

# **BREEDER'S RIGHT ACT**

**No 58 of 19 May 2000**

Date of entry into force 26 May 2000. Amended by Act No 72/2003  
(Date of entry into force 10 April 2003).

## **Chapter I General Provisions**

### **Article 1**

A person who has bred, or discovered and developed a new variety (a variant or a strain of a plant species) or another person who has acquired the person's right, a breeder, can, in accordance with the present Act, acquire exclusive right to exploit it for professional reasons. A right concerning a variety (breeder's right) is granted on the basis of an application filed with the Breeder's Right Committee, cf. Article 22.

The Minister of Agriculture is responsible for the implementation of the present Act.

### **Article 1a**

This Act covers varieties of all genera and species of plants, including hybrids of genera and species. In this Act the term "variety" refers to a plant grouping of the same species or sub-species pursuant to the most precise known botanical taxonomy, which, regardless of whether all the conditions for protection under the law are met, can be:

- a) defined by the characteristics expressing a specific genotype or combination of genotypes,
- b) distinguished from other plant groupings by at least one of the above characteristics, and
- c) considered as a unit with respect to the potential for propagation without changes in their characteristics.

Plant groupings may consist of entire plants or parts of plants if the parts can be used to breed whole plants; both are referred to herein as variety constituents.

The expression of characteristics pursuant to a) may be either invariant or variable among similar variety constituents of the same kind, provided that the level of variation is determined also by genotype or combination of genotypes.

### **Article 2**

A breeder's right may be granted if a variety is:

1. clearly distinct, i.e. clearly distinguishable from other varieties which are known at the time of the filing of the application, cf. paragraph 2;
2. sufficiently uniform, i.e. if its relevant characteristics are sufficiently uniform subject to the variation that may be expected from the particular method of propagation;
3. stable, i.e. its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle;
4. new, i.e. material for its propagation or its harvested material has not, on the application date for breeder's rights and with the breeder's consent, been sold or offered for sale to the public or otherwise assigned for purposes of exploitation for professional reasons:
  - a) in Iceland, for more than one year;
  - b) outside Iceland, for more than four years, but six years in the case of trees or vines.

The existence of a variety shall be deemed to be a matter of common knowledge provided it has been sold or offered for sale to the public, entered in an official register of varieties, or it is a matter of common knowledge by other means. Where a variety has been characterized in an application for a breeder's right, a patent application, or an application for its entry into an official register of varieties in this country or in another state, its existence shall be deemed a matter of common knowledge from the time of the filing of the application onward. This will only apply given the aforementioned applications have lead to approval.

## **Chapter II Application**

### **Article 3**

An application for the entry of a variety into an official register of varieties shall be filed in writing with the Breeder's Right Committee.

An application for a variety shall comprise a characterization of the variety and specify in particular what distinguishes it from other varieties. It shall also include a suggested denomination for the variety together with the name and address of its innovator. The applicant's name, identification number and address shall also be indicated.

Where the applicant and the innovator are not the same person the applicant shall verify his or her authority to apply for a breeder's right.

Where the applicant neither resides nor is established in this country or in any State Party to the Agreement on the European Economic Area [or the Agreement Establishing the European Free Trade Association]<sup>1</sup> he shall have an agent residing, or who is established, in this country.

The Breeder's Right Committee may instruct the applicant to provide, within a prescribed period, any information required to process his or her application. The Breeder's Right Committee may also instruct the applicant to provide, within a prescribed period, documents and material for examination, cf. Article 9.

The applicant shall pay an application fee of ISK 30 000.

<sup>1</sup>Article 34 of Act No 72/2003.

#### **Article 4**

On receipt of a valid application it shall be entered into the Breeder's Right Committee's Diary without delay and a copy of the application, together with an inscription containing the date of entry into the Diary, shall be forwarded to the applicant.

The Diary shall be open to the public with the exception of information on lines forming a hybrids variety and their characterization, provided the applicant has insisted that such information will be kept secret.

#### **Article 5**

If, within a prescribed period of time, the applicant does not provide information, or documents and material requested by the Breeder's Right Committee in accordance with the fifth paragraph of Article 3, the Committee may delete the application from the Diary.

#### **Article 6**

From the date of application onward the applicant has the right of protection of a variety preceding that of others who subsequently apply for protection of the same variety.

On request submitted by the applicant the Breeder's Right Committee can deem the application to have been received concurrently with the first application for breeder's right in any Member State of The International Union for the Protection of New Varieties of Plants (UPOV), provided the first application was filed during the last twelve months before the date of application in this country. The period is calculated from the filing date of the first application and the application date is not counted as part of this period. Such request shall be included in the application and evidence produced of the receipt of the first application within three months from the date of application in this country. The breeder is allowed a period of two years after the expiry of the priority period, or the same time from the rejection or withdrawal of an application, to furnish to the Breeder's Rights Committee any information, documents or material required for the purposes of examination of the application, as provided in Chapter III.

