

**1989 No. 1202**

**PATENTS**

**The Patents (Licences of Right) (Exception of Pesticidal Use) Order 1989**

*Made* - - - - - *13th July 1989*  
*Laid before Parliament* *20th July 1989*  
*Coming into force* *14th August 1989*

The Secretary of State, in exercise of the powers conferred upon him by section 127(2) of, and paragraph 4A(3) of Schedule 1, to the Patents Act 1977(a), hereby makes the following Order:

**1.** This Order may be cited as the Patents (Licences of Right) (Exception of Pesticidal Use) Order 1989 and shall come into force on 14th August 1989.

**2.—(1)** The following uses of a product are excepted under paragraph 4A of Schedule 1 to the Patents Act 1977—

- (a) use of a product as a pesticide, and
- (b) the doing of any other act mentioned in section 60(1)(a) of the Patents Act 1977 with a view to such use.

**(2)** In paragraph (1)(a) above “pesticide” means—  
any substance, preparation or organism prepared or used for any of the following purposes:

- (a) destroying any pest;
- (b) protecting plants or wood or other plant products from harmful organisms;
- (c) regulating the growth of plants;
- (d) giving protection against harmful creatures;
- (e) rendering such creatures harmless;
- (f) controlling organisms with harmful or unwanted effects on water systems, buildings or other structures, or on manufactured products;
- (g) protecting animals against ectoparasites;

other than:

- (aa) organisms other than bacteria, protozoa, fungi, viruses and mycoplasmas, used for destroying or controlling pests;
- (bb) substances whose use or sale within the United Kingdom is controlled under any of the following enactments—
  - Medicines Act 1968(b);
  - Agriculture Act 1970, Part IV(c);
  - Food Act 1984(d);

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(a) 1977 c.37; paragraph 4A of Schedule 1 to the Patents Act 1977 was inserted by the Copyright, Designs and Patents Act 1988 (c.48), section 293.

(b) 1968 c.67.

(c) 1970 c.40.

(d) 1984 c.30.

Food and Drugs (Scotland) Act 1956(a);

The Cosmetics Products (Safety) Regulations 1984(b);

when those substances are used or sold for the purpose over which control under that enactment is exercised;

- (cc) substances prepared or used for the purpose of disinfecting, bleaching or sterilising any substance (including water), other than soils, compost or other growing medium;
- (dd) substances used in laboratories for the purpose of the micropropagation of plants or substances used in the production of novel food;
- (ee) substances designed and used for—
  - (i) the stimulation of the growth of plants, excluding materials which act as plant growth hormones, or which mimic the action of such materials;
  - (ii) the modification of micro-biological processes in soil, excluding soil sterilants;
  - (iii) assistance in the anaerobic fermentation of silage;
- (ff) substances, preparations or organisms, prepared or used for destroying any pest,—
  - (i) used in adhesive pastes, decorative paper or textiles;
  - (ii) used as part of a manufacturing process, other than for the purpose of preserving timber or timber products or in the production of food;
  - (iii) used in preparations intended for topical application to human beings for the purpose of repelling insects;
  - (iv) used in metal working fluids;
  - (v) used in paint;
  - (vi) used in water supply systems or in swimming pools.

(3) Notwithstanding sub-paragraph (ff)(ii) and (v) above the expression “pesticide” when used in paragraph (1)(a) above includes paints used to prevent the fouling of the hulls of vessels or structures below the waterline, or applied to nets, floats or other apparatus used in the cultivation of fish.

(4) In this Order—

“agricultural” is to be construed in accordance with section 109(3) of the Agriculture Act 1947(c);

“creature” means any living organism other than a human being or a plant;

“crops” includes any form of vegetable produce;

“food” has the meaning assigned to it by section 131 of the Food Act 1984, except that it includes water which is—

- (a) bottled; or
- (b) an ingredient of food;

“metal working fluid” means any fluid used to facilitate the cutting, drilling, forming or machining of metal;

“micropropagation” means the growth of plantlets from tissue culture or small parts of a plant in culture solution and under conditions which are sterile apart from the presence of that plant;

“mycoplasma” means a genus of organisms which have a unit membrane without a rigid cell wall and are highly pleomorphic, having no independent form or spore stage in the life cycle;

“novel food” means any food or food ingredient produced from raw material which hitherto has not been used for human consumption or has been so used only in small amounts, or produced by new or extensively modified processes not previously used in the production of food;

“paint” includes surface coatings;

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(a) 1956 c.30.

(b) S.I. 1984/1260.

(c) 1947 c.48.

“pest” means—

- (a) any organism harmful to plants or to wood or other plant products;
- (b) any undesired plant; and
- (c) any harmful creature;

“plants” means any form of vegetable matter, while it is growing and after it has been harvested, gathered, felled or picked, and in particular, but without prejudice to the generality of this definition, includes—

- (a) agricultural crops;
- (b) trees and bushes grown for purposes other than those of agriculture;
- (c) wild plants; and
- (d) fungi;

“soil sterilant” means a substance used to control harmful organisms in soil or compost;

“vessel” has the meaning assigned to it by section 742 of the Merchant Shipping Act 1894(a).

13th July 1989

*Eric Forth*  
Parliamentary Under Secretary of State,  
Department of Trade and Industry

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#### EXPLANATORY NOTE

*(This note is not part of the Order)*

Paragraph 4 of Schedule 1 to the Patents Act 1977 increased the term of certain patents granted under the Patents Act 1949 (c.87) from sixteen to twenty years but provided that licences of right were to be available in the additional period of four years. The Order provides that such licences shall not extend to use of a product as a pesticide. The definition of “pesticide” used in the Order is based on provisions contained in the Food and Environment Protection Act 1985 (c.48) and the Control of Pesticides Regulations 1986 (S.I. 1986/1510).

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(a) 1894 c.60.