

The Consolidated Plant Variety Protection Actⁱ

This is to consolidate the Act on Plant Variety Protection, cf. Act No. 10 of 4 January 2017 with the amendments that ensue from Article 1 in Act No. 809 of 9 June 2020.

Chapter I

Scope of the Act

Article 1

- (1) Varieties of all species and genera of plants may be protected as plant novelties if at the time of granting the protection they are
 - 1) distinct, by which is meant that they are distinguishable by one or more characteristics, or by a combination of characteristics, from any other variety known at the time when protection is applied for,
 - 2) sufficiently uniform,
 - 3) stable in their specific characteristics (main characteristics) when propagated in accordance with the method specified by the breeder, and
 - 4) new, by which is meant that the propagating material or harvested material of the variety has not prior to the application been offered for sale, sold or in any other manner transferred with the consent of the holder of the variety and with a view to commercial utilization
 - a) in this country for more than one year, or
 - b) in a foreign country for more than four years or, in case of grape vines, trees and their root-stocks, for more than six years.
- (2) Notwithstanding paragraph 1, No. 4, a variety is considered a novelty
 - 1) even though material of a variety has been sold or transferred
 - a) to an official institution for legal purposes,
 - b) to others in accordance with a contract or other legally binding arrangement with a view solely to propagation or treatment and storage for the purpose of propagation, provided that the recipient did not hold a right of disposal over the material of the variety, or
 - c) by one company to another company, if one of the companies is owned by the other or both companies are owned by a third company, provided that none of the companies are cooperative societies, and
 - 2) even though propagation material, or harvested material of the variety produced from plants, that have been cultivated for the purpose of experiments or breeding has been offered for sale, sold, or transferred to others provided that this has happened without reference to the variety.
- (3) Paragraph 2 does not apply to varieties used for the production of a hybrid variety if repeated use of the variety is necessary for the production, and if material of the hybrid variety has been sold or transferred to others.

Article 2

As an exception The Minister for Food, Fisheries and Equal Opportunitiesⁱⁱ may approve the protection of a variety that does not satisfy the conditions laid down in Article 1, paragraph 1, No. 4, if it is

considered to be of economic interest to agriculture.

Chapter 2

Application

Article 3

- (1) An application for entry of a variety into the Register of Plant Novelty shall be submitted to the Plant Novelty Board by the holder of the variety. If the holder is not resident in or does not have his registered office in a Member State of the European Union, application shall be submitted by an agent, appointed by the holder of the variety, who is resident in or has his registered office in Denmark.
- (2) The applicant shall present evidence of his right to submit an application for the variety before the Plant Novelty Board, cf. Article 22. If an agent makes the application on behalf of the holder of the variety, the agent shall present documentation of his authority to represent the holder of the variety in all matters relating to the application and registration.
- (3) The Board may require the applicant to provide such information as it considers necessary for the examination of the application and may fix a time limit for doing so.
- (4) At the time of submitting the application an application fee shall be paid.

Article 4

- (1) The application is entered in the journal kept by the Plant Novelty Board immediately after receipt, and a copy of the application provided with the Plant Novelty Board's note as to the date of entry in the journal shall be returned immediately to the applicant. The Plant Novelty Board shall publish a notice of the application.
- (2) The journal shall be accessible by the public. However, this does not apply to information concerning the genealogical components of hybrid varieties and descriptions hereof, if the applicant has requested that the information be treated as confidential.

Article 5

- (1) The Plant Novelty Board may delete an entry from the journal if the applicant does not provide the information required by the Board pursuant to Article 3, paragraph 3, within the time limit fixed by the Board.

Article 6

- (1) From the time of filing the application, the applicant has priority in obtaining protection of the variety over others who subsequently submit an application for protection of the same variety.
- (2) At the request of the applicant, the Plant Novelty Board may establish priority for the application from the date 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 submission of the application in this country and shall be accompanied by documentation of receipt of the first application

Article 7

- (1) As soon as possible after entry of the application in the journal, the Plant Novelty Board shall make a provisional examination to establish whether the variety may be considered to fulfil the conditions for protection. If based upon such examinations 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 within a specified time limit any objections to the registration of the variety.

Article 8

- (1) The Plant Novelty Board shall refer any objections to the applicant's right to apply for protection of the variety to the Danish court system. When the Board is informed of such legal proceedings, it shall so indicate on the application.
- (2) If based on other objections the Board decides to delete the application from the journal and to discontinue the testing, a notice to this effect shall be published by the Board.