#### **Article 7**

As soon as possible, after the entry of an application into the Breeder's Right Committee's Diary, the Committee shall conduct a preliminary examination to determine if a variety fulfils the conditions of protection.

If the Committee is of the opinion, on having concluded the examination, that the conditions have been fulfilled it shall publish a notification in the National Gazette, including an appeal to possible interested parties to object against the registration of the variety within a prescribed period.

On the other hand, if the Committee is of the opinion that conditions have not been fulfilled the applicant shall be given time to submit observations. The application shall be notified in the National Gazette, provided the applicant's observations have changed a conclusion drawn earlier.

#### **Article 8**

If, on the basis of observations submitted, the Breeder's Right Committee decides to delete an application from its Diary and cancel the examination, a notification shall be published to that effect in the National Gazette.

The Breeder's Right Committee will not rule on questions concerning the applicants right to a variety. The Committee shall call the parties attention to the fact that matters of dispute may be presented to a Court of Law. Where the Committee is notified of a court action the application shall be inscribed accordingly.

### **Chapter III**

#### **Examination and Registration**

##### **Article 9**

The Breeder's Right Committee shall, before a variety can be protected and subject to Article 21, determine whether the variety is in compliance with the conditions for protection, cf. Article 2, by way of a special examination if necessary, and whether it has the distinctive characteristics specified in the application.

The applicant may be required to make a payment to the Committee owing to its examinations expenses, cf. the first paragraph of this Article. Such a payment shall in no case exceed ISK 30 000.

##### **Article 10**

Where a variety is deemed to be in compliance with the conditions for protection, the Breeder's Right Committee shall register it in the official register of varieties under an approved variety denomination, cf. Article 11.

The Breeder's Right Committee can reject an application for registration of a variety if the applicant does not answer, within a prescribed period, the Committee's plea to propose a denomination of the variety or propose a new denomination for it, if the Committee holds the belief that the proposed denomination does not meet the conditions imposed.

Where an action has been brought before a court of law, cf. the second paragraph of Article 8, a note to that effect shall be entered into the official register of varieties.

##### **Article 11**

An approved denomination shall be applied to designate a variety, which shall be maintained even when the variety is no longer protected.

The denomination may not consist solely of figures except where this is an established practice for designating varieties of the species in question. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety, or the identity of the breeder. It must be different from every denomination, which already designates an existing variety of the same plant species or of a closely related species.

An additional denomination may be used in relation to the variety denomination.

The Breeder's Right Committee may, in special cases and at the breeder's request, authorize a different denomination for a variety from that which was originally approved.

The Minister of Agriculture may establish more express rules on variety denominations.

##### **Article 12**

On having registered a variety the Breeder's Right Committee will issue a breeder's right document and deliver it to the applicant against the payment of a registration fee of ISK 3 000. This document is valid for one year and is renewable one year at a time for up to 25 years.

Protection in accordance with a breeder's right document is renewed by way of a payment of the annual fee to the Breeder's Right Committee. The annual fee is due on the date of issue of the breeder's right document. The annual fee for each year from the first year of payment until the 10th year of payment is ISK 3 000. The fee for each year from the 11th year until the 25th year is ISK 6 000. The fee for each year from the 26th year until the 30th year is ISK 9 000.

Notwithstanding the first paragraph of this Article the Minister of Agriculture may provide for a longer period of validity with respect to a breeder's right document concerning specified species and genera, thus allowing a variety to be protected for up to 30 years.

A registration notice shall publish in the National Gazette.

##### **Article 13**

Subsequent to registration the Breeder's Right Committee may check the breeder's compliance with the requirement to preserve the variety in a satisfactory manner. For this purpose, and within the period prescribed by the Committee, the breeder shall provide the Committee with necessary material for propagation of the variety in question.

#### **Article 14**

The Breeder's Right Committee shall declare a breeder's right granted by it null and void when it is established:

1. that a variety does not comply with the conditions of being distinct and new, laid down in subparagraphs 1 and 4 of the first paragraph of Article 2, at the time of the grant of the breeder's right;
2. that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, a variety does not comply with the conditions of being sufficiently uniform and stable, laid down in subparagraphs 2 and 3 of the first paragraph of Article 2, at the time of the grant of the breeder's right.
3. that a breeder's right has been granted to a person not entitled to such right, unless it is transferred to the person entitled to such right.

