

Act to amend the Merchant Shipping Act

Act no. 599 of 24 June 2005

Act to amend the Merchant Shipping Act

(Liability for pollution damage caused by bunker oil and liability for damage in connection with the carriage of hazardous and noxious substances by sea)

We Margrethe the second, by the grace of God Queen of Denmark hereby witness: Folketinget (the Danish Parliament) has adopted and We with Our consent hereby enact the following Act:

Section 1

The Merchant Shipping Act (*søloven*), cf. Consolidated Act no. 538 of 15 June 2004 as amended by Act no. 1172 of 19 December 2003, shall be amended as follows:

1. After section 151 the following shall be inserted:

»152.-(1) In this Act tonnage shall mean the gross tonnage of the ship calculated in accordance with the tonnage measurement regulations contained in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969.

(2) In this Act SDR shall mean the Special Drawing Rights applied by the International Monetary Fund. Conversion of SDR into Danish currency shall be carried out according to the exchange rate on the date, on which security is provided for the liability. If security cannot be provided, conversion shall be carried out according to the exchange rate on the date of payment. If a limitation fund is constituted according to parts 9, 9a, 10 or 11, conversion shall, however, be carried out according to the exchange rate on the date when the limitation fund is considered as constituted according to section 234(3), unless security for the liability has been provided before the constitution of the fund.«

2. Section 173, no. 2 shall be worded as follows:

»2) claims arising from damage or costs of the nature mentioned in section 191 and which are covered by section 206(1), and claims arising from damage or costs of the nature mentioned in section 211 and which are covered by section 227.«

3. Section 175(6) shall be repealed.

Subsection (7) shall hereafter become subsection (6).

4. In section 182(1), 1st clause », cf. section 170(1)« shall be omitted.

5. Part 9a shall be worded as follows:

* Throughout the translation the term "shipowner" is used to denote the Danish term "reder" for which there is no directly equivalent English term. The "reder" is the entity that operates the ship for its own account, typically the owner or demise charterer of the ship. Time and voyage charterers are not considered "reder".

»Part 9a

Regarding liability for damage caused by bunker oil

183.-(1) The owner of a ship shall, irrespective of who is at fault, be liable for any pollution damage. If an incident consists of a series of occurrences having the same origin, the liability shall attach to the owner at the time of the first of such occurrences.

(2) In this part pollution damage shall mean loss or damage outside the ship by contamination resulting from the escape or discharge of bunker oil from the ship provided that compensation for impairment of the environment, other than loss of profit from such impairment, shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken. Pollution damage shall also mean costs, damage or loss caused by reasonable preventive measures undertaken to avoid or limit pollution damage after the incident which causes pollution damage or causes serious and immediate risk of pollution damage has taken place.

(3) In this part bunker oil shall mean any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for operation or propulsion of the ship, however not such bunker oil covered by the regulations of part 10.

(4) In this part owner shall mean the owner of the ship, including the registered owner, shipowner*, bareboat charterer, manager or other persons operating the ship instead of the owner.

(5) In this part registered owner shall, for registered ships, mean the person registered as the owner of the ship, or in absence of registration, the person owning the ship. If a ship is owned by a state and operated by a company which in that state is registered as the ship's operator, that company shall be considered as the owner of the ship.

(6) When more than one person are liable in accordance with the regulations of this provision, their liability shall be joint and several.

(7) Bunkers Convention shall mean the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001.

184.-(1) No liability for pollution damage shall attach to the owner if the owner proves that the damage:

- 1) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character,
- 2) was wholly caused by an act or omission done with intent to cause damage by a third party, or
- 3) was wholly caused by the negligence or other wrongful act of any public authority for the maintenance of lights or other navigational aids.

(2) If the owner proves that the pollution damage resulted from an act or omission done with intent or to cause damage by the person who suffered the damage or from negligence of that person, the owner may be exonerated wholly or partially from liability to such person.

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185.-(1) No claim for compensation for pollution damage shall be made against the owner otherwise than in accordance with this part. This part shall not affect the right to limit liability in accordance with part 9.

(2) No claim for compensation for pollution damage may be made against

- 1) any person for whom the owner is responsible for or the members of the complement,
- 2) the pilot or any other person, who performs services for the ship,
- 3) any person performing salvage operations with the consent of the owner, the shipowner* or the master, or on the instructions of a competent public authority,
- 4) any person taking preventive measures to avoid or limit pollution damage, or
- 5) employees or other persons acting for the persons mentioned in nos. 2-4, unless the damage resulted from their intentional act or gross negligence.

(3) There shall be no right of recourse for pollution damage against the persons mentioned in subsection (2), nos. 1-5, unless the damage resulted from their intentional act or gross negligence and with knowledge that such damage would probably result. Regarding recourse in general, ordinary legal rules shall apply.

