

KINGDOM OF SWEDEN

ACT ON THE PROTECTION OF PLANT BREEDERS' RIGHTS  
(Swedish Statute Book 1997:306)<sup>1</sup>

**Chapter 1**

**On the Acquisition of Plant Breeders' Rights**

**Article 1**

Anyone who has in Sweden produced a new plant variety, or his successor in title, may acquire an exclusive right to exploit the plant variety according to this Act (plant breeder's right).

Anyone who has outside this country produced a new plant variety, or his successor in title, may acquire a plant breeder's right in respect of the plant variety, where the producer is a Swedish national or has his domicile in Sweden.

A plant breeder's right may also be acquired by

1. anyone who has produced a plant variety in a foreign State party to the Convention of December 2, 1961, on the Protection of Plant Varieties, or in a State which is party to an intergovernmental organization which in its turn is party to this Convention, or the successor in title of such a person,
2. anyone who is a national of, or has his domicile in, such a State and who has, in cases other than those mentioned under 1, produced a new plant variety outside this country, or is the successor in title of such a person.

The provisions in the first to third paragraphs apply also to anyone who has discovered and further developed a new plant variety or his successor in title.

A plant breeder's right is acquired through registration of the plant variety.

**Article 2**

The Government may prescribe that a plant breeder's right may be acquired also in cases other than those provided for in Article 1, where this is of specific importance for the supply of the Swedish market or for Swedish plant breeding activities.

The Government may furthermore provide for the application of this Act in relation to other countries on condition of reciprocity or where this follows from such an agreement with a foreign State or intergovernmental organization which has been approved by the Parliament.

**Article 3**

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<sup>1</sup> The Act on the Protection of Plant Breeders' Rights was adopted on May 29, 1997.  
Translation by the national authorities.

A "plant variety" means for the purposes of this Act a plant grouping within one and the same botanical entity of the lowest known rank, where this grouping can

1. be defined by the expression of characteristics resulting from a given genotype or combination of genotypes,
2. distinguished from any other plant grouping by the expression of at least one of the said characteristics, and
3. considered as a unit with regard to its suitability for being propagated unchanged.

## **Chapter 2**

### **On the Scope of the Plant Breeder's Right**

#### **Article 1**

A plant breeder's right applies to

1. the plant variety which has been registered in accordance with the provisions of this Act,
2. groupings of plants which are not clearly distinguishable from the variety which has been registered,
3. plant varieties which are essentially derived from the registered variety, where the registered variety is not in itself an essentially derived variety, and
4. plant varieties whose production requires the repeated use of the protected variety.

A plant variety shall be deemed to be essentially derived where it

1. is predominantly derived from the initial variety, or from a variety that in itself is predominantly derived from the initial variety, while retaining the the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,
2. is clearly distinguishable from the initial variety, and
3. except for the differences which result from the act of derivation, conforms with the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

#### **Article 2**

With the exceptions provided for in Articles 3 and 4, the plant breeder's right includes that nobody may, without the authorization of the holder of the plant breeder's right, exploit a plant variety or another grouping of plants covered by the plant breeder's right through

1. producing or reproducing propagating material
2. conditioning propagating material for the purposes of propagation,
3. offering propagating material for sale,
4. selling or otherwise marketing propagating material,
5. exporting propagating material from Sweden,
6. importing propagating material to Sweden, or
7. stocking propagating material for any of the purposes indicated in items 1. to 6.

Where the holder of the plant breeder's right had no reasonable opportunity to exercise the right in relation to a certain propagating material, nobody may without his or her authorization exploit the plant variety through such acts as mentioned in the first paragraph, items 1. to 7. by using harvested material which has been produced by means of this propagating material.

### **Article 3**

The plant breeder's right does not include

1. acts carried out privately and for non-commercial purposes,
2. acts carried out for experimental purposes, and
3. acts carried out for the purposes of breeding, of new plant varieties.