The Breeder's Right Committee may delete a variety from the official register of varieties if:

1. the breeder files a request with the Committee to that effect;
2. the annual fee is unpaid;
3. a variety does no longer comply with the conditions of being sufficiently uniform and stable, laid down in subparagraphs 2 and 3 of the first paragraph of Article 2; or
4. the breeder does not answer, before the end of a prescribed period, the Committee's plea to:
  - a) provide it with necessary material for propagation of the variety for the purpose of surveillance subsequent to registration, or
  - b) propose a new variety designation, where the Committee has, subsequent to registration of the variety, established that an approved designation does not comply with rules laid down by the Minister of Agriculture.

A variety shall be deleted from the official register of varieties two months after the breeder has been notified in a verifiable manner of the decision of the Breeder's Right Committee, unless he files a lawsuit before the end of that period.

#### **Article 15**

Where a variety has been deleted from the official register of varieties it will not be registered anew. The Breeder's Right Committee shall publish a notification to that effect in the National Gazette together with justifications.

### **Chapter IV Breeder's Right**

#### **Article 16**

Breeder's right extends to the variety registered pursuant to this Act. Breeder's right also applies to:

- a) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- b) varieties which are not clearly distinguishable from the protected variety in accordance with Article 2;
- c) varieties which cannot be produced without the repeated use of the protected variety.

For the purposes of subparagraph 1(a), a variety shall be considered essentially derived from another variety when:

- a) it is mainly derived from the initial variety, or from a variety that is itself mainly derived from the initial variety and retains the principal characteristics determined by the genotype or combination of genotypes of the initial variety;

- b) it is clearly distinguishable from the initial variety in accordance with Article 2;
  - c) it conforms, apart from the differences resulting from the act of its derivation, to the initial variety in the essential characteristics resulting from the genotype or combination of genotypes of the initial variety;
- A government regulation may be issued detailing the possible ways of deriving a variety pursuant to Paragraphs 1–2.

### **Article 17**

A breeder's right entails that other persons are not permitted, without the authorization of the breeder, to utilise the propagating material or harvest of the protected variety as follows:

- a) production or reproduction;
- b) conditioning for the purpose of propagation; ;
- c) offering for sale;
- d) selling or other marketing; ;
- e) exporting;
- f) importing;
- g) stocking for the purposes mentioned in a) to f) above..

The provisions of Paragraph 1 extend only to the harvest of a variety obtained by utilisation of propagating material of the variety provided that the breeder has not:

- a) authorised the utilisation, and
- b) had an opportunity to exercise his right under Paragraph 1.

A government regulation may be issued providing that in special circumstances the provisions of Paragraph 1 may also apply to products derived directly from the harvest of a party other than the breeder. However, this applies only if the products were obtained by the unauthorised use of the protected variety, provided that the owner of the right did not have reasonable means of exercising his right. To the extent that the provisions of Paragraph 1 apply to products derived directly from the harvest of the protected variety, such products shall also constitute a harvest under this Act.

The exercise of a breeder's right shall not contravene provisions enacted on the basis of the public good, morality or public safety, for the preservation of human, animal and plant health and life, for environmental protection, for the protection of property rights in industry or trade or to secure competition in trade or agriculture. The provisions of this Paragraph shall not curtail the rights of farmers provided for in Sub-paragraph 18(a).

### **Article 17a**

A breeder may subject authorization for utilisation of a variety to conditions, including the condition of payment of a reasonable licence fee.

Persons who for commercial purposes propagate varieties or sell propagating material of varieties or utilise a variety by other means, shall provide the breeder with the necessary information for the purposes of the collection of licence fees.

The conditions imposed by a breeder pursuant to Paragraph 1 above, e.g. on licence fees, shall apply only to the use and supply referred to in Paragraph 1 of Article 17. The conditions shall be reasonable and all producers shall receive equal treatment.

### **Article 18**

Breeder's right does not constitute:

1. applications for private but not professional reasons;
2. applications in experiments;
3. use for breeding, i.e. for the purpose of developing new varieties, and, where the provisions of Paragraphs 1-2 of Article 16 apply, use pursuant to Paragraph 1 of Article 17 in the case of such new varieties;
4. applications of material of a variety marketed by the breeder or his or her agent in the European Economic Area [or in a State Party to the Agreement Establishing the European Free Trade Association]<sup>1</sup>, provided that the above mentioned applications do not involve:
  - a) further propagation of the variety in question,
  - b) an export of material, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

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<sup>1</sup> Article 34 of Act No 72/2003.

Material, for the purposes of paragraph 1, means:

- a. propagating material of any kind, including whole plants and parts of plants;
- b. harvest;
- c. any product processed directly from harvested material.

<sup>1</sup>Article 35 of Act No 72/2003.

