

Order No. 51 of 5 February, 1996

**THE DANISH PLANT VARIETY PROTECTION ACT**

This is to consolidate the Act on Plant Variety Protection, cf. Act No 866 of 23 December, 1987, with the amendments that ensue from Act No. 1107 of 21 December 1994, and Act No. 1086 of 20 December, 1995.

**Chapter I**

*Scope of the Act*

Article 1

- 1) Varieties of all species and genera of plant may be protected as plant novelties if at the time of granting of protection they are
  - 1) independent, 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 owner of the variety and with a view to commercial utilisation,
    - a) in this country for more than one year, or
    - b) in a foreign country for more than four years or, in the 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 the 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 if 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

The Ministry of Agriculture and Fisheries may, as an exception, approve the protection of a variety that does not satisfy the conditions laid down in Article 1 (1), No. 4, if it is considered to be of economic interest to agriculture.

## **Chapter 2 Applications**

## Article 3

- (1) An application for entry of a variety in the Register of Plant Novelties shall be submitted to the Board for Plant Novelties 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, such application shall be made by an agent, appointed by the applicant, who is resident in or has his registered office in Denmark.
- (2) The applicant shall before the Board for Plant Novelties, cf. Article 22, produce evidence of his right to apply for entry of the variety to. If the application is made by an agent on behalf of the holder of the variety, the agent shall produce documentation 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 try the application and may fix a time-limit for this. The Board may further demand that material to be used for examination, cf Article 9, be submitted within a specified period.
- (4) At the time of the making of the application, an application fee shall be paid.

## Article 4

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

## Article 5

- (1) The Board for Plant Novelties may delete an entry from the journal if the applicant does not furnish the information or testing material required by the Board pursuant to Article 3 (3) within the time-limit fixed by the Board.

#### Article 6

- (1) From the date of filing of the application the applicant shall enjoy a right of priority to protection of the variety if any other person subsequently submits an application for protection of the same variety.
- (2) At the request of the applicant the Board for Plant Novelties 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 filing of the application in this country and shall be accompanied by documentation of the receipt of the first application.

#### Article 7

- (1) As soon as possible after entry of the application in the journal the Board for Plant Novelties 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 Board for Plant Novelties shall refer any objections to the applicant's right to apply for protection of the variety to the ordinary law-courts. When the Board is informed of such legal proceedings, it shall furnish the application with a note to this effect.
- (2) If on the basis of other objections the Board decides to delete the application from the journal and to discontinue its examination, a notice to this effect shall be published by the Board.

### **Chapter 3**

#### *Examination and registration*

#### Article 9

- (1) Before a variety for which an application has been filed can obtain protection, cf., however, Article 21, the Board for Plant Novelties shall establish whether the variety can be considered to fulfil the conditions for this, including whether it has the special characteristics mentioned in the application. To this end the Board shall arrange for an examination of the variety to the necessary extent.
- (2) The applicant may be required to pay a fee to cover the costs incurred by the Board in connection with examining the variety.

#### Article 10

- (1) If the variety is considered to satisfy the conditions for protection, the Board for Plant Novelties shall enter the variety in the Register of Plant Novelties under a variety denomination, which has been approved in accordance with provisions laid down by the Minister of Agriculture and Fisheries.

- (2) The Board for Plant Novelty may refuse registration of a variety if the holder of the variety does not within a fixed time-limit comply with the Board's request to propose a name for the variety or fails to propose a new name, where the Board has found that the name proposed does not satisfy the conditions for approval.
- (3) Where legal proceedings are pending, Article 8 (1), a note to this effect shall be made in the Register of Plant Novelty.

#### Article 11

- (1) The plant novelty shall be designated by the approved variety denomination. This shall apply even after expiry of the period of protection.
- (2) It shall be permitted to use an additional denomination for the new variety in connection with the variety denomination.
- (3) At the request of the holder of the variety the Board for Plant Novelty may in special cases permit that the plant novelty be given another denomination than the one originally approved.
- (4) The Minister of Agriculture and Fisheries shall lay down provisions on the denomination of plant novelty.

#### Article 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 or, for varieties of potatoes, up to 30 years, calculated from the date of issue of the certificate of protection, cf., however, article 21 (1).
- (2) The validity of the certificate of protection is extended against payment of an annual registration fee to the Board for Plant Novelty.
- (3) Irrespective of paragraph (1) of this section the Minister of Agriculture and Fisheries may lay down provisions to the effect 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 Board for Plant Novelty may carry out post-control to ensure that the plant novelty is maintained satisfactorily by the holder of the variety.
- (2) The holder of the variety shall within the time-limits fixed by the Board make the necessary plant material available for the post-control to be performed by the Board for Plant Novelty.