### **Article 4**

The plant breeder's right does not include the exploitation of plant variety material which has been brought on the market within the European Economic Area by the holder of the plant breeder's right or with his consent.

The provisions of the first paragraph do not extend to the exportation of plant variety material which can be used for propagating purposes, where the exportation is directed towards a foreign country where the plant genus or species to which the variety belongs is not protected and the material exported is not intended for final consumption.

### **Article 5**

The provisions on exceptions from the exclusive right in Article 14 of the Council Regulation (EC) No 2100/94 of July 27, 1994, on the Community Breeder's Right and the Implementing Regulations which have been issued on the basis of that Article shall apply also to plant varieties which have been registered according to this Act. The provisions in that Article and Regulation on the Community Plant Breeder's Right shall apply to plant breeder's rights under this Act.

## **Chapter 3**

### **On the Requirements for Registration**

#### **Article 1**

A plant variety may be registered only if it is

1. new,
2. distinct,
3. uniform with respect to its essential characteristics, and
4. stable.

#### **Article 2**

A plant variety shall be considered as new where propagating material or harvesting material of the variety have not been sold or otherwise disposed of to others for the purpose of exploitation of the variety, by the breeder or his successor in title

1. in this country, earlier than one year before the date of the filing of the application for registration,
2. outside this country, earlier than six years before the filing of the application for registration, where this application concerns trees or vines, or
3. outside this country, earlier than four years before the date of the filing of the application for registration, where this application concerns plant varieties other than trees or vines.

### **Article 3**

A plant variety shall be deemed to be distinct if it is clearly distinguishable from any other variety the existence of which is known at the time of the filing of the application.

A plant variety shall be deemed as known, where propagating material of it has been offered for sale, sold or otherwise disposed of to others. The plant variety shall also be deemed to be known where it has been registered for a plant breeder's right, has been entered into an official list of plant varieties, has been entered into a commonly available list of references, has been described in a commonly available publication or has in any other way come to the common knowledge of the public.

Also a plant variety which has not come to the common knowledge of the public shall be deemed to be known, where an application for an exclusive right or for the entering into an official list of plant varieties has been filed in any country and that application has later been approved.

### **Article 4**

For the determination of whether a plant variety is uniform, variations which can be expected due to particular features of the propagation of the variety shall not be taken into account.

### **Article 5**

A plant variety shall be deemed to be stable, where its relevant characteristics remain unchanged after repeated propagation or, where the plant variety has a particular cycle of propagation, at the end of each such a cycle.

### **Article 6**

If the applicant or someone from whom the applicant has acquired his right has earlier applied for protection of the plant variety in a State which is party to the Convention of December 2, 1961, on the Protection of Plant Varieties and if registration is applied for in this country within twelve months from the date when the application was filed in the foreign State, the application shall, for the purposes of Articles 2 to 5, be deemed to have been filed at the same time as the application in the foreign State, if the applicant so requests.

Such priority may also be granted from an application for protection filed in another foreign State if a corresponding priority from a Swedish application for the protection of a plant variety would be admitted in that State and where the legislation in force there corresponds in its main features with the Convention. Where priority has been sought in several foreign States, the twelve month period is calculated from the date when the first application for protection was filed.

The Government or a Public Authority as decided by the Government may issue provisions on the way in which a claim for priority shall be made and which documents shall be filed in support of the claim. Where such provisions are not complied with, priority shall not be enjoyed.

### **Article 7**

A plant variety may not be registered where it is already registered for a Community plant breeder's right under the Council Regulation (EC) No 2100/94 on the Community Plant Breeder's Right.

## **Chapter 4**

### **On Plant Variety Denominations**

#### **Article 1**

Any registered plant variety shall have a plant variety denomination. This denomination shall be such as to enable the distinction of that plant variety from other varieties.

