

Un-authorized Translation: Only the Danish version of the text has legal validity.

Act on inventions at public research institutions

Notice is hereby given of Act no. 347 of 2 June 1999 on inventions at public research institutions as amended by section 50 of Act no. 145 of 25 March 2002, section 7 of Act no. 545 of 24 June 2005, section 34 of Act no. 523 of 6 June 2007 and Act no. 1413 of 27 December 2008.

Purpose

Section 1. It is the purpose of this Act to ensure that research results produced by means of public funds shall be utilized for the Danish society through commercial exploitation.

Scope

Section 2. The Act applies

- 1) to inventions made by an employee as a part of his work at an institution as mentioned in section 6, and
- 2) to commercial exploitation of rights as mentioned in sections 12 and 14-14 b..

Section 3. In this Act, invention means an invention or creation which may be patented under the Danish Patents Act or registered as a utility model under the Danish Utility Models Act.

Section 4. In this Act, employee means any person employed at an institution as mentioned in section 6 of this Act.

Section 5. In this Act, the work of an employee means all activities performed as part of his employment.

Section 6. For the purposes of this Act, an institution is the university subject to the Danish University Act, the government research institution, the public hospital, the health research institution under the regions or The Geological Survey of Denmark and Greenland (GEUS), where the relevant employee is employed.

Distribution of the right to inventions

Section 7. The right to inventions made by an employee at an institution shall be accorded to the employee with the restrictions according to this Act.

Section 8. (1) If an employee has made an invention as part of his work, the institution has a right to transfer to itself the rights attached to the invention.

(2) The provision of subsection 1 shall also apply, if the invention has been made jointly by several employees employed at the institution.

(3) If an employee participates in a cooperation, which involves employees from several institutions, the institutions shall agree upon the distribution of their rights under this Act.

Section 9. In relation to projects which are completed in cooperation with or are financed, in full or in part, by a party not included by the Act, the institution may on its own and the employees behalf, upon prior agreement with the party concerned, renounce, in full or in part, the right to the inventions made by the project.

Notification and evaluation

Section 10. (1) If an employee has made an invention as part of his work, he shall notify the institution thereof in writing without undue delay. The employee is in this connection under an obligation to provide the institution with all necessary information in accordance with the provision of the institution.

(2) The institution may lay down specific rules concerning how the notification under subsection 1 shall take place. The institution may decide that the obligation of notification under subsection 1 shall not apply within areas where, from experience, inventions are not made.

(3) The employee does not have the right to publish nor to dispose of an invention before the institution has confirmed receipt in writing of the notification mentioned in subsection 1. The institution is under an obligation to send the confirmation as soon as possible.

Section 11. (1) Within 2 months from the date of notification under section 10(1) of this Act, the institution shall have had carried out an evaluation of the possibility of exploiting the invention commercially, and of protecting the rights to the invention and, with the employee, consider how the rights to the invention may be exploited commercially.

(2) The institution may, concurrently with its confirmation under section 10(3) of this Act, order the employee neither to publish nor to dispose of an invention for up to 2 months from receipt of the notification under section 10(1) of this Act.

(3) The time limits under subsections 1 and 2 may be extended when agreed with the employee.

(4) The institution shall, within the limit prescribed in subsection 1 or the limit agreed upon under subsection 3, make a decision on the claim of transfer of the right under section 8 of this Act, or on whether the employee maintains his right under section 7 of this Act in return for a remuneration under section 12(2) of this Act.

(5) If the institution has not, within the limit prescribed in subsection 1 or the limit agreed upon under subsection 3, given notice of its decision under subsection 4 to the employee, he shall have all rights to the invention.

(6) If the rights attached to an invention have been transferred to the institution with a view to commercial exploitation, cf. section 8 of this Act, the institution is at the same time under an obligation actively to seek the rights exploited.

Commercial exploitation

Section 12. (1) If the right to an invention, which has been transferred to the institution under section 8 of this Act, is exploited commercially, the employee having made the invention will be entitled to a reasonable remuneration from the institution.

(2) If the right to an invention, upon agreement with the institution, is exploited commercially by the employee who has made the invention, the institution will be entitled to a reasonable payment.

(3) The institution shall lay down the rules for calculation of payment under subsections 1 and 2.

