

## **Consolidated act on diving operations and diving equipment, etc.<sup>1</sup>**

Hereby the act on diving operations and diving equipment, etc. is promulgated, cf. consolidated act no. 936 of 20 July 2010 with the amendments deriving from section 62 of act no. 1231 of 18 December 2012 and section 2 of act no. 618 of 12 June 2013.

### Part 1

#### *Purpose and scope of the act*

**Section 1.** The purpose of the act is to secure in a safe manner the life and health of persons using diving equipment and of persons rescued in diving operations as well as to further the safety and health conditions of persons carrying out diving operations.

**Section 2.** The act shall apply to

- 1) diving operations in Danish territory and in the Danish continental shelf area, including from offshore installations and from Danish ships, and
- 2) diving equipment irrespective of whether the equipment is used in diving operations or for recreational purposes.

*Subsection 2.* The act shall not apply to crew members on a foreign ship carrying out diving operations on that ship and to persons under the Defence Command Denmark who carry out diving operations as part of their service.

### Part 2

#### *Diving operations*

**Section 3.** Diving operations shall be carried out only by persons holding a certificate as a professional diver.

*Subsection 2.* For the purposes of this act, diving operations shall mean a task carried out under the water for which the use of a breathing apparatus is required and which is normally carried out against a payment. The performance of special diving operations, such as rescue operations or the like, including tasks carried out by municipal rescue services, shall be considered diving operations irrespective of whether the work is carried out without receiving a payment.

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<sup>1</sup> The act contains provisions implementing parts of Council Directive 89/48/EEC, Official Journal 1989 L 19, p. 16, on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration, parts of Council Directive 92/51/EEC, Official Journal 1992 L 209, p. 25, on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC and parts of Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market (Official Journal L 376 of 27 December 2006, pp. 36-38).

*Subsection 3.* Diving operations shall not include tasks carried out in connection with recreational diving.

*Subsection 4.* Anyone using persons for diving operations or ordering other diving operations shall ensure that the persons concerned hold the certificates required for the task.

*Subsection 5.* Irrespective of subsections 1 and 4, foreign divers may be used from Danish ships abroad who do not hold professional diving certificates when the persons in question are not part of the ship's crew.

#### *Professional diving training programme*

**Section 4.** Professional diving training shall be held at a diving school approved by the Danish Maritime Authority.

*Subsection 2.* The Minister of Business and Growth shall lay down regulations on admission requirements, the contents of the training programme, the scope and examinations, including the issue of examination certificates and other conditions related to the training.

**Section 5.** (Repealed)

#### *Professional diving certificate*

**Section 6.** In order to acquire a certificate as a professional diver, the applicant shall prove that he has passed the training programme mentioned in section 4 and shall have satisfactory health. The certificate shall be issued by the Danish Maritime Authority free of charge. The Minister of Business and Growth shall lay down regulations on the health requirements to be met by professional divers, on medical examinations and certificates in connection with such examinations.

**Section 7.** The diver shall at any time have satisfactory health. Should the Danish Maritime Authority have any information that may give rise to doubt as to whether the person in question has satisfactory health, the authority may require that he undergoes a medical examination. This applies irrespective of whether the person concerned proves that he has undergone a medical examination according to the regulations laid down pursuant to section 6.

*Subsection 2.* An examination requested by the Danish Maritime Authority shall be free of charge for the diver.

**Section 8.** In case the diver does not meet the prescribed health requirements, the professional diving certificate shall lose its validity and may be withdrawn by the Danish Maritime Authority. The same shall apply if a diver refuses to undergo a medical examination under section 7.

*Subsection 2.* The certificate may be withdrawn for a specific period of up to five years or until further notice. The decision shall contain information about the access to request judicial review and about the time-limit for this, cf. section 9(1).

**Section 9.** The withdrawal of a professional diving certificate may be required brought before the courts by the person affected by the decision. A request for this shall be made with the Danish Maritime Authority within four weeks after the person concerned has been informed about the decision.

*Subsection 2.* When the withdrawal of a professional diving certificate is required brought before the courts, the Danish Maritime Authority shall instigate proceedings against the person concerned in accordance with the rules of civil procedure.

*Subsection 3.* A request to have a decision under section 8(1) brought before the courts shall act as a stay of the proceedings. However, the Danish Maritime Authority may decide that a request shall not act as a stay of the proceedings. This decision may be annulled by court order before deciding on the issue of the legality of the withdrawal.

**Section 10.** A diving certificate that has been withdrawn shall be returned to the Danish Maritime Authority.

*Subsection 2.* The Danish Maritime Authority may at any time return a diving certificate that has been withdrawn under section 8(1) when the conditions that motivated the withdrawal no longer exist.

*Subsection 3.* If an application for return of a diving certificate is rejected, the applicant may require the issue brought before the courts. If the case has previously been brought before the courts, the case shall, however, be brought before the courts again only if at least one year has passed since the withdrawal was affirmed. Section 8(2), the second clause, and section 9(2) shall also apply.