A plant variety shall not be accepted where it

1. consists solely of figures, except where this is an established practice for designation of varieties
2. is obviously likely to mislead the public,
3. is contrary to laws or other regulations or public order or is likely to cause offence,
4. is likely to cause confusion with a variety denomination which has, for a variety of the same plant species or of a closely related species, been entered into, or has been proposed for entrance into, the Plant Variety Register, any corresponding foreign Register or any other official list of varieties, or which is used as propagating material of such a variety,
5. is likely to cause confusion with a trademark, a name, a firm or any other denomination for which any person other than the applicant enjoys protection and which would have constituted an obstacle against the registration of the variety denomination as a trademark for material of a plant variety or for goods of a similar kind,
6. is likely to cause confusion with such a trademark for material of a plant variety or for goods of a similar kind for which the applicant enjoys protection.

On condition of reciprocity the Government may prescribe that a variety denomination which has been registered, or for which an application for registration has been filed, in a foreign State may be registered in Sweden notwithstanding the provisions in the first and second paragraphs, where there are no particularly important reasons for not doing so.

#### **Article 2**

Anyone who offers for sale or otherwise disposes of propagating material of a registered plant variety shall use the registered variety denomination. This applies also where the term of protection has lapsed or the plant breeder's right has been terminated for other reasons.

A registered denomination for a variety or a denomination which is confusingly similar to that denomination must not be used for any other variety of the same plant species or for a plant species which is closely related thereto or for material of such a variety as long as the registration of the denomination is in force.

## **Chapter 5**

### **On the Application Procedure**

#### **Article 1**

Registration in accordance with this Act is effected in the Plant Variety Register which is kept by the National Plant Variety Board.

In connection with the registration of a plant variety, also the denomination of the variety shall be recorded.

#### **Article 2**

An application for the registration of a plant variety shall be made in writing to the National Plant Variety Board.

The application shall contain

1. a clear description of the variety with a special indication of the characteristic feature or features which distinguishes or distinguish the variety from other varieties,
2. an indication of the origin of the variety,
3. a proposal for the denomination of the variety, and
4. an indication of the name of the plant breeder.

Where a person other than the plant breeder applies for registration, the applicant shall prove his right in the variety.

To the application shall be attached a declaration, signed by the applicant himself, on his faith and honour, that the variety, to the best knowledge of the applicant, has not, before the date on which the application was filed or, according to Chapter 3, Article 6, shall be deemed to have been filed, has been disposed of in such a way that it, according to Chapter 3, Article 2, shall not be deemed to be new.

The applicant shall, in connection with the application, make available plant material sufficient to allow testing of the variety.

The application shall pay the prescribed application fee.

#### **Article 3**

An application may concern only the registration of one plant variety.

#### **Article 4**

The National Plant Variety Board may request an applicant not having his domicile in Sweden to appoint a representative domiciled in the European Economic Area and to notify this fact to the Board. The representative shall be empowered to receive communications of any documents in the matter. Where the applicant does not comply with the request, the serving of communications may be carried out through the mailing of the document in question to the applicant under his last known address.

#### **Article 5**

Where the applicant has not met the requirements relating to the application or where there is any other obstacle for the approval of the application, the applicant shall be invited to submit, within a determined period of time, either a statement or a correction.

Where the applicant does not, within the prescribed period of time, submit a statement or take measures to remedy the deficiency indicated, the application shall be removed from the files. An indication of this possibility shall be included in the invitation.

#### **Article 6**

Where there is an obstacle for the approval of the application also after the applicant has submitted a statement and the applicant has been given an opportunity to file a statement concerning the obstacle, the applicant shall be rejected unless there is a reason for issuing a new invitation to the applicant.

#### **Article 7**

If anyone claims, before the National Plant Variety Board, that he has a better title to the plant variety than the applicant and the matter is in doubt, the Board may invite him to bring an action in Court within a certain time, failing which his claim may be disregarded in the course of the continued examination of the application.

Where a dispute concerning a better title to the plant variety is under consideration by a Court, the application for registration may be declared suspended pending a final decision in the case.

#### **Article 8**

If anyone proves before the National Plant Variety Board that he has a better title to the plant variety than the applicant, the Board shall, upon request, transfer the application to him or her. The person to whom an application is thus transferred, shall pay a new application fee.