#### *Removal*

#### Article 14

- (1) The Board for Plant Novelty deletes a plant novelty from the Register of Plant Novelty if
  - 1) it is established that at the time of registration the plant novelty did not satisfy the conditions for entry laid down in Article 1,
  - 2) at the post-control the Board finds that the plant novelty has not been maintained satisfactorily,
  - 3) the Board receives a written request from the holder of the variety to this effect, or
  - 4) the annual registration fee has not been paid.
- (2) The Board for Plant Novelty may further delete a plant novelty from the Register of Plant Novelty if the holder of the variety does not within the time-limit fixed by the Board comply with the Board's request
  - 1) to make available to the Board the material needed for the post-control or
  - 2) to propose a new name for the variety in cases where the Board has subsequently found that the approved name does not satisfy the provisions laid down by the Minister of Agriculture and Fisheries.
- (3) The plant novelty shall be deleted from the Register two months after notification of the holder of the variety of the decision of the Board for Plant Novelty unless before expiry of that period the case has been brought before the law-courts by the holder of the variety.

#### Article 15

- (1) If a plant novelty has been deleted from the Register of Plant Novelty, it cannot be reentered in the Register. The Board for Plant Novelty shall publish a notice of the deletion and the reason for it.

### **Chapter 4** *Scope of protection*

#### Article 16

- (1) Material of a plant novelty may only
  - 1) be used for commercial production, propagation or treatment and storage with a view to propagation, and
  - 2) be offered for sale, sold, transferred or stored with a view to sale or transfer subject to permission by the holder of the variety and only on the terms and conditions, including payment of an appropriate royalty, specified by the holder.
- (2) The Minister of Agriculture and Fisheries may lay down provisions to the effect that any person propagating plant novelty of specified species for professional use on his own holding shall pay a royalty to the holder of the variety.

- (3) Any person who propagates a plant novelty or sells propagating material of the plant novelty shall provide the holder of the variety with the information necessary for calculation and collection of royalty.
- (4) Paragraphs (1) - (3) shall apply correspondingly
- 1) to harvested material obtained from the use of propagation material of a plant novelty, if the holder of the variety
    - a) has not permitted such use of the material and
    - b) has not had the possibility of exercising his rights to the material in accordance,
  - 2) to varieties that
    - a) are essentially derived from a plant novelty if this is not itself essentially a derived variety or
    - b) are not independent in relation to the plant novelty, cf. Article (1) (1), or
    - c) can be produced only by repeated use of the plant novelty.
- (5) The Ministry of Agriculture and Fisheries may decide that on the conditions laid down in paragraph (4) no. 1, a) and b), paragraphs (1) - (3) shall also apply to products produced from propagation material of a plant novelty or any harvested material obtained therefrom.
- (6) The conditions specified by the holder of the variety, cf. paragraph (1) may only concern the use and offer for sale as stated in paragraph (1), nos. 1 and 2, and royalties. The terms and conditions shall be reasonable and identical for all producers.

#### Article 17

Plant novelties may be used freely for research and breeding activities.

#### Article 18

(Repealed).

#### Article 19

- (1) The question of whether the terms and conditions stipulated by the holder of the variety are in accordance with Article 16 (6) may be referred to the Terms Board for Plant Novelties, cf. Article 22 (1). Where the Board finds that the terms and conditions are against Article 16 (6), it may order the holder of the variety to change them.
- (2) The holder of the variety shall not be entitled to demand a fee for the use of an additional variety denomination registered as a trade mark, cf. Article 11 (2), until after the expiration of a period of 25 (30 resp.) years, cf. Article 12 (3), calculated from the date of issue of the certificate of protection for the plant novelty irrespective of whether the registration is maintained throughout the period.

- (3) Paragraph 2 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.

#### Article 20

- (1) If the Minister of Agriculture and Fisheries considers it necessary to ensure 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 the variety to give one or more persons permission for the commercial propagation and sale of propagating material of a plant novelty and to fulfil, or cause others to fulfil, orders for suitable propagating material within a reasonable time-limit. The provisions of Article 16 shall apply correspondingly.