Chapter 3

Testing and registration

Article 9

- (1) Before a variety for which an application has been submitted can obtain protection, cf. however, Article 21, the Plant Novelty Board shall establish whether the variety can be considered to fulfil the conditions for protection, including whether it has the special characteristics mentioned in the application. The Board may to the necessary extent call for testing of the variety.
- (2) Testing as to whether a variety can be considered to meet the conditions for obtaining protection must be carried out by a private legal person appointed for this purpose pursuant to Article 5 a, paragraph 1, of the Act on Plants and Plant Health etc.

Article 10

- (1) If the variety is considered to meet the conditions for protection, the Plant Novelty Board shall enter the variety in the Register of Plant Novelty under a variety denomination, which has been approved in accordance with provisions laid down by the Minister for Food, Fisheries and Equal Opportunities.
- (2) The Plant Novelty Board may refuse registration of a variety, if the holder of the variety does not comply with the Board's request to propose a denomination for the variety within a fixed time limit, or fails to propose a new denomination, where the Board has found that the proposed denomination does not meet the conditions for approval.
- (3) Where legal proceedings are pending, cf. Article 8, paragraph 1, a note to this effect shall be made in the Register of Plant Novelty.

Article 11

- (1) The protected variety must be designated by the approved variety denomination. This also applies after the termination of protection.
- (2) It shall be permitted to use an additional denomination for the protected variety in connection with the variety denomination.
- (3) At the request of the holder of the variety, the Plant Novelty Board may in special cases allow an additional denomination to the protected variety other than the denomination originally approved.

- (4) The Minister for Food, Fisheries and Equal Opportunities shall lay down provisions on the denomination of protected varieties.

Article 12

- (1) Simultaneously with the publication of the registration, the Plant Novelty Board 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 or, for varieties of potatoes up to 30 years, starting on the date of issue of the certificate of protection, cf., however, Article 21, paragraph 1.
- (2) Extension of the validity of the certificate of protection happens by paying an annual registration fee to the Plant Novelty Board.
- (3) Notwithstanding paragraph 1, the Minister for Food, Fisheries and Equal Opportunities may lay down provisions that the validity of the certificate of protection for varieties of further specified species and genera can be extended for a period of up to 30 years.

Post control

Article 13

- (1) The Plant Novelty Board may carry out post control to ensure that the holder of the variety maintains the protected variety satisfactorily.
- (2) Within the time limits fixed by the Plant Novelty Board, the holder of the variety shall make the necessary plant material available to the Board for post control.

Deletion

Article 14

- (1) The Plant Novelty Board deletes a protected variety from the Register of Plant Novelty, if
 - 1) it is proved that the protected variety at the time of registration did not meet the conditions in Article 1 for entry,
 - 2) the Board by post control finds that the protected variety is not maintained satisfactorily,
 - 3) the holder of the variety in writing requests the Board for deletion, or
 - 4) the annual registration fee is not paid.
- (2) The Plant Novelty Board may also delete a protected variety from the Register of Plant Novelty if the holder of the variety does not comply with the Board's request before the expiry of a fixed time limit on
 - 1) making the necessary material available to the Board for post control, or
 - 2) proposing a new denomination for the variety in cases where the Board has subsequently found that the approved denomination does not comply with the provisions laid down by the Minister for Food, Fisheries and Equal Opportunities.
- (3) The deletion takes place 2 months after the holder of the variety has received notification of the Plant Novelty Board's decision unless the holder of the variety brings the case before the court system before the expiry of this deadline.

Article 15

If a protected variety is deleted from the Register of Plant Novelty, it cannot be re-entered in the register.

The Plant Novelty Board publishes a notice of the deletion and the reasons for this.