If a transfer is requested, the application may not be altered, removed from the files, rejected or approved until the claim has been finally considered.

#### **Article 9**

If the application documents are complete and there is no obstacle to the registration, the National Plant Variety Board shall publish a notice of the application in order to give the public an opportunity to file an opposition against the application.

Any opposition shall be filed in writing with the National Plant Variety Board within the period determined by the Board.

### **Article 10**

The National Plant Variety Board shall arrange for a test to be made of the plant variety material, unless this is, for special reasons, considered unnecessary. The applicant shall pay prescribed fee for testing conducted.

### **Article 11**

Where the period for submitting an opposition against the application has expired and the tests of material of the plant variety have been finalized, the examination of the application shall continue. As regards this examination, Articles 4 to 8 apply.

The applicant shall be given an opportunity to submit observations concerning oppositions filed and concerning tests carried out.

### **Article 12**

Where an application for the registration of a plant variety has been approved and the decision has taken legal force, the variety shall be entered into the Plant Variety Register and a notice of the registration be published.

Where an application which has been published according to Article 9, has been removed from the files or rejected, the decision in this respect shall be published when it has taken legal force.

## **Chapter 6**

### **The Term of Validity, Annual Fees and Subsequent Control**

#### **Article 1**

The plant breeder's right subsists from the date when the application for registration was approved and may be maintained for 25 years counted from, and including, January 1 the year after the year when the decision about the registration obtained legal force. As regards potatoes, trees and vines, the plant breeder's right may, however, be maintained for a period of 30 years calculated from the same point in time.

#### **Article 2**

A prescribed annual fee shall be paid for each calendar year for the plant breeder's right. This fee shall be paid as from, and including, the year when the application for registration was approved.

The annual fee shall be payable on the first day of the calendar year to which it relates. The latest day for the payment of the annual fee for a year which has commenced before the plant variety was registered or within two months thereafter shall, however, be payable only two months after the date of the registration. The annual fee must not be paid before the registration has been effected or earlier than six months before the calendar year to which the fee relates.

The annual fee, with the prescribed increase, shall be paid within six months after the date when it is payable.

### **Article 3**

In order to control whether a registered plant variety is stable, the National Plant Variety Board may request the holder of the plant variety right to make available to the Board reproduction material as well as necessary documents and information.

## **Chapter 7**

### **Licenses**

#### **Article 1**

If the holder of a plant breeder's right has granted someone else a right to commercially exploit a registered plant variety (license) the licensee may transfer his right further only if there is an agreement to this effect.

Where the license forms part of a business activity, it may, however, be transferred together with the activity or part thereof, unless there is an agreement to the contrary. If the license has been transferred in this manner, the transferor remains liable for the fulfillment of the license agreement.

#### **Article 2**

Where a plant breeder's right has been transferred to another person, or a license has been granted or transferred, an entry of this fact shall, upon request and against the payment of the prescribed fee, be made in the Plant Variety Register where it is shown that a license which has been recorded in the Register has expired, the entry shall be removed.

The provisions of the first paragraph apply accordingly to compulsory licenses.

The holder of the plant breeder's right shall, for the purposes of lawsuits or other legal cases relating to the plant variety, be deemed the person who has last been recorded in the Register in this capacity.

### **Article 3**

Where there is not a supply of reproduction material of a registered plant variety available on the market on reasonable terms and to the extent necessary for the national economy or otherwise from the point of view of the public interest and there is no acceptable reason for the lack of supply, a compulsory license may be granted to any person who wants to exploit the plant variety in this country. The compulsory license includes also a right to obtain reproduction material from the holder of the plant breeder's right to the extent reasonable.

### **Article 4**

A compulsory license may not be granted to persons other than those who can be presumed to be able to exploit the plant variety in an acceptable manner and in conformity with the license.

A compulsory license does not prevent the holder of the plant breeder's right from exploiting the plant variety himself or from granting a license in this respect. A compulsory license may be transferred to someone else only together with the business activity in which it is exploited or was intended to be exploited.

