

Translation: Only the Danish document has legal validity.

*Order no. 1235 of 28 November 2019
issued by the Danish Maritime Authority*

Order on the counting and registration of persons on board passenger ships operating to or from ports of the Member States of the Community¹

In pursuance of section 1(2) and (3), section 3(1)(iii) and (vii), section 8a and section 32(9) of the Danish Act on Safety at Sea (*lov om sikkerhed til søs*), see Consolidated Act no. 1629 of 17 December 2018, and following negotiation with the Minister of Defence, the following provisions are laid down as authorised under section 1(1)(iii) of Order no. 744 of 24 June 2013 on the transfer of certain powers to the Danish Maritime Authority and on the right of appeal, etc.:

Purpose and scope of application

Section 1. The purpose of this Order is to enhance the safety and possibilities of rescue of passengers and crew on board passenger ships operating to or from ports in Member States of the Community and to ensure that search and rescue and the aftermath of any accident which may occur can be dealt with effectively.

Subsection 2. This Order applies to Danish passenger ships as well as foreign passenger ships calling at Danish ports with the following exceptions:

- (i) Ships of war and troop ships.
- (ii) Pleasure craft.
- (iii) Ships operating exclusively in port areas or in inland waterways.

Definitions

Section 2. For the purposes of this Order, the following definitions apply:

- (i) a 'nautical mile' is 1,852 metres;
- (ii) 'pleasure craft' means a vessel which is not used for commercial purposes, irrespective of its means of propulsion;
- (iii) 'port area' means an area as defined in Article 2, point (r), of Directive 2009/45/EC;
- (iv) 'high-speed craft' means a high-speed craft as defined in Regulation X/1 of the 1974 SOLAS Convention in the version applicable at the date of adoption of Directive 2017/2109/EU;
- (v) 'ISM Code' means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organisation (IMO) through Assembly Resolution A.741(18) of 4 November 1993 as amended;
- (vi) 'National Single Window' means the single window for the fulfilment of reporting obligations to the authorities in Member States in electronic format, which was introduced by Article 5 of Directive 2010/65/EU;
- (vii) 'persons' means all people on board irrespective of age;
- (viii) 'passenger ship' means a ship or a high-speed craft which carries more than twelve passengers;
- (ix) 'company' means the owner of a passenger ship or any other organisation or person such as the manager or the bareboat charterer who has assumed responsibility for operating the passenger ship from the owner;

¹ This order implements Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community, Official Journal 1998, no. L 188, page 35, as amended by Directive (EU) 2017/2109 of the European Parliament and of the Council of 15 November 2017 amending Council Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community and Directive 2010/65/EU of the European Parliament and of the Council on reporting formalities for ships arriving in and/or departing from ports of the Member States, Official Journal 2017, no. L 315, page 52.

- (x) 'passenger registrar' means the responsible person designated by a company to fulfil the ISM Code obligations where relevant or a person designated by a company as responsible for the transmission of information on persons who have embarked on a company passenger ship;
- (xi) 'regular service' means a series of ship crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either:
 - (a) according to a published timetable, or
 - (b) with crossings so regular or frequent that they constitute a recognizable systematic series;
- (xii) 'third country' means any country which is not an EU Member State;
- (xiii) 'designated authority' means the competent authority responsible for search and rescue or concerned with the aftermath of an accident and which, for these purposes, has access to the information required to be reported under this Order.

Registration of persons

Section 3. All persons on board any passenger ship which departs from a Danish port must be counted before that passenger ship departs and the number of persons must be communicated to the master of the ship.

Subsection 2. Until 21 December 2023, the number of persons on board must, before the ship departs from a port, be communicated to the company's passenger registrar or to a shore-based company system from where the information is at all times readily available for transmission to the designated authority.

Subsection 3. From 21 December 2023, the number of persons on board must be made available to the designated authority before the ship departs from a port by reporting to the Danish National Single Window.

Section 4. Before a Danish ship or a third country ship departs from a Danish port, its master shall ensure that the number of persons on board does not exceed the number the passenger ship is permitted to carry.

Section 5. Passenger ships departing from Danish ports to undertake a voyage of more than twenty nautical miles from the point of departure to the next port of call shall, before the departure, record the following information about the persons on board:

- (i) forename and family name,
- (ii) gender,
- (iii) nationality,
- (iv) date of birth, and
- (v) when volunteered by a passenger, information concerning the need for special care or assistance in emergency situations.