186.-(1) The registered owner of a Danish ship having a tonnage greater than 1,000 GT shall have approved insurance or other guarantee to cover the liability mentioned in section 183 and within the limitation of liability stated in section 175. A certificate attesting that such insurance or guarantee is in force shall be issued. The ship may not be used without a valid certificate.

(2) The provisions of subsection (1) shall apply correspondingly to ships which are not domiciled in the Realm and which enter or leave a Danish port or other loading or unloading place in Denmark or on the Danish continental shelf, provided such ships have a tonnage of more than 1,000 GT. Ships registered in a State Party to the Bunkers Convention shall have the certificate stipulated in the Convention which states that the insurance or other guarantee is in force.

(3) With the exceptions consequential upon section 190b, the provisions of subsections (1) and (2) shall also apply to ships owned by the Danish state or another state, as such ships, instead of being provided with the insurance or guarantee mentioned above, may be provided with a certificate issued by the appropriate authority stating that the ship is owned by the state and that the ship's liability is covered within the limits prescribed in section 175.

(4) The Minister for Economic and Business Affairs, in accordance with the Bunkers Convention, may lay down more detailed regulations on insurance and guarantees, including on the requirements to be met by the insurance contract or guarantee in order to be approved as well as on the certificate, its form, content, issue and validity. The Minister for Economic and Business Affairs may leave the issue of certificates to others, including private persons.

(5) The Minister for Economic and Business Affairs may issue certificates for ships, the owners of which are registered in Denmark, but are bareboat registered in the register of a foreign country.

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(6) The Minister for Economic and Business Affairs may lay down more detailed regulations on the use of electronic registers in connection with the certificates referred to in this provision.

(7) The Minister for Economics and Business Affairs may lay down more detailed regulations on fees for issuing certificates.

187. If a ship is not provided with the insurance or guarantee or the certificate required by section 186, the Danish Maritime Authority or other authorities duly authorised by the Minister for Economic and Business Affairs may refuse the ship access to, or refuse exit from a Danish port or other place of loading and discharge in Denmark or on the Danish continental shelf and take the necessary measures to prevent pollution damage.

188. Any claim for compensation for pollution damage may be brought directly against the insurer, including the person providing a guarantee for the registered owner's liability to pay compensation. The insurer may avail himself of the provisions on limitation of liability under section 175, even in the event the owner is not entitled to limitation of liability. The insurer may further avail himself of the provisions on exemption from liability which the owner himself would have been entitled to invoke. The insurer may not, however, avail himself of defences against the claimant which the insurer would be entitled to invoke against the registered owner except for the defence that the damage resulted from the wilful misconduct of the registered owner himself.

189.-(1) Actions against the owner or the insurer regarding liability for pollution damage may be brought before a Danish court provided the pollution damage arose in Danish territory or exclusive economic zones or measures have been taken to avert or minimise pollution damage in such an area notwithstanding where said measures have been taken.

(2) When a Danish court is competent under subsection (1), such court shall also have competence in any action in respect of pollution damage resulting from the same incident or series of occurrences with the same origin and which occurred in a foreign state which is a State Party to the Bunkers Convention or in the exclusive economic zone of this state or any other area stipulated in accordance with international law or which results from measures taken to avert or minimise pollution damage in the territory of such a state, notwithstanding where such measures have been taken.

(3) Actions for pollution damage according to the regulations of this part may not otherwise be brought in Denmark.

(4) When a Danish court is competent under subsection (1), the action shall be brought before the Copenhagen Maritime and Commercial Court.

190. Enforceable decisions against the owner of the ship or the registered owner's insurer issued in a State Party to the Bunkers Convention shall be binding and may be enforced in the Realm when the decision is issued by a court which is competent under article 9 of the Bunkers Convention.

190a. The provisions of sections 183-185 and 188-190 on liability for pollution damage shall apply to pollution damage arising in the Realm or in the Danish exclusive economic zone, or in another State Party to the Bunkers Convention, or in the exclusive economic zone of this state or any other corresponding area stipulated in accordance with international law, and to measures taken to avert or minimise such pollution damage notwithstanding where such measures are taken.

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190b. This part shall not apply to warships or other ships owned or operated by a state, and which at the time of the oil escape or discharge from the ship exclusively were used on Government non-commercial service. However, sections 175 and 183-185 shall apply in cases where pollution damage has occurred in the Realm or in the Danish exclusive economic zone.