Section 13. (1) The institution may, if this, according to an employee, is due to particular ethical conditions, accept that an invention shall not be the object of commercial exploitation, or be protected by filing an application for a patent or a utility model registration.

(2) Section 11 of this Act shall not apply, if decisions as mentioned in subsection 1 are made.

Section 14. (1) If the right to an invention has been transferred to the institution under section 8 of this Act, any third party may enter into an agreement on exploitation of the invention with the institution.

(2) If the right to an invention has not been transferred to the institution under section 8 of this Act, any third party may enter into all agreements on exploitation of the invention with the employee in question.

Section 14 a. Apart from rights to inventions made by an employee, cf. section 8, the institution may acquire rights of inventions as well as copyrights to software for the purpose of commercial exploitation, see section 1,

- 1) upon agreement with a student not employed at the institution, or with another party as a part of their mutual cooperation, which is fully or partially financed by public funds, given that the other party does not itself intend to utilise the rights commercially, or
- 2) upon agreement with another institution as mentioned in section 6.

Section 14 b. In events in which the institution has transferred the right to an invention to a third party, which subsequently abandons commercial exploitation of the right, the institution may enter into agreement with this third party as to reacquiring such rights. The institution may reacquire unutilised copyrights to software according to the Danish Act on Copyright.

Revenue and expenditure of the institution

Section 15. (1) The institution may incur costs in connection with acquisition, transfer and protection of the right to inventions as well as copyrights to software according to the provisions of sections 12 and 14-14 b.

(2) The institution may incur costs in connection with transfer and protection of the right to inventions which are included by section 2 of this Act but transferred to the institution at a point in time following expiration of the time limits prescribed in section 11 of this Act.

Section 16. (1) The rector, the board, or the hospital owner shall use the revenues from the transfer of rights to inventions for activities within the purpose of the institution.

(2) The institution may earn revenues by way of dividends by transferring rights according to section 14 subsection 1 or section 14 a subsection 1 to a company with limited liability in return for remuneration by way of equity shares. Correspondingly, the institution may accept to receive remuneration according to section 12 subsection 2 by way of equity shares in a company with limited liability.

(3) According to the provisions of subsection 2, the institution shall not independently or in cooperation with other institutions as mentioned in section 6 obtain such relation with the company as a parent company would have with a subsidiary according to the Danish acts on private and public limited companies.

Statute-barring

Section 17. (nullified)

Decision competence

Section 18. The decisions of the institution under this Act shall be made in the universities by the rector, in government research institutions by the board, and in public hospitals by the hospital owner. The decision of the rector, the board or the hospital owner, respectively, cannot be appealed to another administrative authority.

Entry into force, etc

Section 19. (1) The Act shall come into force on 1 July 1999.

(2) The Act shall apply to inventions made after 1 January 2000. Inventions of which the institution has not been notified by the employee before 1 January 2000 shall be considered to have been made after this date.

(3) The institution and the employee shall respect opposite rights acquired by transfer before 1 July 1999.

Section 20. The Act shall not apply to the Faroe Islands and Greenland.

Act no. 145 of 25 March 2002 includes the following commencement provision:

Section 78

(1) The Act shall come into force on 1 January 2003, see however section 79, subsection 1.¹

(2) (Excluded).

Act no. 545 of 24 June 2005 includes the following commencement provision:

Section 18

The Act shall come into force on 1 January 2007.²

Act no. 523 of 6 June 2007 includes the following commencement provision:

Section 47

The Act shall come into force on 1 January 2008.³

Act no. 1413 of 27 December 2008 includes the following commencement provision:

Section 2

Subsection 1. The Act shall come into force on 1 January 2009.⁴

Subsection 2. Section 16 subsection 3 of Act on inventions at public research institutions as drafted by section 1, number 6 of this Act shall solely apply to possessions of equity shares obtained in cooperation with other institutions after 1 January 2009.

Ministry for Science, Technology and Innovation, 17 March 2009

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¹ The amendment relates to section 6.

² The amendment relates to section 6.

³ The amendment relates to section 17.

⁴ Subsection 1 of the commencement provision relates to sections 2 and 6, section 12 subsection 3, sections 14 a and 14 b, section 15 subsection 1, section 16 subsections 2 and 3, and section 18 first sentence.