### **Article 5**

A compulsory license is granted by a Court which also determines the extent to which a plant variety may be exploited and decides the remunerations and other conditions for the license.

## **Chapter 8**

### **On the Termination of the Plant Breeder's Right, Etc.**

#### **Article 1**

Where the annual fee according to Chapter 6, Article 2, is not paid, the plant breeder's right shall be void as from January 1 of the year for which the fee was not paid. The National Plant Variety Board shall also remove the plant variety from the Register.

#### **Article 2**

If the holder of the plant breeder's right, in writing to the National Plant Variety Board, renounces his plant breeder's right, the Board shall remove the plant variety from the Register.

If the plant breeder's right is sequestered for debt, seized for debt or for securing the payment of a debt, or if a dispute concerning the transfer of a registration is pending, the plant variety may not, at the request of the holder of the plant breeder's right, be removed from the Register as long as the sequestering or seizure or the keeping for the payment of a debt is still valid or the dispute has not been finally decided.

### **Article 3**

A Court may, upon an action brought in this respect, invalidate the registration of a plant variety, where

1. the plant variety on the date of the filing of the application, or, if the holder of the plant breeder's right has enjoyed priority, on the date from which priority has been enjoyed, did not meet the requirement of novelty under Chapter 3, Article 2, or the requirement of distinctness in Chapter 3, Article 3,
2. the plant variety at the point in time mentioned under item 1. did not meet the requirement of uniformity under Chapter 3, Article 4, or the requirement of stability under Chapter 3, Article 5, if the variety was registered mainly on the basis of information provided by the applicant,
3. the plant variety has been registered contrary to the provisions of Chapter 3, Article 7, or
4. the plant variety has been registered for someone who was not entitled thereto and no action has been brought concerning the transfer of the registration.

A registration must not be invalidated only on the ground that the person who has obtained the registration is entitled only to a part of the plant breeder's right.

### **Article 4**

Where a plant variety has been registered for a person other than the one entitled to it under Chapter 1, Article 1, the Court shall, following an action in this respect by the person entitled to it, transfer the registration to him or her. Any action in this respect shall be brought within the period of time prescribed in Article 5.

### **Article 5**

Any action under Article 3, first paragraph, item 4, which is based on the fact that a plant variety has been registered for a person other than the one who is entitled thereto may be brought only by the person who claims to be entitled to the variety. Any action in this respect shall be brought within one year from the date when the plaintiff became aware of the registration and of the other circumstances on which the action is based. If the holder of the plant breeder's right was in good faith when the variety was registered or when the plant breeder's right was transferred to him, the action may not be brought later than three years from the registration.

In other cases an action may be brought by anyone who suffers a disadvantage from the registration and, where this is called for in the public interest, by a Public Authority as decided by the Government.

### **Article 6**

The National Plant Variety Board shall remove a plant variety from the Register where

1. the variety no longer meets the requirements under Chapter 3 as regards uniformity and stability, or
2. the holder of the plant breeder's right has not complied with an invitation under Chapter 6, Article 3, and the non-compliance constitutes an obstacle for a reliable subsequent control.

### **Article 7**

Where a plant variety denomination has been registered contrary to the provisions of this Act and the ground for non-registration remains, the National Plant Variety Board shall register a new denomination for the plant variety. The same applies where a registered variety denomination obviously has become likely to deceive the public or has become contrary to public order or likely to cause offence.

In cases referred to in the first paragraph the holder of the plant breeder's right shall be given the opportunity to propose a new denomination.

A registered denomination for a variety for which the term of protection has expired or the plant breeder's right has otherwise lapsed, may, at the request of the plant breeder's right or where there is otherwise a reason for it, following an examination of the case by the National Plant Variety Board, be removed from the Register if the denomination is no longer used.

### **Article 8**

Article 92.2 of the Council Regulation (EC) No 2100/94 on the Community Plant Breeder's Right contains special provisions which apply when a plant variety has been registered for a Community plant breeder's right after the registration of the variety according to this Act.

