

Consolidating Act on inventions at public-sector research institutions

This is an Act to consolidate Act no. 347 of 2 June 1999 on inventions at public-sector 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

1. The purpose of this Act is to ensure that research outcomes generated using public funding are exploited commercially to the benefit of the Danish society.

Scope of the Act

2. This Act shall apply to

- 1) inventions made by employees as a part of their work for institutions as mentioned in section 6, and
- 2) commercial exploitation of rights as mentioned in sections 12 and 14-14b.

3. For the purposes of this Act, "invention" shall mean an invention or creation that can be patented under the Patents Act or registered as a utility model under the Utility Model Act.

4. For the purposes of this Act, "employee" shall mean any person who is employed by an institution as mentioned in section 6.

5. For the purposes of this Act, "work" shall mean all activities performed in the context the conditions of employment.

6. For the purposes of this Act, "institution" shall mean the university covered by the University Act; the government research institute; the public-sector hospital; the health-sciences research institution under the Regions; or the Geological Survey of Denmark and Greenland (GEUS) at which the employee in question is employed.

Distribution of the right to inventions

7. The right to inventions made by an employee of an institution shall belong to the employee with the restrictions following from this Act.

8.-(1) Where the employee has made an invention as part of their work, the institution shall be entitled to have the rights associated with the invention transferred to the institution.

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(2) The provision in subsection (1) shall also apply if the invention was made jointly by several employees employed by the institution.

(3) If an employee participates in a collaboration which involves employees from other institutions, the institutions shall enter into an agreement on the distribution of their rights pursuant to this Act.

9. In situations involving collaboration projects with, or funded in full or in part by, a party that is not covered by this Act, the institution may on its own behalf and on the behalf of its employees and following prior agreement with the party in question waive its right in full or in part to the inventions created through the project.

Notification and assessment

10.-(1) If an employee makes an invention as a part of their work, the employee shall notify the institution of this in writing and without undue delay. In this connection, the employee shall be obliged to provide the institution with all the information which the institution finds necessary.

(2) The institution may lay down more detailed regulations for how notification pursuant to subsection (1) is to take place. The institution may decide that the notification obligation pursuant to subsection (1) does not apply for areas in which experience shows that inventions are not made.

(3) The employee may not publish or utilize an invention before the institution has confirmed in writing its receipt of the notification mentioned in subsection (1). The institution shall send said confirmation as soon as possible.

11.-(1) Within two months of notification pursuant to section 10(1), the institution shall instigate an assessment of the possibility for exploiting the invention commercially and for protecting the rights associated with the invention, as well as discuss with the employee how the rights to the invention can be exploited commercially.

(2) In conjunction with its confirmation pursuant to section 10(3), the institution may order the employee not to publish or utilize an invention for up to two months from receipt of the notification pursuant to section 10(1).

(3) After agreement with the employee, the time limits set out in subsections (1) and (2) may be extended.

(4) Within the time limit stated in subsection (1) or the time limit agreed pursuant to subsection (3), the institution shall decide on requirements for transfer of the right pursuant to section 8, or on whether the employee is to retain the right pursuant to section 7 in return for payment pursuant to section 12(2).

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(5) If the institution neglects to provide its decision pursuant to subsection (4) to the employee within the time limit stated in subsection (1) or the time limit agreed pursuant to subsection (3), the employee shall be entitled to all rights to the invention.

(6) If the rights associated with an invention have been transferred to the institution with the purpose of commercial exploitation, cf. section 8, then the institution is also obliged to take active steps to exploit the rights.

Commercial exploitation

12.-(1) If the right to an invention that has been transferred to the institution pursuant to section 8 is exploited commercially, the employee who made the invention shall be entitled to fair payment from the institution.

(2) If, after agreement with the institution, the right to an invention is exploited commercially by the employee who made the invention, the institution shall be entitled to fair payment.

(3) The institution shall stipulate regulations for how to calculate payment pursuant to subsections (1) and (2).

