

Plant Variety Protection Act

Act No. 866 of 23 December 1987¹

WE, MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, hereby make known:

The Danish Folketing has passed and we by Our Consent have confirmed the following Act:

Part 1 Scope of Act

1.–

- (1) A variety of cultivated plant can be protected as a plant novelty if it
 - (1) belongs to a species or genus which as determined by the Minister of Agriculture is covered by this Act,
 - (2) is distinguishable by one or more characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for,
 - (3) is sufficiently homogeneous,
 - (4) is stable in its essential characteristics when propagated in accordance with the method specified by the breeder,
 - (5) has not prior to the making of the application been offered for sale or sold with the consent of the owner of the variety
 - (a) in this country, or
 - (b) in a foreign country for longer than four years or, in the case of grape vines, trees and their root-stocks, for longer than six years, and
 - (6) at the time of the granting of protection satisfies the conditions herefor.

(2) To obtain protection for a variety the breeder or any person who has acquired the rights in the variety (the owner) shall

- (1) be resident or have his registered office in this country or in a Member State of the European Communities, or
- (2) be a national of, be resident in or have his registered office in a State which is a member of the International Union for the Protection of New Varieties of Plants (UPOV).

2.–

(1) The Minister of Agriculture may, as an exception, approve the protection of a variety which does not satisfy the condition laid down in paragraph (5) of subsection (1) of section 1 of this Act if it is found to be of economic interest to agriculture.

(2) Notwithstanding the provisions of subsection (2) of section 1 of this Act, a variety can be granted protection if

- (1) an agreement for reciprocity with respect to protection of varieties of the species concerned has been entered into with the State in which the owner of the variety is resident or has his registered office,
- (2) a variety bred in this country can be protected in the State concerned to the same extent as a variety bred in that State, or
- (3) the variety is otherwise found to be of economic interest to agriculture.

¹ In this Act the expression “propagate” has meaning which embraces both sexual reproduction and vegetative propagation.

Part 2 Applications

3.–

(1) An application for entry of a variety in the Register of Plant Novelities shall be made to the Board for Plant Novelities by the owner of the variety. Where the owner is not resident in or has his registered office in a Member State of the European Communities, such application shall be made by an attorney appointed by the applicant, who is resident in or has his registered office in this country.

(2) The applicant shall produce evidence of his right to apply for entry of the variety to the Board for Plant Novelities, see section 22 of this Act. Where the application is made by an attorney on behalf of the owner of the variety, the attorney shall produce evidence of his authority to represent the owner in all matters relating to the application and registration.

(3) The Board may demand that the applicant furnish all such information as is deemed necessary to entertain the application and may fix a time-limit herefor. The Board may further demand that material to be used for examination purposes, see section 9 of this Act, be submitted within a specified time.

(4) At the time of the making of the application, an application fee shall be paid.

4.–

(1) The application shall be entered in the journal kept by the Board for Plant Novelities immediately after receipt, and a copy of the application furnished with the date of entry in the said journal shall be returned forthwith to the applicant. Notice of the application shall be published by the Board for Plant Novelities.

(2) The journal shall be available to the public. However, this does not apply to information concerning the genealogical components of hybrid varieties and the description hereof if the applicant has requested that the information be treated as confidential.

5. The Board for Plant Novelities may remove an entry from the journal if the applicant does not furnish the information or testing material required by the Board pursuant to subsection (3) of section 3 of this Act within the time-limit prescribed by the Board.

6.–

(1) From the date of acceptance of the application the applicant shall enjoy a right of priority to protection of the variety if any other person subsequently makes an application for protection of the same variety.

(2) At the request of the applicant the Board for Plant Novelities may establish priority for the application from the date of acceptance of the first application for protection of the variety in any member State of the International Union for the Protection of New Varieties of Plants (UPOV) if the first application was filed within the previous 12 months. The request shall be made at the time of the making of the application in this country and shall be accompanied by evidence of the receipt of the first application.