190c. The provisions in this part shall not apply if this would violate Denmark's convention obligations to states which are not State Parties to the Bunkers Convention.«

6. In *section 191(1)* the following shall be inserted as the *2nd clause*:

»If pollution damage is caused by a series of occurrences having the same origin, liability shall attach to the person who, at the time of the first of such occurrences, was owner of the ship.«

7. In *section 191(2)* »In this part« shall be inserted before »pollution damage shall mean«.

8. In *section 191(5)* »notified as owner to the ship register« shall be changed to »registered as owner or, if the ship is not registered, the person who is the owner of the ship«.

9. *Section 191(6)* shall be repealed.

Subsections (7)-(9) shall hereafter become subsections (6)-(8).

10. *Section 192(1)* shall be worded as follows:

»The owner shall not be liable if he proves that the damage:

- 1) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character,
- 2) was wholly caused by an act or omission done with intent to cause damage by a third party, or
- 3) was wholly caused by the negligence or other wrongful act of any public authority for the maintenance of lights or other navigational aids.«

11. *Section 193(2) and (3)* shall be worded as follows:

»(2) No claim for compensation may be made against

- 1) any person for whom the owner is responsible for or the members of the complement,
- 2) the pilot or any other person, who performs services for the ship,
- 3) the ship's charterer or manager, where this is not the owner of the ship, any charterer, shipper, consignee, owner or consignee of the cargo,
- 4) any person performing salvage operations with the consent of the owner, the shipowner* or the master or on the instructions of a competent public authority,
- 5) any person taking preventive measures to avoid or limit pollution damage,
- 6) employees or other persons acting for the persons mentioned in nos. 2-5, unless the damage resulted from their intentional act or gross negligence.

(3) There shall be no right of recourse for pollution damage against any person mentioned in subsection (2), nos. 1, 2, 4, 5, or 6 unless the damage resulted from such person's intentional act or gross negligence and with knowledge that such damage would probably result. Regarding recourse in general, ordinary legal rules shall apply.«

12. In *section 194(1)*, *1st clause* (omitted), and in the *3rd clause* », cf. however subsection (3) « shall be inserted after »SDR«.

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13. *Section 194(4)* shall be repealed.

Subsection (5) shall hereafter become subsection (4).

14. In *section 195(1)* »in Denmark with the Copenhagen Maritime and Commercial Court and otherwise« shall be deleted and as the *2nd clause* the following shall be inserted:

»In Denmark this shall take place at the Copenhagen Maritime and Commercial Court.«

15. In *section 196(1), 2nd clause* »for such a claim« shall be inserted after »arrested«, and after »the owner«, »for such claims« shall be deleted.

16. In *section 197(2)* (omitted).

17. In *section 198*, the following shall be inserted as the *2nd clause*:

»The Minister for Economic and Business Affairs may leave the issue of certificates to other persons, including private persons.«

18. In *section 198*, the following shall be inserted as *subsections (2) and (3)*:

»(2) The Minister for Economic and Business Affairs may issue a certificate for a ship, the owner of which is registered in Denmark, but bareboat registered in the register of a foreign country.

(3) The Minister for Economic and Business Affairs may lay down more detailed regulations on the use of electronic registers in connection with the certificates referred to in this provision.«

19. In *section 199* »provided with« shall be changed to »has«, »the ship inspectors« shall be changed to »the Danish Maritime Authority«, and (omitted).

20. *Subsection 200(1), 5th clause* shall be repealed.

21. In *section 201(1)* »and shall be promulgated by order of the Minister for Economic and Business Affairs in its English or French original or in Danish translation« shall be deleted.

22. In *section 202(1), 1st clause* »and shall provide security for these contributions pursuant to regulations to be laid down by the Minister for Economic and Business Affairs« shall be deleted.

23. In *section 202(4), 1st clause* »in accordance with provisions laid down by the Minister for Economic and Business Affairs« shall be deleted, and after the 1st clause the following shall be inserted:

»The Minister for Economic and Business Affairs may lay down more detailed regulations for the obligations to submit communication and to pay contributions.«

24. *Section 202(5)* shall be repealed.

25. In *section 203(1)* »the owner's insurer« shall be changed to »the insurer«, »only« shall be deleted, and »exclusive economic zones« shall be changed to »the Danish exclusive economic zone«.

26. In *section 203*, the following shall be inserted after *subsection (2)* as a new subsection:

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»(3) Actions for pollution damage according to the regulations of this part may not otherwise be brought in Denmark.«

Subsections (3) and (4) shall hereafter become subsections (4) and (5).

27. *Section 204* shall read as follows:

»204.-(1) Actions for compensation under the 1992 Fund Convention may be brought before a Danish court in the circumstances mentioned in section 203(1) and (2), and only if actions in respect of the same pollution damage against the owner or the insurer have not been brought in another State Party to the 1992 Fund Convention. Actions for compensation under the Supplementary Fund Protocol of 2003 may be brought before a Danish court in the circumstances mentioned in section 203(1) and (2), and only if actions in respect of the same pollution damage against the owner or the insurer have not been brought in another State Party to the Supplementary Fund Protocol of 2003.