**Section 11.** A person holding a foreign professional diving certificate complying with the requirements of the Directive of the European Parliament and of the Council on recognition of professional qualifications shall be entitled to carry out diving operations in this country.

*Subsection 2.* The Minister of Business and Growth may lay down more detailed regulations on the access to perform professional diving, including on the recognition of foreign professional diving certificates and on the service provider's obligation to provide information to service recipients.

### *General obligations*

**Section 12.** Anyone in charge of diving operations shall, through instructions and supervision of divers and assistants, ensure that the work is carried out properly in terms of health and safety.

*Subsection 2.* Divers and assistants shall observe the directions given for the diving operations and shall help ensure that the measures taken to prevent accidents and harmful effects have the desired effect.

### *Performance of the work*

**Section 13.** The Minister of Business and Growth shall lay down regulations on the safe performance of diving operations for the diver and for persons rescued in diving, including on the employer's obligations, on the organisation of diving operations and on diving logs.

## Part 3

### *Diving equipment*

**Section 14.** Diving equipment shall be designed, manufactured, fitted and maintained so that the users' lives and health are satisfactorily safeguarded.

*Subsection 2.* The Minister of Business and Growth shall lay down regulations on diving equipment, including the arrangement and equipment, etc. of auxiliary equipment.

**Section 15.** The Minister of Business and Growth may lay down more detailed regulations on the approval of diving equipment, including auxiliary equipment, used for diving as well as on marketing and the lending and hiring out of such equipment.

#### *Surveys*

**Section 16.** Diving equipment, including auxiliary equipment, used for diving operations or for hiring out shall be surveyed.

*Subsection 2.* The Minister of Business and Growth shall lay down regulations on surveys and on the obligations of the owner of the diving equipment in this connection.

#### Part 4 *(Repealed)*

**Section 17.** (Repealed).

#### Part 5 *Inspection, etc.*

**Section 18.** The Danish Maritime Authority may order that conditions in contravention of the act or regulations or decisions pursuant to the act shall be remedied immediately or within a time-limit.

#### *Communication*

**Section 18a.** The Minister of Business and Growth may lay down provisions to the effect that written communication to and from authorities about conditions covered by this act or regulations issued pursuant to this act shall be made digitally.

*Subsection 2.* The Minister of Business and Growth may lay down more detailed regulations on digital communication, including on the use of specific computer systems, special digital formats and digital signatures or the like.

*Subsection 3.* A digital message shall be considered to have reached the recipient when it is available to the addressee of the message.

**Section 18b.** The Minister of Business and Growth may lay down provisions to the effect that the authorities may issue decisions and other documents pursuant to this act or pursuant to regulations issued pursuant to this act without a signature, with a mechanically or similarly reproduced signature or using a technique ensuring unambiguous identification of the one who has issued the decision or the document. Such decisions and documents shall be comparable with decisions and documents with a personal signature.

*Subsection 2.* The Minister of Business and Growth may lay down regulations to the effect that decisions and other documents that have exclusively been made or issued on the basis of electronic data processing may be issued solely giving the relevant authority as the sender.

#### *Payment*

**Section 19.** The Minister of Business and Growth may lay down regulations to the effect that the Danish Maritime Authority shall be paid for the costs incurred in connection with the approval of diving equipment and the survey of diving equipment.

#### *Deviations*

**Section 20.** The Minister of Business and Growth may, in connection with special diving tasks, including rescue diving operations, lay down regulations that in full or part deviate from the provisions of part 2 on diving operations and professional diving certificates. In this connection, the nature of the diving task and the safety and health conditions in connection with the performance of the task shall be considered.

**Section 21.** The Danish Maritime Authority may, in special circumstances, grant exemptions from the provisions of section 3(1) and section 16(1).

#### *Complaints*

**Section 22.** The Minister of Business and Growth may lay down regulations on the access to complain, including that complaints about the decisions made by the Danish Maritime Authority cannot be brought before another administrative authority.

### Part 6

#### *Penalty clauses, etc.*

**Section 23.** If a diver is found by judgment responsible for injury to persons in connection with the performance of diving operations, his diving certificate acquired under this act may in aggravating circumstances be suspended for a specific period not longer than five years or forever. The diving certificate may also be suspended in case of repeated neglect or contraventions of the provisions of this act or regulations issued pursuant to this act. In such cases, the prosecution shall forward the diving certificate of the person concerned and a transcript of the judgment to the Danish Maritime Authority. If a diving certificate has been suspended for longer than three years, the issue of re-acquiring the right before the expiry of the suspension may be brought before the courts. The case shall be brought before the courts in accordance with the provisions of section 78(3) of the penal code (*straffeloven*) and may, at the earliest, be brought before the courts when three years of the suspension period have passed. The right may be re-acquired only under very special circumstances.

**Section 24.** Unless the contravener is liable to a stricter punishment pursuant to other legislation, he shall be liable to punishment by fine, simple detention or imprisonment for a term not exceeding one year if he

- 1) contravenes section 3(1) and (4), section 12 and section 16(1), or
- 2) fails to observe orders issued pursuant to section 18.