7. As soon as practicable after entry of the application in the journal the Board for Plant Novelities shall make a provisional examination to see whether the variety may be deemed to fulfil the conditions for protection. Where after such examination the Board finds that the conditions for protection are fulfilled, the Board shall publish a notice of the application together with an invitation to all concerned to make known any objections to the registration of the variety within a specified time-limit.

8.–

(1) The Board for Plant Novelities shall refer any objections to the applicant's right to make an application for protection of the variety to the ordinary courts of law. Where the Board is informed of such legal proceedings, it shall furnish the application with an endorsement to this effect.

(2) Where by reason of other objections the Board decides to remove the application from the journal and to discontinue the examination, a notice to this effect shall be published by the Board.

Part 3 Examinations and Registration

9.–

(1) Before a variety which is the subject of an application can obtain protection, see, however, section 21 of this Act, the Board for Plant Novelty shall cause an examination to be made to ascertain whether the variety satisfies the conditions herefor and whether it has the special characteristics mentioned in the application.

(2) The Board may decide that the examination of a variety can be shortened or omitted if the variety has previously been examined by an official testing authority.

(3) The applicant may be required to pay a fee to cover the cost of the examination.

10.–

(1) Where after completion of the examination the Board for Plant Novelty finds that the variety satisfies the conditions for protection, the Board shall enter the variety in the Register of Plant Novelty under a variety denomination approved by the Minister of Agriculture and shall publish a notice to this effect.

(2) Where legal proceedings are pending, see subsection (1) of section 8 of this Act, a note to this effect shall be made in the Register of Plant Novelty.

11.–

(1) The plant novelty shall be designated by the approved variety denomination. This shall apply even after the expiration of the period of protection.

(2) It shall be permitted to associate a name with the variety denomination approved for the plant novelty.

(3) At the request of the holder of Plant Breeders' Rights the Board for Plant Novelty may in special cases permit that the plant novelty be given another name than the one originally approved.

(4) The Minister of Agriculture shall lay down regulations concerning the naming of plant novelty.

12.–

(1) Simultaneously with the publication of the registration the Board for Plant Novelty shall issue a certificate of protection, which shall be delivered to the applicant against payment of a registration fee. The certificate of protection shall be valid for a period of one year, and the period of validity may be extended by one year at a time for up to 25 years reckoned from the date of issue of the certificate of protection, see, however, subsection (1) of section 21 of this Act.

(2) The period of validity of the certificate of protection shall be extended on the payment of an annual registration fee to the Board for Plant Novelty.

Post-control

13.–

(1) The Board for Plant Novelty may carry out post-control to ensure that the plant novelty is satisfactorily maintained by the holder of Plant Breeders' Rights.

(2) The holder of Plant Breeders' Rights shall within the time-limits prescribed by the Board make the necessary plant material available for the post-control to be performed by the Board for Plant Novelty.

Removal

14.–

(1) The Board for Plant Novelty shall remove a plant novelty from the Register of Plant Novelty if

- (1) it is shown that at the time of registration the plant novelty did not satisfy the conditions for entry laid down by section 1 of this Act,
- (2) during its post-control the Board finds that the plant novelty has not been satisfactorily maintained,
- (3) the Board receives a written request from the holder of Plant Breeders' Rights to this effect, or
- (4) the annual registration fee has not been paid.

(2) The Board for Plant Novelties may further remove a plant novelty from the Register of Plant Novelties if the holder of Plant Breeders' Rights does not within the time-limit prescribed by the Board comply with the Board's request to make the necessary material available to the Board for the post-control,

(3) The plant novelty shall be removed two months after the holder of Plant Breeders' Rights has been notified of the decision of the Board for Plant Novelties unless before the expiration of that period the matter is brought before the courts of law by the holder of Plant Breeders' Rights.

15. Once removed from the Register of Plant Novelties, a plant novelty cannot be re-entered in the Register. The Board for Plant Novelties shall publish a notice of the removal and the reason for it.