Subsection 2. Until 21 December 2023, the information recorded pursuant to subsection (1) must be communicated not later than 15 minutes after the ship's departure to the company's passenger registrar or to a shore-based company system from where the information is at all times readily available for transmission to the designated authority.

Subsection 3. From 21 December 2023, the information recorded pursuant to subsection (1) must be made available not later than 15 minutes after the ship's departure to the designated authority by reporting to the Danish National Single Window.

Collection and reporting of information

Section 6. As regards every passenger ship that flies the Danish flag and departs from a port located in a third country and is bound for a port located within the Community, the company shall ensure that the information specified in section 3(1) and section 5(1) is provided and made available to the designated authority of the country of the port of call.

Subsection 2. As regards every passenger ship that flies the flag of a third country and departs from a port located outside the Community and is bound for a Danish port, the company shall ensure that the information specified in section 3(1) and section 5(1) is collected and made available to the Danish designated authority as set out in section 3(2) and (3) and section 5(2) and (3), respectively.

Section 7. Companies that operate passenger ships which are required to record persons under sections 3, 5 and 6 shall lay down recording procedures and ensure that they are used effectively so that the information required is reported in an accurate and timely manner.

Subsection 2. The information must be collected and recorded in such a way that no undue delay is caused for passengers embarking or disembarking the vessel. A multiplicity of data collection on the same or similar routes is to be avoided.

Subsection 3. The company shall appoint a passenger registrar responsible for keeping and reporting the information referred to in these provisions.

Subsection 4. The company shall ensure that information concerning persons who have declared a need for special care or assistance in emergency situations is properly recorded and communicated to the master before the passenger ship departs.

Protection of personal data

Section 8. Without prejudice to other legal obligations in compliance with EU and national legislation on data protection, personal data collected in accordance with section 5(1) may not be processed or used for any other purposes. Such personal data must always be handled in accordance with EU legislation on data protection and privacy and must be erased automatically and without undue delay once it is no longer needed.

Subsection 2. Personal data collected by the company in accordance with the provisions of section 5(1) may be kept no longer than is necessary for the purposes of this Order, and in any event only until the moment the data has been made available to the designated authority as set out in section 5(2) and (3), respectively, and the ship's voyage in question has been safely completed. Without prejudice to other specific legal obligations under EU or national law, including for statistical purposes, once the information is no longer needed for this purpose, it must be erased automatically and without undue delay.

Exemptions

Section 9. A company that operates passenger ships sailing on domestic voyages or between two Member States may, if it considers it impracticable to record the information specified in Section 5(1) request to derogate, wholly or partly, from this requirement where the passenger ships concerned operate services where the annual probability that the significant wave height will exceed two metres is less than 10%, and:

- (i) where the voyage does not exceed about thirty nautical miles from the point of departure, or
- (ii) where the primary purpose of the service is to provide regular links to outlying communities for customary purposes.

Subsection 2. A request made pursuant to subsection (1) must substantiate the conditions for exemption set out in the provision, including the impracticability of the recording. In addition, it must be demonstrated that in the area where such ships operate, shore-based navigational guidance and reliable weather forecasts are provided and that adequate and sufficient search and rescue facilities are available.

Subsection 3. Derogations granted under subsection (1) may not have any adverse effect on competition.

Subsection 4. Passenger ships from a third country that is a contracting party to the SOLAS Convention cannot be exempted or granted derogations if the third country concerned does not agree to the application of such exemptions under the relevant SOLAS provisions.

Penalty provisions and entry into force, etc.

Section 10. Contravention of this Order is punishable with a fine.

Subsection 2. In determining the amount of the fine, it is considered an aggravating circumstance if the contravention has caused injury to life or health or a risk thereof.

Subsection 3. If the benefit obtained through the contravention is not confiscated, the amount of such financial benefit obtained or sought must be taken into particular account in the determination of the fine, including additional fines.

Subsection 4. Criminal liability may be imposed on companies, etc. (legal persons) under the rules of Part 5 of the Danish Criminal Code (*straffeloven*).

Section 11. This Order enters into force on 21 December 2019.

Subsection 2. Technical Regulation of 15 December 1998 on the counting and registration of the persons on board passenger ships is repealed.

Section 12. This Order applies to Greenland passenger ships only when they call at ports within the Community.

Danish Maritime Authority, 28 November 2019

Martin Hvid John
On behalf of the Director General

/ Per Sønderstrup