(2) When actions for compensation against the 1992 Fund have been brought before a court in a State Party to the 1992 Fund Convention but not to the Supplementary Fund Protocol of 2003, actions for compensation according to the Supplementary Fund Protocol of 2003 concerning the same incident may, notwithstanding subsection (1), be brought before a Danish court in the circumstances mentioned in section 203(1) and (2).

(3) Actions for pollution damage according to the regulations of this part may not otherwise be brought before a Danish court.

(4) Actions against the 1992 Fund and the Supplementary Fund in Denmark shall be brought before the Copenhagen Maritime and Commercial Court.

(5) The 1992 Fund and the Supplementary Fund may be, or be brought in as, a party in any actions for compensation under this part against the owner of the ship or the owner's insurer.

(6) When actions are brought against the owner of the ship or the owner's insurer, each of the parties may inform the 1992 Fund and the Supplementary Fund about the actions. The decision shall become binding on the fund in question in the sense that the decision may not be disputed by the fund when the decision is enforceable, and if the information has been effected promptly so that the fund could effectively represent its interests.«

28. In *section 206*, the following shall be inserted as *subsection (3)*:

»(3) Subsection (2) shall not apply to the extent that special provisions of this Act on liability for pollution damage as referred to in section 191(2) regulate the circumstance.«

29. In *section 207*, *2nd clause* »exclusive economic zones« shall be changed to » the Danish exclusive economic zone«.

30. After part 10, the following shall be inserted:

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»Part 11

Regarding liability for damage in connection with the carriage of hazardous and noxious substances by sea under the regulations of the HNS Convention

211.-(1) The owner of a ship shall, irrespective of who is at fault, be liable for any HNS damage, caused during the carriage of HNS substances as cargo, and which has been caused by the polluting properties of the HNS substance. If HNS damage is caused by an incident which consists of a series of occurrences having the same origin, the liability shall attach to the owner at the time of the first of such occurrences.

(2) HNS damage shall mean damage resulting in

- 1) loss of life or personal injury on board or outside the ship carrying HNS substances,
- 2) loss or damage to property outside the ship carrying HNS substances,
- 3) loss or damage by contamination of the environment, provided that compensation for impairment of the environment, other than loss of profit from such impairment, shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken, and
- 4) costs, damage or loss caused by reasonable preventive measures undertaken to avoid or limit HNS damage after the incident which causes pollution damage or causes serious and immediate risk of HNS damage has taken place.

(3) The regulations of this part shall not apply to

- 1) such pollution damage as described in section 191(2),
- 2) pollution damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code (the IMDG Code) or in appendix B of the Code for Safe Practice for Solid Bulk Cargoes (the BC Code),
- 3) claims pursuant to contracts on carriage of goods and passengers, or
- 4) the extent that they are incompatible with the legislation on compensation for employees or social security schemes, which applies.

(4) If it is not possible in a reasonable way to separate damage caused by HNS substances and damage caused in other ways, the total damage shall be considered to be caused by HNS substances. This shall not apply to the extent that there is pollution damage as mentioned in section 191 or damage caused by radioactive material as mentioned in subsection (3), nos. 1 and 2.

212.-(1) In this part HNS substances shall mean

- 1) oils carried in bulk listed in appendix I of annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78),
- 2) noxious liquid substances carried in bulk referred to in appendix II of annex II to the International Convention on Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) and those substances and mixtures provisionally categorized as falling in category A, B, C or D in accordance with regulation 3(4) of the said annex II;
- 3) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, 1983,

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- and the dangerous products for which the preliminary suitable conditions for the carriage have been stipulated in accordance with paragraph 1.1.3 of the Code,
- 4) dangerous substances and pollutants, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code (the IMDG Code),
 - 5) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk, 1983 (the IGC Code), and the products for which preliminary suitable conditions for the carriage have been stipulated in accordance with paragraph 1.1.6 of the Code,
 - 6) liquid substances carried in bulk with a flashpoint not exceeding 60 °C (measured by a closed cup test),
 - 7) solid bulk materials possessing chemical hazards covered by appendix B of the Code of Safe Practice for Solid Bulk Cargoes (the BC Code), to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code (the IMDG Code) when carried in packaged form,
 - 8) residues from the previous carriage in bulk of substances referred to in nos. 1-3 and 5-7.

(2) The codes and conventions mentioned in subsection (1) and section 211(3), no. 2 shall apply with subsequent amendments when these are adopted by the relevant organs in the United Nations International Maritime Organisation (IMO), and have entered into force.

(3) In this part ship shall mean any floating craft constructed or adapted for sea carriage.