Part 4 Scope of Protection

16.–

(1) A plant novelty may be used commercially as propagating material for the purpose of selling propagating material only with the permission of the holder of Plant Breeders' Rights and only on the terms and conditions specified by the holder, including terms and conditions concerning payment of a royalty.

(2) Any person who propagates a plant novelty commercially for the purpose of selling propagating material or sells propagating material hereof shall furnish the holder of Plant Breeders' Rights with any information that is needed to compute and collect the royalty payable to the holder.

(3) The Minister of Agriculture may by regulations prescribe that any person propagating plant novelties of specified species for commercial use in his own business shall pay a royalty to the holder of Plant Breeders' Rights.

17. Plant novelties may be used freely for breeding activities.

The Duty of the Holder of Plant Breeders' Rights to Supply Plant Material, Etc.

18. To the extent it is necessary to ensure that the agricultural sector is supplied with plant material, the holder of Plant Breeders' Rights shall within a reasonable time either himself or through others execute orders for suitable propagating material of the plant novelty.

19.–

(1) The terms and conditions stipulated by the holder of Plant Breeders' Rights, see subsection (1) of section 16 of this Act, shall be limited to the commercial propagation of the plant novelty, offers for sale and sale of propagating material of the plant novelty as well as to the royalty. The terms and conditions shall be reasonable and identical for all producers.

(2) Any dispute as to whether the terms and conditions stipulated by the holder of Plant Breeders' Rights are reasonable may be referred to the Terms Board for Plant Novelties, see subsection (1) of section 22 of this Act. Where the Board finds that the terms and conditions are unreasonable, it may order the holder of Plant Breeders' Rights to alter them.

(3) The holder of Plant Breeders' Rights shall not be allowed to demand a fee for the use of a trade mark associated with an approved variety denomination, see subsection (2) of section 11 of this Act, until after the expiration of a period of 25 years reckoned from the date of issue of the certificate of protection for the plant novelty no matter whether the registration is maintained throughout the period.

(4) Subsection (3) of this section shall not apply to propagating material of a variety protected in this country if the propagating material originates from a State which has not protected the variety.

20.–

(1) Where the holder of Plant Breeders' Rights refuses a request for permission for propagation or an order for propagating material, the matter may be brought before the Terms Board for Plant Novelty. If the Board finds that the refusal was unjustified, it may order the holder of Plant Breeders' Rights to grant the desired permission and to supply suitable propagating material to anyone who in the judgement of the Board is deemed to be able to propagate or utilise the plant novelty in a satisfactory manner.

(2) Where the Minister of Agriculture determines that it is necessary to ensure the wide distribution of a plant novelty or to prevent substantial deterioration of the conditions for a branch of industry, he may after consultation with the Terms Board for Plant Novelty order the holder of Plant Breeders' Rights to give anyone that is found by the Board to be suited permission for commercial propagation and sale of propagating material of a plant novelty and to execute, within a reasonable time, either himself or through others orders from the person concerned for suitable propagating material of the plant novelty.

Utilisation during the Period of Application

21.–

(1) The terms and conditions referred to in subsection (1) of section 16 of this Act may be stipulated by the applicant for Plant Breeders' Rights in the period from acceptance of the application for protection of a variety to its entry in the Register of Plant Novelty (the period of application) provided the applicant notifies the Board for Plant Novelty thereof and from the time of such notice satisfies the obligation set out in section 18 of this Act. In that case the period of protection referred to in section 12 of this Act shall be reckoned from the date of entry of the notice in the journal kept by the Register of Plant Novelty. The provisions of sections 11 and 20 of this Act shall apply correspondingly during the period of application.

(2) Any royalty collected during the period of application shall be deposited by the producer in a blocked account with a financial institution in favour of the applicant for Plant Breeders' Rights. The amount shall be released if the variety is entered in the Register of Plant Novelty. Otherwise the deposited amount inclusive of any interest accrued shall be repaid to the producer.