## **Chapter 9**

### **On Liability and Compensation for Damages, Etc.**

#### **Article 1**

Anyone who willfully or with gross negligence infringes a plant breeder's right shall be punishable by fines or imprisonment for not more than two years. A person who has violated a prohibition on penalty of a fine under Article 2 must not be adjudicated to criminal liability for the infringement covered by the prohibition.

Attempts to commit an infringement under the first paragraph, as well as the preparation of such acts, shall be punishable according to the provisions of Chapter 23 of the Criminal Code.

A public prosecutor is entitled to bring an action for violations as mentioned in the first and the second paragraphs only upon complaint by the injured party and such an action is called for in the public interest.

#### **Article 2**

Upon a request filed by the holder of the plant breeder's right or by anyone who has, on the basis of a license, the right to exploit the plant variety, a Court may order a prohibition, upon penalty of a fine, for anyone who infringes the plant breeder's right to continue the infringing act.

#### **Article 3**

Where the plaintiff shows a probable case than an act constituting an infringement takes place and it can reasonably be assumed that the defendant, through the continuation of the act, diminishes the value of the exclusive right in the plant variety, the Court may issue an injunction, upon penalty of a fine, for the time until the case has been finally adjudicated or otherwise is decided. No injunction may be issued before the defendant has been given an opportunity to respond, unless a delay would entail a risk for injury.

An injunction under the first paragraph may be issued only if the plaintiff deposits a security with the Court for the injury which may be caused to the defendant. If the plaintiff is not capable of depositing such a security, the Court may liberate him from making a deposit. As regards the type of security, the provisions of Chapter 2, Article 25, of the Enforcement Code shall apply. The security shall be examined by the Court unless the defendant has accepted it.

When the case is adjudicated, the Court shall decide whether a prohibition issued under the first paragraph shall continue to apply.

#### **Article 4**

As regards appeals against decisions under Article 3 and as regards the procedures in higher courts the provisions in Chapter 15 of the Code of Judicial Procedure on appeals against decisions apply.

#### **Article 5**

An action for the imposition of a fine may be filed by the person who has requested the injunction. In connection with such an imposition, an action may be brought for a new injunction to be issued under penalty of a fine.

#### **Article 6**

Anyone who willfully or with negligence commits an infringement of a plant breeder's right shall pay an equitable compensation for the use of the plant variety and compensation for the further damage caused by the infringement. In the determination of the amount of the compensation, also the right-owner's interest that an infringement is not committed and to circumstances of other than purely economic importance shall be taken into account.

Anyone who without intention or negligence commits an infringement of a plant breeder's right shall pay a compensation for the use of the variety, if and to the extent this is considered reasonable.

Any action for compensation may relate only to the last five years before the action was brought. If an action is not brought within the time mentioned, the right to compensation shall be lost.

#### **Article 7**

At the request of a person who has suffered injury from an infringement in a plant breeder's right, the Court may, to the extent considered reasonable in order to prevent the continuation of the infringement decide that such plant material which the infringement concerns shall, against compensation, be surrendered to the injured party, or be destroyed, and that objects the use of which would constitute an infringement shall be altered in a specified manner

or destroyed. What has been said now does not apply to persons who have in good faith acquired the material or a particular right therein and who have not themselves committed the infringement.

### **Article 8**

Property referred to in Article 7 may be seized, where it can reasonably be assumed that a violation under Article 1 has been committed. As regards such seizure, the provisions on seizure in criminal cases shall apply.

Notwithstanding the provisions in the first paragraph, the Court may, upon a request to this effect, decide that the owner of material mentioned there be entitled to dispose of the material against a reasonable compensation and upon other reasonable conditions.

The provisions in Article 7 and in the first and second paragraphs apply also as regards attempts and preparatory acts according to Article 1, second paragraph.