Chapter 4
Scope of protection

Article 16

- (1) Material of a protected variety may only, with the permission of the holder of the variety and only on the terms established by the holder of the variety, including payment of a suitable license fee
 - 1) be used for commercial production, propagation or treatment and storage for the purpose of propagation and
 - 2) be offered for sale, be sold, transferred, or stored for the purpose of sale or transfer.
- (2) The Minister for Food, Fisheries and Equal Opportunities may lay down provisions that anyone who propagates protected varieties of specified species only for commercial use in his own holding must also pay a license fee to the holder of the variety.
- (3) Anyone who commercially propagates a protected variety or sells propagating material thereof must provide the holder of the variety with the information necessary for the calculation and collection of license fees.
- (4) Paragraphs 1 - 3 shall apply mutatis mutandis
 - 1) in relation to harvested material obtained using material of a protected variety if the holder of the variety
 - a) has not authorized the use of the material, and
 - b) has not had the opportunity to exercise his rights under paragraph 1 in relation to the material and
 - 2) in relation to varieties that
 - a) are essentially derived from a protected variety, if it is not itself an essentially derived variety or
 - b) are not distinct in relation to the protected variety, cf. Article 1, paragraph 1, no. 1 or
 - c) can only be produced by repeated use of the protected variety.
- (5) The Minister for Food, Fisheries and Equal Opportunities may decide that paragraph 1-3 under the conditions laid down in paragraph 4, no. 1, shall also apply to products made from material of a protected variety or harvested material thereof.
- (6) The terms set by the holder of the variety, cf. paragraph 1, may only relate to the use and offer for sale as stated in paragraph 1, Nos. 1 and 2, and the license fee. The terms shall be reasonable and identical for all producers.

Article 17

Protected varieties may be used freely for research and breeding activities.

Article 18

(Repealed)

Article 19

- (1) The holder of the variety may not charge a fee for the use of a trademark-registered additional denomination, cf. Article 11, paragraph 2, until after the course of 25 years or 30 years, respectively, cf. Article 12, paragraph 3, starting on the date of issue of the certificate of protection for the protected variety, regardless of whether the registration is maintained throughout the period.
- (2) Paragraph 1 shall not apply to propagating material of a variety protected in this country if the propagating material originates in a State, where the variety is not protected.

Article 20

- (1) If the Minister for Food, Fisheries and Equal Opportunities deems it necessary to ensure the prevalence of a protected variety or to counteract a significant deterioration in the conditions for an industry, the Minister may order the holder of a variety to give one or more persons permission for commercial propagation and sale of propagating material of the protected variety and within a reasonable time on their own or through others accommodate requests for suitable propagating material. The provisions of article 16 apply *mutatis mutandis*.
- (2) A patent holder who is unable to obtain or exploit a patented invention without infringing an older variety protection may apply for a compulsory license for non-exclusive exploitation of the protected variety, if the compulsory license is necessary for the exploitation of the invention to be patented and against payment of a reasonable license fee. A compulsory license is only granted if the patent holder proves, that an inquiry to the holder of the variety to obtain a license has been made in vain, and that the invention constitute an important technical progress, which is of economic significance compared to the protected variety.
- (3) If a holder of a variety has obtained a compulsory license in relation to the Patent Act to exploit a patented invention, the patent holder has the right to obtain a mutual license on reasonable terms to exploit the protected variety.

Article 21

- (1) The terms mentioned in Article 16, paragraph 1, can be asserted by the holder of the variety in the period from application of a variety until it is entered in the Register of Plant Novelties (the period of application), provided that the holder of the variety notifies the Plant Novelties Board. The protection period stated in Article 12, shall in this case start on the date of entry of the notification in the journal kept by the Plant Novelties Board. The provisions laid down in Articles 11 and 20 shall be applied *mutatis mutandis* during the period of application.
- (2) License fees collected in the period of application shall be deposited by the producer on a blocked account in a financial institution in favor of the holder of the variety. The amount shall be released if the variety is entered in the Register of Plant Novelties. Otherwise the deposited amount shall be returned to the producer, including any accrued interest.
- (3) If the application for protection of a variety is withdrawn, or if the entry of the variety in the Register of Plant Novelties is refused, the variety may be used freely for propagation. A producer who during the period of application has used the variety for propagation shall be treated as if an unprotected variety had been used.

Chapter 5

Administration

Article 22

- (1) The Minister for Food, Fisheries and Equal Opportunities sets up a board, the Plant Novelties Board,

to administer the provisions laid down in chapters 2 and 3 of the Act.

- (2) The Minister lays down the composition and functions of the Board in the Board's rules of procedure. The Minister can furthermore determine that a private legal person entirely or partly carries out the secretarial function of the Board and that this private legal person as part of the secretarial function can take administrative decisions on behalf of the Board.