(4) In this part owner shall mean, for registered ships, the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. If a ship is owned by a state and operated by a company which in that state is registered as the ship's operator, that company shall be considered as the owner of the ship.

(5) In this part carriage by sea shall mean the period from the time when the HNS substances enter any part of the ship's equipment, on loading, to the time they cease to be present in any part of the ship's equipment, on discharge. If no ship's equipment is used, the period begins and ends respectively when the HNS substances cross the ship's rail.

(6) The HNS Convention shall mean the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996. The HNS Fund shall mean the International Hazardous and Noxious Substances Fund established pursuant to the HNS Convention.

(7) In this part State Party shall mean a state which has acceded to the HNS Convention.

213.-(1) The owner shall not be liable if he proves that the damage

- 1) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character,
- 2) was wholly caused by an act or omission done with intent to cause damage by a third party,
- 3) was wholly caused by the negligence or other wrongful act of any public authority for the maintenance of lights or other navigational aids,
- 4) the failure of the shipper or any other person to provide information concerning the hazardous and noxious nature of the substances shipped either
 - a) has caused the damage, wholly or partly, or

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b) has led the owner not to obtain insurance in accordance with section 219,

provided that neither the owner nor any person for whom he is responsible knew or ought reasonably to have known of the hazardous and noxious nature of the substances carried.

(2) If the owner proves that the damage resulted from an intentional act by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability.

214.-(1) No claim for compensation according section 211 for HNS damage shall be made otherwise than in accordance with this part.

(2) No claim for HNS damage may be made against

- 1) any person for whom the owner is responsible or the members of the complement,
- 2) the pilot or any other person, who performs services for the ship,
- 3) the ship's owner or manager, where this is not the owner of the ship, any charterer, shipper, consignor, owner or consignee of the cargo,
- 4) any person performing salvage operations with the consent of the owner or master or on the instructions of a competent public authority,
- 5) any person taking preventive measures to avoid or limit HNS damage, or
- 6) employees or other persons acting for the persons mentioned in nos. 2-5,

unless the damage resulted from their intentional act or gross negligence.

(3) Notwithstanding the regulation in subsection (2), no. 3, liability to pay compensation may be made valid against persons who are guilty of negligence pursuant to section 213(1), no. 4 to the extent that the owner is exonerated from liability.

(4) There shall be no right of recourse for HNS damage against any person mentioned in subsection (2), nos. 1, 2, 4, 5, or 6 unless the damage resulted from such person's intentional act or gross negligence and with the knowledge that such damage would probably result. Regarding recourse in general, ordinary legal rules shall apply.

215.-(1) The owner shall be entitled to limit his liability under section 211 to 10 million SDR for a ship with a tonnage of no more than 2,000 units of tonnage. For a ship with a tonnage in excess thereof, this amount shall be raised by 1,500 SDR for each unit of tonnage from 2,001 to 50,000 units of tonnage and by an additional 360 SDR for each unit of tonnage exceeding 50,000 units of tonnage. The aggregate amount of compensation shall not, in any event, exceed 100 million SDR, cf. however, subsection (3). The owner shall have unlimited liability for interest and legal expenses.

(2) The limits of liability mentioned shall apply for all liability in respect of any one incident or in respect of a number of occurrences with the same origin.

(3) Liability may not be limited if the HNS damage resulted from the intentional act or gross negligence of the owner and with the knowledge that such damage would probably result.

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(4) The Minister for Economic and Business Affairs may change the limits of liability in subsection (1) in accordance with decisions taken pursuant to article 48 of the HNS Convention.

216.-(1) If HNS damage has resulted from an incident involving two or more ships, each of which is carrying HNS substances, each owner shall be liable for the damage under the regulations in sections 211-213. The owners shall be jointly and severally liable for all such damage which is not reasonably separable.

(2) Owners shall be entitled to the limits of liability applicable to each of them under section 215.

(3) Regarding recourse between the owners in general, ordinary legal rules shall apply.

217.-(1) If the owner wishes to limit his liability in accordance with section 215, the owner may constitute a limitation fund with a court or other competent authority with which the action for compensation according to section 211 is brought or may be brought. In Denmark this shall take place by the Copenhagen Maritime and Commercial Court.

(2) The fund shall be distributed proportionally between all claims arising from the same incident or series of occurrences having the same origin. When distributing the fund, claims in respect of death or personal injury shall have priority over other claims. This priority shall not apply to the part of the aggregate of such claims exceeding two-thirds of the total amount of compensation, cf. section 215. Section 176(3) and (4) shall apply correspondingly.

(3) Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise HNS damage shall rank equally with other claims in the distribution of the fund.

(4) The more detailed regulations on the constitution and distribution of the fund appear in part 12.