*Subsection 2.* The penalty may be increased to simple detention or imprisonment for a term not exceeding two years if the contravention was committed intentionally or due to gross negligence.

*Subsection 3.* When determining the severity of the punishment under subsections 1 and 2, it shall be considered an aggravating circumstance that

- 1) the contravention has caused or threatened to cause damage to life or health,
- 2) a prohibition or order has previously been issued under section 18 for the same or analogous conduct, or
- 3) financial gain has been achieved or sought to be achieved for the contravening party or others through the contravention.

*Subsection 4.* It shall be considered particularly aggravating circumstances if the contravention has caused or threatened to cause damage to the life or health of persons below 18 years of age, cf. subsection 3(i).

*Subsection 5.* If financial gain has been achieved or sought achieved through the contravention, this shall be confiscated in accordance with the provisions of part 9 of the penal code (*straffeloven*). If it is not possible to make such a confiscation, particular account shall be taken hereof when determining the size of the fine, including additional fines.

*Subsection 6.* In regulations issued pursuant to this act, punishment by fine, simple detention or imprisonment for a term not exceeding one year may be determined. Furthermore, it may be determined that the penalty may be increased to simple detention or imprisonment for a term not exceeding two years under conditions similar to those stipulated under subsection 2.

*Subsection 7.* Liability to punishment may be imposed on companies, etc. (juridical persons) in accordance with the regulations of part 5 of the penal code (*straffeloven*).

## Part 7

### *Entry into force, etc.*

**Section 25.** The act shall enter into force on 1 July 1995.

*Subsection 2.* At the same time, the diving act shall be repealed, cf. consolidated act no. 538 of 29 September 1988.

*Subsection 3.* Regulations issued in pursuance of the act mentioned in subsection 2 shall remain in force until they are repealed or superseded by regulations issued in pursuance of this act.

*Subsection 4.* Contraventions of the regulations mentioned in subsection 3 shall be punished by fine.

*Subsection 5.* Professional diving certificates and other diving certificates issued pursuant to the act mentioned in subsection 2 shall retain their validity in accordance with what is stipulated in the certificate.

*Subsection 6.* The Minister of Business and Growth shall lay down regulations on the continued use of diving equipment that complies with the requirements in force until now.

**Section 26.** This act shall not apply to the Faroe Islands and Greenland but may by royal decree be put into force for Greenland with the amendments deriving from the special Greenland conditions.

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Act no. 1231 of 18 December 2012 contains the following entry into force provisions:

### Section 69

*Subsection 1.* The act shall enter into force on 1 January 2013.

*Subsection 2.* Administrative regulations issued pursuant to the previous provisions shall remain in force until they are amended or repealed.

### Section 70

*Subsection 1.* Sections 1-39, 41-50 and 53-68 shall not apply to the Faroe Islands and Greenland, cf. however subsections 3 and 4.

*Subsection 2.* (Left out).<sup>2</sup>

*Subsection 3.* (Left out).<sup>3</sup>

*Subsection 4.* Sections 1-10, 17, 18, 23, 29, 35-39, 41-44, 49, 50, 54, 58-63, 65 and 66 may be put into force in full or partly for Greenland by royal decree with the amendments deriving from the special Greenland conditions.

*Subsection 5.* (Left out).<sup>4</sup>

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Act no. 618 of 12 June 2013 contains the following entry into force provisions:

### Section 10

*Subsection 1.* The act shall enter into force on 1 October 2013, cf. however subsection 2.

*Subsection 2.* The Minister of Business and Growth shall determine the date of the entry into force of section 1(vi)-(xxxiv) and sections 2-9. In this connection, the Minister may determine that the provisions concerned shall enter into force on different dates.<sup>5</sup>

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<sup>2</sup> Subsection 2 concerns the act on mortgage loans and mortgage bonds, etc. (*lov om realkreditlån og realkreditobligationer m.v.*)

<sup>3</sup> Subsection 3 concerns various other acts.

<sup>4</sup> Subsection 5 concerns the act on financial stability (*lov om finansiel stabilitet*) and the act on Government injection of capital into credit institutions (*lov om statsligt kapitalindskud i kreditinstitutter*).

<sup>5</sup> Section 2 of act no. 618 of 12 June 2013 entered into force on 20 August 2013, cf. order no. 988 of 6 August 2013.

## Section 11

*Subsection 1.* (Left out).<sup>6</sup>

## Section 12

*Subsection 1.* The act shall not apply to the Faroe Islands and Greenland, cf. however subsections 2 and 3.

*Subsection 2.* Sections 1-9 may be put into force in full or partly for Greenland by royal decree with the amendments deriving from the special Greenland conditions.

*Subsection 3.* (Left out).<sup>7</sup>

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<sup>6</sup> Section 11 concerns the merchant shipping act (*søloven*).

<sup>7</sup> Subsection 3 concerns the merchant shipping act (*søloven*).