Appeals

Article 23

- (1) Decisions taken by the Plant Novelties Board in relation to chapters 2 and 3 cannot be brought before another administrative authority.

Article 23 a

- (1) Decisions taken pursuant to this Act or rules issued pursuant to it may, unless otherwise provided in this Act or in rules issued pursuant to it, be appealed to the Board of Environment and Food Appeals, which hears the case in the department referred to in Article 3, paragraph 1, no. 4, of the Act on the Board of Environment and Food Appeals, and can thus not be brought before another administrative authority.
- (2) Appeals to the Board of Environment and Food Appeals shall be submitted in writing to the authority who has taken the decision by use of a digital self-service, cf. however, Article 21, paragraph 2-4, of the Act on the Board of Environment and Food Appeals. The Authority shall, if the decision is upheld, as soon as possible and, as a general rule, no later than 3 weeks after receiving the appeal, forward the appeal to the appeals board. The appeal must be forwarded together with the appealed decision, the documents used in the assessment of the case and a statement by the authority containing its comments on the case and the objections raised in the appeal.

Services etc.

Article 24

If the holder of the variety is not a resident or have their registered office in this country, service etc. may be effected on an agent who is a resident or has their registered office in this country. In all other cases, services etc. shall be effected in accordance with Article 159 of the Administration of Justice Act.

Fees

Article 25

- (1) The Minister for Food, Fisheries and Equal Opportunities may lay down provisions concerning
 - 1) fees to cover the cost of processing applications, cf. Article 3, paragraph 4, and extension of the validity of the certificate of protection, cf. Article 12, paragraph 2,
 - 2) interest caused by late payment of fees, and
 - 3) fees for reminder letters.

Penalties and compensation provisions etc.

Article 26

- (1) Anyone, who infringes Article 16, paragraph 1, 3, or 4, is punished with a fine. Infringement of the said provisions is subject to private prosecution.
- (2) Anyone who commits any of the following is also punished with a fine:
 - 1) Infringes Article 11, paragraph 1, or
 - 2) Fails to comply with orders issued in accordance with Article 20.
- (3) Regulations issued pursuant to Article 11, paragraph 4, and Article 16, paragraph 2 and 5, may provide for a penalty of a fine for infringement of the provisions of the regulations. Infringement of regulations issued pursuant to Article 16, paragraph 2 and 5, is subject to private prosecution.
- (4) Companies etc. (legal persons) can be imposed criminal liability according to the rules in chapter 5 of the Criminal Code.

Article 26 a

- (1) Anyone who intentionally or negligently infringes the rights of a holder of a variety shall pay
 - 1) a reasonable remuneration to the aggrieved party for the exploitation and
 - 2) a compensation to the aggrieved party for the additional damage caused by the infringement.
- (2) In determining compensation under paragraph 1, No. 2, account must be taken of e.g. the lost profits of the aggrieved party and the unjustified profits of the infringer.
- (3) In cases pursuant to paragraph 1, in addition, compensation may be set for non-pecuniary damage of the aggrieved party.

Article 26 b

- (1) In order to prevent further infringements, the court may, if a claim to this effect has been made, by judgment, e.g. decide that a product infringing a protected variety must be
 - 1) withdrawn from trade,
 - 2) finally removed from trade,
 - 3) destroyed,
 - 4) handed over to the aggrieved party or
 - 5) changed in a specified manner.
- (2) Paragraph 1 shall apply mutatis mutandis to materials, tools, etc., which have primarily been used for illegal exploitation of a protected variety.

- (3) The measures pursuant to paragraph 1 must be carried out without compensation to the infringer and does not affect a possible compensation to the aggrieved party. The measures shall be implemented at the expense of the infringer, unless there are special reasons to the contrary.
- (4) In a judgment on measures pursuant to paragraph 1, the court must take into account the relation between the extent of the infringement, the measures ordered and the interests of third parties.
- (5) The court may, if a claim to this effect has been made, give the infringer permission to have at their disposal the products, materials, tools etc. mentioned in paragraph 1 and 2, during the period the variety is protected, or part of that period, for a reasonable remuneration. However, this only applies if
 - 1) the infringer has acted neither intentionally nor negligently,
 - 2) the measures pursuant to paragraph 1 would disproportionately damage the infringer and
 - 3) a reasonable remuneration is sufficient.

