be taken to make corresponding provision in respect of proceedings before the controllers, decisions of the controllers including the grant, variation and revocation of compulsory plant variety licences and cross licences granted under regulation 14(2), appeals from the controllers and other matters related to compulsory plant variety licences and cross licences granted under regulation 14(2) arising under these Regulations.

(2) An application for a licence under regulation 11(1) is additional to any application an applicant may make under section 17 of the 1997 Act but the provisions of sections 17 and 23 of the 1997 Act do not extend and apply to and shall not be taken to make corresponding provision in respect of compulsory plant variety licences and cross licences under these Regulations.

(3) For the purposes of paragraph (1), the provisions of the 1997 Act shall have effect as if a reference to the Controller of Plant Variety Rights were to the controllers and with any other necessary modifications.

**Changes to legislation:**

There are currently no known outstanding effects for the The Patents and Plant Variety Rights (Compulsory Licensing) Regulations 2002, PART IV APPEALS AND GENERAL PROVISIONS.