(5) If, in accordance with the HNS Convention, the owner has constituted a limitation fund in a foreign State Party, this shall have the same effect for the right of the owner to limitation of liability as constitution of a fund with the Copenhagen Maritime and Commercial Court.

218.-(1) If the owner is entitled to limit his liability under section 215, and if the owner has constituted a fund in accordance with section 217(1), the ship may not be arrested or seized, and no person may exercise any other rights against the ship or any other property belonging to the owner for claims against the fund. If the ship or any other property belonging to the owner has been arrested for such a claim, or if the owner has provided security to avoid arrest, the arrest shall be lifted and the security released.

(2) The provision in section 1 shall apply correspondingly when the owner in accordance with the HNS Convention has constituted a limitation fund in a foreign State Party, provided the claimant has access to the court or other authority administering the fund and the fund is actually available in respect of his claim.

219.-(1) The owner of a Danish ship carrying HNS substances as cargo shall have approved insurance or other guarantee to cover the liability mentioned in section 211 and within the limitation

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of liability stated in section 215. A certificate attesting that such insurance or guarantee is in force shall be issued. The ship may not be used without a valid certificate.

(2) The provision in subsection (1) shall apply correspondingly to ships which are not domiciled in the Realm and which enter or leave a Danish port or other place of loading or discharge in Denmark or on the Danish continental shelf provided such ships are carrying HNS substances. Ships registered in a State Party shall have the certificate stipulated in the Convention which states that the insurance or security is in force.

(3) With the exceptions consequent upon section 228, the provisions of subsections (1) and (2) shall also apply to ships owned by the Danish state or another state, as such ships, instead of being provided with the insurance or guarantee mentioned above, may be provided with a certificate issued by the appropriate authority stating that the ship is owned by the state and that the ship's liability is covered within the limits prescribed by section 215.

(4) The Minister for Economic and Business Affairs, in accordance with the HNS Convention, may lay down more detailed regulations on insurance and guarantees, including on the requirements to be met by the insurance contract or the guarantee in order to be approved as well as on the certificate, its form, content, issue and validity. The Minister for Economic and Business Affairs may leave the issue of certificates to others, including private persons.

(5) The Minister for Economic and Business Affairs may issue certificates for ships, the owners of which are registered in Denmark, but bareboat registered in the register of a foreign country.

(6) The Minister for Economic and Business Affairs may lay down more detailed regulations on the use of electronic registers in connection with the certificates referred to in this provision.

(7) The Minister for Economic and Business Affairs may lay down more detailed regulations on fees for issuing certificates.

220. If a ship is not provided with the insurance or guarantee or the certificate required by section 219, the Danish Maritime Authority or other authorities duly authorised by the Minister for Economic and Business Affairs may refuse the ship access to, or refuse exit from a Danish port or other place of loading and discharge in Denmark or on the Danish continental shelf or order that the ship be unloaded or towed.

221.-(1) Any claim for compensation for HNS damage may be brought directly against the insurer, including the person providing a guarantee for the owner's liability to pay compensation. The insurer may avail himself of the provisions on limits of liability under section 215, even in the event the owner is not entitled to limitation of liability. The insurer may further avail himself of the provisions on exemption from liability which the owner himself would have been entitled to invoke. The insurer may not, however, avail himself of defences against claimants which the insurer would be entitled to invoke against the owner except for the defence that the damage resulted from the wilful misconduct of the owner himself.

(2) The insurer may constitute a limitation fund pursuant to section 217 with the same legal effect as if it had been constituted by the owner himself. Such a fund may be constituted notwithstanding

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that the owner has no right to limit liability, but in such circumstances the constitution of the fund shall not limit the rights of the claimant against the owner.

222.-(1) Where the claimant has been unable to obtain full compensation under sections 211-217 and 221, such person shall be entitled to compensation according to the regulations on compensation from the HNS Fund in the HNS Convention. The regulations on the HNS Fund in chapter III of the HNS Convention and annex II shall apply in the Realm.

(2) The provisions of section 214 restricting access to recourse against the persons mentioned shall apply correspondingly to claims for recourse against the HNS Fund.

(3) If the aggregate amount of compensation mentioned in article 14, paragraph (5) of the HNS Convention is raised according to the procedure of article 48 of the Convention, the Minister for Economic and Business Affairs may lay down rules on the new aggregate amount of compensation.

223.-(1) Anyone who annually receives more than 20,000 tons HNS substances carried by ship as cargo shall pay contributions to the HNS Fund according to the regulations of articles 16-20 of the HNS Convention. However, contributions for liquefied natural gas of light hydrocarbons with methane as the main constituent (LNG) shall be paid by the person who immediately prior to the discharge held title to the substance, notwithstanding the quantity of LNG. The obligation to pay contributions for anyone receiving heavy oil covered by section 191(4) shall however take effect for these substances when such person has received more than 150,000 tons annually.

