



Patents Act 1977

1977 CHAPTER 37

PART I

NEW DOMESTIC LAW

Employees' inventions

41 Amount of compensation.

- (1) An award of compensation to an employee under section 40(1) or (2) above in relation to a patent for an invention shall be such as will secure for the employee a fair share (having regard to all the circumstances) of the benefit which the employer has derived, or may reasonably be expected to derive, from the patent or from the assignment, assignation or grant to a person connected with the employer of the property or any right in the invention or the property in, or any right in or under, an application for that patent.
- (2) For the purposes of subsection (1) above the amount of any benefit derived or expected to be derived by an employer from the assignment, assignation or grant of—
 - (a) the property in, or any right in or under, a patent for the invention or an application for such a patent; or
 - (b) the property or any right in the invention;to a person connected with him shall be taken to be the amount which could reasonably be expected to be so derived by the employer if that person had not been connected with him.
- (3) Where the Crown or a Research Council in its capacity as employer assigns or grants the property in, or any right in or under, an invention, patent or application for a patent to a body having among its functions that of developing or exploiting inventions resulting from public research and does so for no consideration or only a nominal consideration, any benefit derived from the invention, patent or application by that body shall be treated for the purposes of the foregoing provisions of this section as so derived by the Crown or, as the case may be, Research Council.

Status: Point in time view as at 01/02/1991. This version of this provision has been superseded.

Changes to legislation: Patents Act 1977, Section 41 is up to date with all changes known to be in force on or before 30 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

In this subsection “Research Council” means a body which is a Research Council for the purposes of the ^{M1}Science and Technology Act 1965.

- (4) In determining the fair share of the benefit to be secured for an employee in respect of a patent for an invention which has always belonged to an employer, the court or the comptroller shall, among other things, take the following matters into account, that is to say—
- (a) the nature of the employee’s duties, his remuneration and the other advantages he derives or has derived from his employment or has derived in relation to the invention under this Act;
 - (b) the effort and skill which the employee has devoted to making the invention;
 - (c) the effort and skill which any other person has devoted to making the invention jointly with the employee concerned, and the advice and other assistance contributed by any other employee who is not a joint inventor of the invention; and
 - (d) the contribution made by the employer to the making, developing and working of the invention by the provision of advice, facilities and other assistance, by the provision of opportunities and by his managerial and commercial skill and activities.
- (5) In determining the fair share of the benefit to be secured for an employee in respect of a patent for an invention which originally belonged to him, the court or the comptroller shall, among other things, take the following matters into account, that is to say—
- (a) any conditions in a licence or licences granted under this Act or otherwise in respect of the invention or the patent;
 - (b) the extent to which the invention was made jointly by the employee with any other person; and
 - (c) the contribution made by the employer to the making, developing and working of the invention as mentioned in subsection (4)(d) above.
- (6) Any order for the payment of compensation under section 40 above may be an order for the payment of a lump sum or for periodical payment, or both.
- (7) Without prejudice to [^{F1}section 12 or section 14 of the ^{M2}Interpretation Act 1978], the refusal of the court or the comptroller to make any such order on an application made by an employee under section 40 above shall not prevent a further application being made under that section by him or any successor in title of his.
- (8) Where the court or the comptroller has made any such order, the court or he may on the application of either the employer or the employee vary or discharge it or suspend any provision of the order and revive any provision so suspended, and section 40(5) above shall apply to the application as it applies to an application under that section.
- (9) In England and Wales any sums awarded by the comptroller under section 40 above shall, if a county court so orders, be recoverable by execution issued from the county court or otherwise as if they were payable under an order of that court.
- (10) In Scotland an order made under section 40 above by the comptroller for the payment of any sums may be enforced in like manner as a recorded decree arbitral.
- (11) In Northern Ireland an order made under section 40 above by the comptroller for the payment of any sums may be enforced as if it were a money judgment.

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Textual Amendments

F1 Words substituted by virtue of [Interpretation Act 1978 \(c. 30\), s. 25\(2\)](#)

Marginal Citations

M1 [1965 c. 4.](#)

M2 [1978 c. 30.](#)

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