13.-(1) If an employee has so argued on the basis of ethical considerations, the institution may accept that an invention is not to be exploited commercially, including that it is not to be protected through the submission of an application for a patent or utility model registration.

(2) Section 11 shall not apply if a decision is made as mentioned in subsection (1).

14.-(1) If the right to the invention has been transferred to the institution pursuant to section 8, a third party may enter into an agreement with the institution on exploitation of the invention.

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

14a. In addition to rights to inventions made by an employee, cf. section 8, the institution may buy rights to inventions as well as copyrights to software with a view to commercial exploitation, cf. section 1;

1) after agreement with a student who is not employed at the institution, or with another party as a part of their mutual cooperation which is funded in full or in part by public-sector funds, in so far as the other party itself does not wish to exploit the rights commercially; or

2) after agreement with another institution as mentioned in section 6.

14b. In situations in which the institution has transferred the right to an invention to a third party that subsequently relinquishes the right to exploit the invention commercially, the institution may enter into an

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agreement with the third party to regain the rights. The institution may regain the unexploited copyrights to software pursuant to the regulations in the Copyright Act.

Expenditure and income of the institution

15.-(1) The institution may pay expenses linked to the acquisition, transfer and protection of the right to inventions as well as copyrights to software under the provisions in sections 12 and 14-14b.

(2) The institution may pay expenses linked to the transfer and protection of the right to inventions covered by section 2 but transferred to the institution pursuant to the time limits stated in section 11.

16.-(1) The rector, the executive board or the hospital owner shall utilize the income from the transfer of rights to inventions on activities that fall within the scope of the institution's purpose.

(2) The institution may collect revenues in the form of dividends by transferring its rights under section 14(1) or section 14a(1) to a limited company in return for payment in the form of an equity interest. Similarly, the institution may accept payment pursuant to section 12(2) in the form of an equity interest in a limited company.

(3) The institution shall not, under the provisions in subsection (2), alone or together with other institutions as mentioned in section 6, establish a connection to the company which is similar to the connection that a parent company has to a subsidiary company pursuant to legislation on shares and limited companies.

Period of limitation

17. (Repealed)

Power of decision

18. Decisions by the institution under this Act shall be taken by the rector at the universities, by the executive board at the sector research institutes and the Geological Survey of Denmark and Greenland, and by the hospital owner at public-sector hospitals. Decisions by the rector, the executive board and the hospital owner, respectively, may not be brought before another administrative authority.

Entry into force etc.

19.-(1) This Act shall enter into force on 1 July 1999.

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(2) This Act shall apply to inventions made after 1 January 2000. Inventions about which the employee has failed to inform the institution before 1 January 2000 shall be considered to have been made after this date.

(3) The institution and the employee shall respect opposing rights acquired through transfers before 1 July 1999.

20. This Act shall not extend to the Faeroe Islands and Greenland.

Act no. 145 of 25 March 2002 contains the following provisions concerning entry into force:

78.

(1) This Act shall enter into force on 1 January 2003, cf. however, section 79(1).¹⁾

(2) (Omitted).

Act no. 545 of 24 June 2005 contains the following provisions concerning entry into force:

18.

This Act shall enter into force on 1 January 2007.²⁾

Act no. 523 of 6 June 2007 contains the following provisions concerning entry into force:

47.

This Act shall enter into force on 1 January 2008.³⁾

Act no. 1413 of 27 December 2008 contains the following provisions concerning entry into force:

2.

(1) This Act shall enter into force on 1 January 2009.⁴⁾

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(2) Section 16(3) of the Act on inventions at public-sector research institutions, in the version given in section 1, no. 6, of this Act, shall apply exclusively to holdings of equity interests obtained together with other institutions after 1 January 2009.

Ministry of Science, Technology and Development, 17 March 2009

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Official notes

¹⁾ The amendment concerns section 6.

²⁾ The amendment concerns section 6.

³⁾ The amendment concerns section 17.

⁴⁾ Subsection(1) of the provision concerning entry into force concerns sections 2 and 6, section 12(3), sections 14a and 14b, section 15(1), section 16(2) and (3), and section 18, first clause.