#### Article 21

- (1) The terms and conditions referred to in Article 16 (1) may be applied to the holder of the variety in the period from acceptance of the application for protection of a variety till its entry in the Register of Plant Novelty (the period of application), provided that the applicant notifies the Board for Plant Novelty thereof. The protection period stated in Article 12 shall in this case be calculated from the date of entry of the notice in the journal kept by the Board for Plant Novelty. The provisions of Articles 11 and 20 shall apply correspondingly during the period of application.
- (2) Any royalties collected during the period of application shall be deposited by the producer on a blocked account in a financial institution in favour of the holder of the variety. 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 may 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.

### **Chapter 5** *Administration*

#### Article 22

- (1) The Minister of Agriculture and Fisheries shall set up a board, the Board for Plant Novelty, to administer the provisions of Chapters 2 and 3 of the Act, and a board, the Terms Board for Plant Novelty, to deal with disputes concerning the terms and conditions of royalties, cf. Chapter 4.

The Minister of Agriculture and Fisheries shall lay down the composition and functions of the Boards in the rules of procedure.

#### *Complaints*

#### Article 23

- (1) The decisions of the Board for Plant Novelty pursuant to Chapters 2 and 3 and the decisions of the Terms Board for Plant Novelty pursuant to Chapter 4 of this Act cannot be brought before another administrative authority.

*Services etc.*

Article 24

- (1) Where the holder of the Plant Breeder's Rights is not resident in or does not have his registered office in this country, writs etc. may be served to a duly authorised agent who is resident or has his registered office in this country. In all other cases, notices etc., shall be served in accordance with Article 159 of the Administration of Justice Act.

*Fees*

Article 25

- (1) The Ministry of Agriculture and Fisheries may lay down provisions concerning
  - 1) fees to cover the costs incidental to dealing with applications, cf. Article 3 (4), and to the prolongation of the validity of the certificate of protection, cf. Article 12 (2), and for total or partial covering of the costs of examination, cf. Article 9 (2),
  - 2) interest in connection with late payment of fees, and
  - 3) fees for letters of reminder.
- (2) Distress may be levied on fees and interest charged pursuant to paragraph (1).

Article 26

- (1) Any person who contravenes Article 16 (1), (3) or (4) shall be liable to a fine. Contravention of the said provisions is subject to private prosecution.
- (2) Any person who
  - 1) contravenes Article 11 (1), or
  - 2) fails to comply with an order given pursuant to Article 19 (1), 2nd sentence, and Article 20 shall likewise be punished by a fine.
- (3) Regulations issued pursuant to Article 11 (4) and Article 16 (2) and (5), may provide for punishment by a fine for contravention of the provisions of the regulations. Any contravention of regulations laid down according to Article 16 (2) and (5), shall be subject to private prosecution.
- (4) Where a contravention has been committed by limited companies, private limited companies, co-operative societies, e.a., the punishment by a fine may be imposed on the company as such. Where contravention is committed by a local authority or by an intermunicipal enterprise, cf. Article 60 of the Local Administration Act, the punishment by a fine may be imposed on the local authority or the inter-municipal enterprise.

*Coming into Force etc.*

## Article 27

- (1) This Act shall come 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 shall be repealed.
- (3) Provisions laid down in the Act referred to in paragraph 2 shall remain in force until repealed by the Minister of Agriculture and Fisheries. Contravention of the provisions shall be punishable by a fine.

## Article 28

- (1) The provision laid down in Article 19 (3) shall apply to
  - 1) plant novelties registered on 1 January, 1988, or later, and
  - 2) registered plant novelties for which the holder of the variety after the coming into force of the Act exploits the right to an extended period of protection as set out in Article 12.

## Article 29

- (1) This Act shall not apply to the Faroe Islands and Greenland.

Act nr. 1107 of 21 December, 1994, on amendment of the Act on Plant Novelties came into force on 1 January, 1995.

Act no. 1086 of 20 December, 1995, on amendment of the Act on Plant Novelties contains the following provisions on coming into force etc.

## Article 30

- (1) The Act shall come into force on 1 January, 1996.
- (2) Article 1 (3) as drawn up in Article 1, No. 2, of this Act shall apply only to varieties for which an application for protection was filed not later than 31 December, 1995.
- (3) Article 16 (4), no. 2, as drawn up in Article 1, no. 11 of this Act, shall apply only to varieties that prior to 1 January, 1996, have not been transferred to an official body for a legal purpose or, with the consent of the holder of the variety and with a view to commercial utilisation of the variety, have been offered for sale, sold, or otherwise transferred.

The Ministry of Agriculture and Fisheries, 5 February 1996