#### **Article 18a**

In order to protect agricultural production, farmers may, notwithstanding the provisions of Paragraph 1 of Article 17, use the harvest from their own land for the purpose of growing varieties of specified plant species on their own land, provided that the variety in question is not a hybrid or synthetic variety. "Own land" means both the privately owned lands of farmers and estates held by farmers for residence and agriculture and other cultivation pursuant to agreements with landowners.

The Minister of Agriculture will decide, by means of a government regulation, which plant species shall fall within the scope of Paragraph 1 and on what conditions.

Farmers shall not be required to pay a licence fee for the use of a variety pursuant to Paragraph 1 if their production of agricultural crops pursuant to Paragraph 2 takes place in an area of land capable of yielding a maximum of 92 tons of cereals; the quantity of other agricultural crops shall be based on the same area of land. Other farmers are required to pay to the breeder a licence fee, but the Minister for Agriculture may decide on a price which is lower than the price paid in the same area for the use of propagating material of the same variety. The Minister for Agriculture shall issue further rules concerning the implementation of this provision in a government regulation.

#### **Article 19**

The Breeder's Right Committee shall, after being requested to do so, examine whether conditions imposed by the breeder for his or her approval, in accordance with the second paragraph of Article 17, comply with the sixth paragraph of that Article.

#### **Article 20**

In the event that a breeder has not secured an adequate supply of material for the propagation of a protected variety in Iceland on reasonable terms and in the quantity and manner necessary to secure the production of food in Iceland and other important public interests, the person desiring to utilise the variety may apply for a non-voluntary licence before the courts of law, provided that there is no reasonable justification for the neglect of the breeder.

A patent holder who cannot utilise his invention without violating an existing breeder's right may, subject to payment of a reasonable fee, apply for a non-voluntary licence to utilise the protected variety. A non-voluntary licence shall be granted only if the holder of a patent can demonstrate that the patent relating to the variety represents a technologically important advance and entails substantial benefits.

If a breeder has obtained a non-voluntary license to utilise a patented invention pursuant to Paragraph 1 of Article 46 of the Patent Act No. 17/1991, the holder of the patent is entitled to a non-voluntary licence on reasonable terms to utilise the protected variety.

The provisions of Articles 49 and 50 of the Patent Act No. 17/1991 apply, as applicable, to non-voluntary licences under this Article. A court of law may order a breeder to supply the holder of a non-voluntary licence with the material necessary for the propagation of the variety.

#### **Article 21**

From the date of application until the date of registration in the official register of varieties, breeders may impose conditions, in accordance with the second paragraph of Article 17, provided they submit notification to that effect to the Breeder's Right Committee. In that case the protection period, in accordance with Article 12, is authentic from the date of registration of the said notification in the Breeder's Right Committee's Diary. The provisions of Articles 11 and 20 shall apply in a similar way in the application period.

In the event that a cultivator pays licensing fee before the application has been dealt with, the fee shall be credited to a deposit account under the breeder's name. The amount shall become accessible once the variety has been registered. If the application is rejected, the fee shall be reimbursed at a certain rate of interest.

Every person is free to use a variety for propagation purposes, where an application for the protection of that variety has been withdrawn or rejected. Cultivators, who have used the variety in the application period, will acquire the same status as if they were using an unprotected variety.

### **Chapter V Administration**

## **Article 22**

The Minister of Agriculture will appoint the members of the Breeder's Right Committee for four years at a time whose duty is to implement Chapters II to IV of the present Act.

The Committee shall be composed of at least three members and five members at the most. At least one member of the Committee shall be an expert in the cultivation and breeding of exploitable plants and another an expert in the field of property right.

## **Article 23**

Decisions of the Breeder's Right Committee, based on Chapters II to IV, shall not be subjects of recourse to other administrative bodies.

## **Article 24**

[Where a breeder neither resides nor is established in this country, in any State Party to the Agreement on the European Economic Area or a State Party to the Agreement Establishing the European Free Trade Association, matters can be referred to his or her agent.]<sup>1</sup> Where the breeder or his or her agent cannot be reached, the provisions of the Civil Proceedings Act or the Act on the Publication of Law and Administrative Affairs shall be observed, as appropriate.

<sup>1</sup>Article 36 of Act No 72/2003.

## **Article 25**

A person, who deliberately restricts the right of a breeder pursuant to the present Act or pursuant to rules based on it, shall be fined.

A legal person, who commits such an offence, may be sentenced to pay monetary damages.

## **Article 26**

A person, who deliberately or negligently restricts the right of a breeder, shall pay an equitable fee for the exploitation of a variety and compensations for other damages caused by his or her restrictions.

## **Chapter VI** **Entry into Force and Other Provisions**

## **Article 27**

The Minister of Agriculture may, in the framework of Regulation, lay down more express provisions on the implementation of the present Act.

## **Article 28**

The present Act shall enter into force forthwith.