Article 26 c

- (1) In a judgment convicting someone under Article 26 a or Article 26 b, the court may, on request, decide that the judgment shall be published in full or in part.
- (2) The duty to publish rests with the infringer. The publication shall be at the expense of the infringer and in as prominent a manner as may reasonably be required.

Article 26 d

The provisions of Articles 26 a-26 c shall apply mutatis mutandis to infringements of plant varieties protected under Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights.

Entry into force etc.

Article 27

- (1) This Act shall enter into force on 1 January 1988.
- (2) At the same time Act No. 205 of 16 June 1962 on the protection of plant breeders' rights is repealed.
- (3) Provisions laid down under the Act referred to in paragraph 2 shall remain in force until they are repealed by the Minister for Food, Fisheries and Equal Opportunities. Violations of the provisions shall be punishable by a fine.

Article 28

- (1) The Provision laid down in Article 19, paragraph 1, shall apply for
 - 1) plant varieties registered on or after 1 January 1988, and
 - 2) registered plant varieties for which the holder of the variety, after the entry into force of the Act, exploits the right to an extended period of protection as referred to in Article 12.

Article 29

This Act shall not apply to the Faroe Islands and Greenland.

The Act No. 1715 of 27 December 2016 on the Board of Environment and Food Appealsⁱⁱⁱ contains the following entry into force and transitional provision:

Article 24

- (1) This Act shall enter into force on 1 February 2017
- (2) (Omitted)
- (3) The Minister for Industry, Business and Financial Affairs^{iv} may, after consultation with the Minister of Agriculture, Fisheries and Equal Opportunities, lay down transitional rules.
- (4) (Omitted)
- (5) Rules laid down pursuant to previously applicable rules shall remain in force until they are repealed or replaced by rules laid down on the basis of this Act. Violation of the rules shall be punished in accordance with the previously applicable rules.
- (6) Pending appeals before the Nature and Environment Appeals Board or the Appeals Centre for Food, Agriculture and Fisheries, which have not been completed by the entry into force of this Act, shall be finalized and decided by the Board of Environment and Food Appeals in accordance with the rules laid down in this Act. However, this does not apply to pending appeals to the Nature and Environment Appeals Board which, upon entry into force of this Act, must be finalized and decided by the Planning Appeals Board, cf. article 1 of Act of the Planning Appeals Board.
- (7) (Omitted)

Act No. 809 of 9 June 2020 (Tasks in connection with variety list approval and certification, including delegation to private actors and fee financing of some of the tasks)^v contains the following provision on entry into force:

Article 3

This Act shall enter into force on 15 June 2020.

The Agricultural Agency, 3 July 2020

Louise Piester

/ Kristine Riskær

ⁱ The Act contains provisions to implement parts of the European Parliament and Council directive 98/44/EC of 6 July 1998 concerning legal protection of biotechnological inventions (EF-Tidende 1998 No. L213, p. 13) and provisions which implement parts of European Parliament and Council directive 2004/48/EC of 29 April 2004 concerning enforcement of intellectual property rights (EU-Tidende 2004 No. L 195, p. 15).

ⁱⁱ By royal decree of 28 June 2015 the Ministry of the Environment and the Ministry of Food, Agriculture and Fisheries merged into the Ministry of Environment and food, cf. Regulation No. 1229 of 3 November 2015 on change in the distribution of business between ministers. By royal decree of 27 June 2019 the responsibility for cases concerning agriculture, including organic farming, food safety, food health, and food supply, animal welfare, including the institutions etc. belonging to the areas, cases concerning equal opportunities, and cases concerning fisheries was referred to the Minister of Food, Fisheries and Equal Opportunities, cf. Article 8, paragraph 1 in regulation No. 794 of 8 August 2019 on change in the distribution of business between the ministers. The other areas under the Ministry of the Environment and Food fall under the direction and responsibility of the Minister of the Environment cf. the Regulation Article 8, paragraph 3.

ⁱⁱⁱ The amendment to the Act concerns the insertion of Article 23 a.

^{iv} By Royal decree of 28 November 2016 the term Ministry of Business and Growth has been changed to Ministry of Industry, Business and Financial Affairs, cf. regulation No. 1777 of 23 December 2016.

^v Changes in the Act concerns changes in Article 3, paragraph 2, Article 5, Article 9, paragraph 1 and 2, Article 19, paragraph 2, Article 22, paragraph 2, Article 25, and Article 28.