(2) The receiver shall mean the person who physically receives contributing cargo in Danish Ports or terminals. If the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver if the agent discloses the principal to the HNS Fund.

(3) Cargo in transit which is transferred directly, or through a port or place of discharge, from one ship to another, either wholly or in part, in the course of the carriage from the port or terminal of original loading to the final destination shall not be considered as contributing cargo. Such cargo shall be considered as received at the final destination.

(4) Recipients in Denmark shall be obliged to submit data on the quantity received. The persons who immediately prior to discharge held title to LNG shall also be obliged to provide data on the quantity. The Minister for Economic and Business Affairs may lay down more detailed regulations on the obligations to submit data and to pay contributions. If the undertaking is operated in company form, it shall be the responsibility of the members of the board of management, or those who may rank alongside the board of management, to ensure that the obligation to submit is fulfilled. If the obligation to submit communication is not fulfilled by the due date, the Minister for Economic and Business Affairs may, on the basis of an estimate, determine and report the assumed imported quantities.

(5) The Minister for Economic and Business Affairs shall appoint the public authority which may carry out direct supervision of the data from the undertakings on HNS imports. Regarding inspection and supervision of HNS substances, this authority shall have the right to, without a court order, carry out supervision of imports of contributing HNS substances received by Danish undertakings, including access to undertakings importing these substances, and to the financial statements of the undertakings, records or the like documenting the import.

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224.-(1) Actions against the owner or the owner's insurer regarding liability for HNS damage may only be brought before a Danish court provided

- 1) the HNS damage was caused in Danish territory, including territorial sea, or if damage due to contamination of the environment, cf. section 211(2), no. 3, has arisen in the Danish exclusive economic zone or if damage was caused by measures to avert or minimise such damage notwithstanding where such measures have been taken,
- 2) an incident has caused HNS damage exclusively outside the territory, including the territorial sea, of any state and such damage is neither pollution damage of a nature referred to in section 211(2), no. 3 nor is due to measures taken to avert or minimise such pollution damage. In this case actions may only be brought before a Danish court if
 - a) the ship is registered in Denmark or, if unregistered, it is entitled to fly the Danish flag,
 - b) the owner has habitual residence or principal place of business in Denmark, or
 - c) a limitation fund has been constituted in Denmark pursuant to section 217.

(2) When a Danish court is competent under subsection (1), no. 1, it may judge any claim for liability for the HNS damage as a result of an incident or a series of occurrences having the same origin, notwithstanding where such damage arose.

(3) Actions for HNS damage according to the regulations of this part may not otherwise be brought in Denmark.

(4) Claims in respect of distribution and payments by a limitation fund mentioned in section 217 may not be brought before Danish courts if the fund has been constituted in another State Party.

(5) When a Danish court is competent under subsection (1), the action shall be brought before the Copenhagen Maritime and Commercial Court.

225.-(1) Actions for compensation against the HNS Fund may only be brought before a Danish court in the circumstances mentioned in section 224(1) if actions in respect of the same HNS damage against the owner or the insurer have not already been brought in another State Party.

(2) Notwithstanding the provision in subsection (1), actions against the HNS Fund may be brought before a Danish court in the circumstances mentioned in section 224(1), no. 1, provided the ship carrying the HNS substances which caused the damage has not been identified, if actions in respect of the same HNS damage against the HNS Fund have not already been brought in another State Party.

(3) Actions against the HNS Fund may not otherwise be brought in Denmark.

(4) Actions against the HNS Fund shall in Denmark be brought before the Copenhagen Maritime and Commercial Court.

(5) The HNS Fund shall have the right to be, or be brought in as, a party to any legal actions for compensation against the owner or the insurer according to this part.

(6) When an action has been brought against the owner or the owner's insurer, each party shall be entitled to notify the HNS Fund of the proceedings. The judgement shall become binding on the Fund, in the sense that any facts and findings in the judgment may not be disputed by the Fund

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when the judgement is enforceable, if notice has been made promptly so that the Fund could effectively represent its interests.

226.-(1) Enforceable judgement against the owner of the ship or his insurer issued in a State Party shall be binding and may be enforced in the Realm when the judgement is issued by a court which is competent under article 38 of the HNS Convention.

(2) The same shall apply to judgements issued against the HNS Fund in a State Party by a court competent under article 39, nos. 1, 2, and 4 of the HNS Convention.