(3) If the application for protection of a variety is withdrawn or if the entry of the variety in the Register of Plant Novelty is refused, the variety can be used freely for propagation. A producer who during the period of application has used the variety for propagation shall be in the same position as if an unprotected variety had been used.

Part 5 Administration

22.–

(1) The Minister of Agriculture shall set up a board, the Board for Plant Novelty, to administer the provisions of Parts 2 and 3 of this Act and a board, the Terms Board for Plant Novelty, to deal with disputes concerning licence terms and conditions, see Part 4 of this Act.

(2) The Board for Plant Novelty shall consist of a chairman to be appointed by the Minister and up to 6 members to be appointed by the Minister after consultation with the Government Committee on Crop Husbandry and the Forestry Research Board.

(3) The Terms Board for Plant Novelty shall consist of a chairman, a graduate in law, to be appointed by the Minister and up to 5 members to be appointed by the parties to the dispute concerned.

(4) The Minister of Agriculture may lay down regulations concerning the publication of notices from the Board for Plant Novelties pursuant to subsection (1) of section 4, section 7, subsection (2) of section 8, subsection (1) of section 10, section 15 and subsection (1) of section 21 of this Act and concerning the making of applications pursuant to section 3 of this Act.

Complaints

23. The decisions made by the Board for Plant Novelties pursuant to Parts 2 and 3 of this Act and the decisions made by the Terms Board for Plant Novelties pursuant to Part 4 of this Act cannot be brought before any other administrative authority.

Notices, Etc.

24. Where the owner of the variety is not resident in or does not have his registered office in this country, notices, etc. may be served on a duly authorised attorney resident in or having his registered office in this country. In all other cases notices, etc. shall be served in accordance with section 159 of the Administration of Justice Act.

Fees

25. The Minister of Agriculture shall fix the amount of the fees to be collected pursuant to subsection (4) of section 3 and subsection (2) of section 12 of this Act and may further fix fees to cover, in whole or in part, the cost of examination pursuant to subsection (3) of section 9 of this Act.

Part 6 Offences

26.–

(1) A person who contravenes subsection (1) or (2) of section 16 of this Act shall be liable to a fine. Any contravention of the said provisions shall be subject to private prosecution.

(2) A person who

(1) contravenes subsection (1) of section 11 of this Act, or

(2) fails to comply with an order given pursuant to the second sentence of subsection (2) of section 19 and the second sentence of subsection (1) of section 20 of this Act shall likewise be liable to a fine.

(3) Any regulations issued pursuant to subsection (4) of section 11 and subsection (3) of section 16 of this Act may provide for punishment with a fine for contravention of the provisions of the regulations.

(4) Where offences are committed by companies, private limited companies, co-operative societies, or the like, the liability to pay a fine may be imposed on the company, etc. as such. Where an offence is committed by a local authority or by an inter-municipal enterprise, see section 60 of the Local Government Administration Act, the liability to pay a fine may be imposed on such local authority or inter-municipal enterprise.

Entry into force, etc.

27.–

(1) This Act shall enter into force on 1 January 1988.

(2) At the same time Law No. 205 of 16 June 1962 on the Protection of Plant Breeders' Rights shall be repealed.

(3) Provisions laid down by the Law referred to in subsection (2) of this section shall remain in force until repealed by the Minister of Agriculture. Contravention of the provisions shall be punishable by a fine.

28.–

- (1) The provision laid down in subsection (3) of section 19 of this Act shall apply to
- (1) plant novelties registered on 1 January 1988 or later, and
 - (2) registered plant novelties where after the coming into operation of this Act the holder of Plant Breeders' Rights utilises the right to an extended period of protection as set out in section 12 of this Act.

29. This Act shall not extend to the Faeroe Islands and Greenland.

Given at Fredensborg Castle on the 23 December 1987

Under Our Royal Hand and Seal
MARGRETHE R.

/LAURITS TØRNES