### **Article 9**

If anyone exploits a plant variety which is included in an application for registration, what is said about infringements of a plant breeder's right shall apply, where the application results in a registration. Criminal liability may, however, not be adjudicated for such exploitation. Compensation for damages based on an exploitation which took place before the publication according to the provisions of Chapter 5, Article 9, may, however, be determined only according to the provisions in Article 6, second paragraph.

Notwithstanding the provisions of Article 6, third paragraph, the right to compensation is not lost where an action in this respect is brought no later than one year from the registration of the plant breeder's right.

### **Article 10**

Where the registration of a plant breeder's right has been invalidated through a judgement which has taken legal force, the Court may not adjudicate a sanction or decide on other measures under Articles 1 to 9.

Where an action is brought concerning infringement of a plant breeder's right and the defendant claims that the registration should be invalidated, the Court shall, at his request, order the proceedings to be suspended until the question of the invalidation of the registration has, been finally decided. Where an action in this respect has not been brought, the Court shall, in connection with the order for suspension, determine a certain period of time for the person against whom an action for infringement is brought to initiate an action for invalidation.

### **Article 11**

Anyone who willfully or by negligence violates the provisions of Chapter 4, Article 2, shall be adjudicated to fines and shall pay compensation for the injury caused. Where the negligence is of minor importance, criminal liability shall not be adjudicated. In such cases also the amount of the compensation may be adjusted.

## **Chapter 10**

### **Provisions on Judicial Proceedings**

#### **Article 1**

The holder of a plant breeder's right or anyone who on the basis of a license has a right to exploit a plant variety, may bring an action aiming at determining whether the registration provides protection against another party. A prerequisite for this is that there is uncertainty in this respect and that this is to the disadvantage of the holder of the plant breeder's right or the licensee.

Anyone who carries out or intends do carry out a business activity may, under the same conditions, bring an action against the holder of a plant breeder's right to the effect that it shall be determined whether there is, due to the registration, an obstacle against the activity.

If it is claimed, in a case as referred to in the first paragraph, that the registration should be invalidated, the provisions of Chapter 9, Article 2, shall apply.

#### **Article 2**

Anyone who intends to bring an action for the invalidation of the registration of a plant variety, for the transfer of a registration or for the obtaining of a compulsory license shall notify the National Plant Variety Board about this fact and inform anyone who is recorded in the Plant Variety Register as a licensee having the right to exploit the plant variety. If a licensee intends to bring an action for the infringement of the plant breeder's right or for the determination of a matter as referred to in Article 1, first paragraph, the licensee shall notify the holder of the plant breeder's right about this fact.

The requirement for notification shall be considered as fulfilled when a notification has been sent, in registered mail, to the address which has been recorded in the Plant Variety Register.

Where it is not shown, when the action is brought, that a notification has been made or information has been sent, the plaintiff shall be given time to do so. If the plaintiff does not comply within the time period afforded, the action must not be taken up for consideration.

#### **Article 3**

Where there is not, under the Code of Judicial Procedure, any Court competent as regards an action relating to a better right in a plant variety, to an invalidation of the registration of a plant variety, to the transfer of such a registration, to the granting of a compulsory license or to the determination of a legal situation according to Article 1, the action shall be brought at the Stockholm City Court.

#### **Article 4**

The Court shall transmit a copy of any judgement or final decision in cases under this Act to the National Plant Variety Board.

## **Article 5**

A final decision by the National Plant Variety Board may be appealed against by the party which is concerned by the decision where it goes against him or her.

An appeal against a decision through which an application for registration has been approved may, however, be brought only by a person who has, in due course, filed an opposition against the application. Even if the opponent withdraws his appeal, the case may still be brought to a decision where special reasons for it exist.

Any decision through which an application for the transfer of a registration under Chapter 5, Article 8, has been approved may be appealed against by the applicant. Anyone who has brought an action for such a transfer may lodge an appeal against a decision through which the claim has been rejected.

## **Article 6**

A decision by the National Plant Variety Board may be appealed against before the Court of Patent Appeals ("Patentbesvdrsdttten") within two months from the date of the decision.