227. The provisions in this part shall apply correspondingly to

- 1) HNS damage caused in the Realm, including territorial sea, or in another State Party,
- 2) damage caused by contamination of the environment, cf. section 211(2), no. 3 in the Danish exclusive economic zone or in the exclusive economic zone or any other area stipulated in accordance with international law in another State Party,
- 3) HNS damage other than damage due to contamination of the environment, cf. section 211(2), no. 3 caused outside a state's territory, including territorial sea, if such damage was caused by goods carried as cargo in a ship registered in the Realm or in another State Party, or in case of an unregistered ship, a ship entitled to fly the flag of a State Party, and
- 4) measures taken to avert or minimise HNS damage as mentioned in nos. 1-3, notwithstanding where said measures have been taken.

228.-(1) This part shall not apply to warships or any other ship owned or operated by a state which at the time the HNS damage occurs is used exclusively for state, non-commercial purposes. However, sections 211-215 shall apply in cases where, in the Realm or in the Danish exclusive economic zone, HNS damage is caused by HNS substances as mentioned in section 212(1) or where measures are undertaken to avert or limit such damage notwithstanding where said measures were undertaken.

(2) Furthermore, the provisions mentioned in subsection (1) shall apply to Danish state-owned ships if HNS damage other than damage caused by contamination of the environment, cf. section 211(2), no. 3 exclusively arose outside the territory, including the territorial sea, of any state, or if preventive measures are undertaken to avert or minimise HNS damage in such area notwithstanding where said measures were undertaken.

229. The provisions of this part shall not apply if this would violate Denmark's convention obligations to states which are not State Parties to the HNS Convention.«

31. After part 11, the following shall be inserted:

»Part 11a

Regarding insurance of ships registered in a Danish bareboat register

229 a.-(1) For ships registered in the bareboat register pursuant to section 22(1) or section 11a. (1) of the Act on the Danish International Register of Shipping (*lov om Dansk Internationalt Skibsregister*), the regulations of this Act on the duty to be insured and certificates shall apply, including provisions on liability to pay compensation for damage caused by such ships.

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(2) The bareboat charterer shall ensure and guarantee compliance with the duty to have approved insurance or other guarantee to cover liability pursuant to this Act. The bareboat charterer shall be liable for the consequences of this duty not being met.

(3) The Minister for Economic and Business Affairs shall lay down more detailed regulations on the duty to be insured and certificates pursuant to the provisions of this Act on liability to pay compensation caused by such ships, including the consequences of no insurance.«

32. In *section 231(1)* »sections 177, 183 and 195« shall be changed to »sections 177, 195 and 217«.

33. In *section 232(1)* »or section 183«, »respectively« and »and section 184« shall be deleted.

34. In *section 232(2)* the following shall be inserted as *the second clause*:

»A limitation fund pursuant to section 217 shall correspond to the limitation amount according to section 215.«

35. In *section 234(2)* »or 183« shall be deleted.

36. In *section 235(1)* and *section 244(1)*, »183« shall be deleted.

37. In *section 280(1), 2nd clause* and *section 422(5)* »section 505« shall be changed to »section 152(2)«.

38. In *section 502(1), 1st clause* »sections 191, 206(2), or 207« shall be changed to »sections 183, 190b and 191, section 206(2), or section 207«, and *the 2nd clause* shall be worded as follows:

»The time limit concerning claims against the 1992 Fund or the Supplementary Fund shall be suspended in addition to legal proceedings pursuant to section 204(6).«

39. *Section 502(2)* shall be worded as follows:

»(2) Claims may not, in any event, however, be brought when a period of six years has passed from the day on which the incident causing the event mentioned occurred. If the damage or costs are caused by an incident which consists of a series of occurrences having the same origin, the six-year limit shall be calculated from the first of such occurrences.«

40. After section 502, the following shall be inserted:

»503.-(1) Claims for damage or costs of the nature mentioned in section 211 or 228, or for compensation or reimbursement from the HNS Fund shall lapse, if no actions have been brought within three years from the day on which the person who suffered the damage knew or ought reasonably to have known of the damage or the costs. The period of limitation concerning claims against the HNS Fund shall also be suspended in legal proceedings pursuant to section 225(6).

(2) No claims shall be made when ten years have passed after the day on which the incident occurred causing the event mentioned. If the damage or costs are caused by a series of occurrences having the same origin, the ten-year limitation period shall be counted from the first of such occurrences.«

41. *Part 20* shall be repealed.

42. In *section 514b(1)*, the following shall be inserted after »section 202« : »and section 223« and after »section 202(4),« : »section 223(4),«.

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Section 2

The Minister for Economic and Business Affairs shall determine the time of entry into force of this Act and the Minister may also decide that this Act shall enter into force on different dates.

Section 3

This Act shall not extend to Greenland and the Faeroe Islands, but may be brought into force by Royal Decree for these parts of the Realm subject to any variations in their operation necessitated by the specific conditions prevailing in Greenland and the Faeroe Islands respectively.

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