



Bird & Bird

United
Kingdom

Employee Invention Laws

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UK – Employee Invention Laws

Does your country have specific laws governing employee inventions?

Yes, employee inventions are covered by Sections 39 to 43 of the UK Patents Act 1977 ("UK Act") and common law.

What types of intellectual property are covered by your national employee invention laws (patents, utility models, trade secrets, etc.)?

Section 39 of the UK Act applies to any "invention made by an employee" - not just patentable inventions - covering anything that has been invented.

Extended Scope: It can therefore extend to inventions protected by other IP rights, including copyright, design rights, and trade secrets. Ownership may vest in the employer under Section 39, and the employer can choose which registered or unregistered IP rights to use for protection. The UK offers no utility model protection.

Section 40, governing employee compensation, applies only to inventions for which a patent has been granted.

Which categories of employees are covered by your national employee invention laws?

The UK Act defines an "employee" as anyone working (or who previously worked) under a contract of employment (Section 130(1)). This includes individuals employed by or for a government department, and those serving (or who served) in the naval, military, or air forces of the Crown.

When status is disputed, the first step is to confirm whether a contract exists. If so, the next step is to determine whether it is a contract "of service" (employment) or "for services" (self-employed/independent contractor). Courts assess not just the contract wording, but the actual working relationship.

What temporal and territorial restrictions apply to employee invention laws in your jurisdiction?

Sections 39–42 of the UK Act apply only to inventions made after 1 June 1978 (s.43(1)).

They apply if, when the invention was made, the employee either:

- a) was mainly employed in the UK; or
- b) was not mainly employed anywhere, or their place of employment could not be determined, but was attached to a UK place of business of their employer, whether or not also attached elsewhere (s.43(2)).

As a result, these provisions may not cover inventions by non-UK-based employees of a multinational. However, they apply to both UK and non-UK patents if the invention was made by a UK-based employee (s.43(4)).

Do the national employee invention laws recognise different kinds of inventions or are all inventions treated equally?

No, all inventions are treated equally under Sections 39-43 of the UK Act.

What is the statutory process of acquiring rights to employee inventions under your national laws? Does the employer acquire rights directly under the law or does the employer need to take separate actions?

Under Section 39(1) of the UK Act, an invention automatically vests in the employer if:

- a) it was made during the employee's normal or specifically assigned duties, and an invention could reasonably be expected to result; or
- b) it was made in the course of duties where the employee has a special obligation to further the employer's interests.

If neither applies, Section 39(2) provides that ownership rests with the employee, and the employer must obtain an assignment of IP rights.

How are employee invention disputes governed in your jurisdiction? Is there a special dispute resolution mechanism / a body for employee invention related disputes?

There is no special dispute resolution mechanism dedicated exclusively to employee invention disputes. Questions about entitlement (Sections 8 and 12 of the UK Act) and applications for compensation (Section 40 of the UK Act) can be referred to the Comptroller of the UK IPO for determination. In addition, or alternatively, entitlement disputes and compensation claims may be commenced with the Patents Court or the Intellectual Property Enterprise Court ("IPEC"), both of which are specialist courts within the High Court of England and Wales.

Are policies on employee inventions commonly used in your jurisdiction? Are there regulatory requirements for implementation of a policy on employee inventions?

Yes, many employers use internal policies or contractual clauses to clarify how employee inventions are handled. In many cases, relevant terms are included in employment contracts, such as express IP assignment clauses and "further assurances" clauses to require the execution of further documents where necessary.

Any term in a contract entered into by the employee with or at the request of the employer which diminishes the employee's rights in inventions made by them after the date of the contract is unenforceable (Section 42(2) of the UK Act). Therefore, for example, the assignment or exclusive licence of employee's invention belonging to the employee, which would "diminishes the employee's rights in inventions" must be occur after the making of the inventions.

Do your national laws on employee invention obligate employers to pay compensation to employees when taking rights to an employee invention?

Yes, but statutory compensation is not automatic. Compensation sought under Section 40 may be awarded only if the employee asserts their right and the conditions in the provision are met.

Under Section 40(1) of the UK Act, concerning employee inventions that belong to the employer, the Court or Comptroller may award compensation only if (i) a patent has been granted for the invention; (ii) it appears that the invention or the patent for it is, considering the size and nature of the employer's undertaking, of "outstanding benefit" to the employer; and (iii) an award is therefore "just". Please note that for patent applications made prior to 1 January 2005, compensation may be awarded only where the outstanding benefit derives from the patent itself, not from the invention.

Under Section 40(2) of the UK Act, concerning inventions that belong to the employee and are then assigned or exclusively licensed to the employee, the Court or Comptroller may award compensation only if: (i) a patent has been granted for the invention; (ii) the benefit derived by the employee from the contract whereby the employee assigned their rights, or granted an exclusive licence, to the employer is "inadequate" in relation to the benefit derived by the employer; and (iii) an award is therefore "just".

What are the principles of determining the mandatory compensation according to your national laws on employee inventions?

The guiding principle for determining compensation is that the employee should receive a "fair share" (having regard to all the circumstances) of the benefit that the employer has derived, or may reasonably be expected to derive, from:

- a) the invention in question.
- b) the patent for the invention.
- c) The assignment, assignation or grant of -
 - (i) the property or any right in the invention, or
 - (ii) the property in, or any right in or under, an application for the patent, to a person connected with the employer (Section 41(1) of the UK Act).

Matters to be considered in determining a "fair share" of the benefit are set out in Section 41(4) and (5) of the UK Act.

Where the invention has always belonged to the employer, the court/Comptroller will consider:

- the employee's duties, salary, and other benefits received.
- the effort and skill the employee contributed to the invention.
- the effort and input of any co-inventors or colleagues who assisted; and
- the employer's contribution (e.g. facilities, opportunities, management, or commercial support) (s.41(4)).

Where the invention originally belonged to the employee, the court/Comptroller will consider:

- any conditions in licences in respect of the invention or patent.
- whether the invention was made jointly with others; and
- the employer's contribution (s.41(5)).

The Court's assessment of the benefit that the employer has derived may be done ex post (i.e., after the invention has been commercially successful, and should take into account both the benefit to date and likely future benefit, not just the benefit at the time the invention was made) and is calculated net (Shanks v Unilever Plc [2019] UKSC 45).

Do your national laws on employee inventions obligate and/or provide for payment of certain fixed amounts or running compensations, such as royalties?

No, UK law does not obligate employers to pay fixed amounts or running compensations by default.

What is the general level that is considered sufficient or customary in your jurisdiction as a mandatory compensation?

There is no established or customary level of compensation in the UK. The amount awarded, if any, is determined case by case, based on what constitutes a fair share of the actual benefit the employer has derived from the invention or patent (Section 41 of the UK Act).



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