A final decision by the Court of Patent Appeals may be appealed against before the Supreme Administrative Court within two months from the date of the decision. As regards appeals before the Supreme Administrative Court, the provisions of Articles 35 to 37 of the Act on Administrative Proceedings (Act 1971:291) shall apply. The decision of the Court of Patent Appeals shall contain an indication of the fact that a special permission has to be obtained for the case to be brought to the Supreme Administrative Court and of the grounds on which such a permission may be granted.

## **Chapter 11**

### **Special Provisions**

#### **Article 1**

Anyone who holds a plant breeder's right and who does not have domicile in Sweden shall have a representative having his or her residence here. The representative shall be authorized to receive writs, invitations and other documents in cases relating to the plant breeder's right with the exception of writs in cases relating to criminal liability and of invitations to parties to personally appear before the Court. The representative shall be notified to the National Plant Variety Board and be recorded there.

If the holder of the plant breeder's right has not notified any representative under the first paragraph, any notices may instead be served through the transmission of the document, which is to be served to him or her, to the address recorded in the Plant Variety Register. Where a complete address is not recorded in the Register, the serving of the notice may be carried out through the holding available of the document at the National Plant Variety Board and the publishing of this fact and of the main contents of the document in a publication as decided by the Government. The serving of a notice shall be deemed to have occurred when what has been said now has taken place.

## **Article 2**

The Government or a Public Authority as decided by the Government may issue provisions concerning the amount of fees under this Act.

## **Article 3**

The Government may prescribe that plant varieties for which registration is being sought may be submitted to tests at a Public Authority in another State or at an international institution. Furthermore, the Government may prescribe that persons who apply for registration of a variety for which they have earlier applied for registration in another State shall be obliged to provide information about what the Public Authority in that State has stated to them as regards the examination of the conditions for registration.

## **Chapter 12**

### **On European Community Plant Breeder's Rights**

#### **Article 1**

Anyone who files an application for a European Plant Breeder's Right to the National Plant Variety Board for transmission according to Article 49 of the Council Regulation (EC) No 2100/94 of July 27, 1994, on the Community Plant Breeder's Right shall pay a fee, the amount of which is decided by the Government.

#### **Article 2**

The provisions of Chapter 9, Article 1, on liability for infringement of a plant breeder's right apply to infringement of a Community Plant Breeder's Right.

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1. This Act enters into force on the date decided by the Government. Through this Act the Act on Plant Breeder's Rights (No 1971:392) is abrogated. (Note: According to Regulation No 1997:392 the Act entered into force on July 1, 1997).
2. This Act applies also to plant varieties registered at the date of the entry into force which have been registered on the basis of applications filed before that date, where not otherwise follows from what is prescribed below.
3. An application for registration which has been published before the entry into force shall be processed and decided on according to the provisions previously in force.
4. The new provisions do not apply to measures taken or rights acquired before the entry into force.
5. The provisions of Chapter 2, Article 4, second paragraph, do not apply to plant variety material which has been brought into circulation according to Article 4, third paragraph, of the Act previously in force.
6. The question of invalidation of a registration of a plant variety which has been registered according to the provisions previously in force shall be determined according to the previous provisions.

7. Where someone before the entry into force has started the exploitation of plant variety material in a manner which did not require authorization by the holder of the plant breeder's right under the provisions previously in force but which requires such an authorization under this Act, he or she may, notwithstanding the new provisions, continue the planned activity to the extent necessary and customary, however not for more than five years from the entry into force. Such a right has also, under the same conditions, anyone who has taken significant measures to exploit the plant variety.
8. Where an application for registration concerns a plant variety on which the provisions previously in force were not applicable and the application is filed within one year from the entry into force of this Act, the time limit under Chapter 3, Article 2. item 1. shall be four years instead of one year.
9. As regards a decision by the National Plant Variety Board which has been taken before the entry into force, the provisions concerning appeals which were previously in force shall apply.