

Translation: Only the Danish document has legal validity

*Excerpts of Act no. 618 of 12 June 2013
issued by the Ministry of Business and Growth*

Act amending the merchant shipping act and various other acts

(Enhanced navigational safety requirements in arctic waters, improving seafarers' legal status in case of piracy, adjustment of the ship registration provisions, implementation of the Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, implementation of the amendment Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea and abolition of the Divers' Council)

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

In the merchant shipping act (*søloven*), cf. consolidated act no. 856 of 1 July 2010, as amended by inter alia act no. 599 of 24 June 2005, section 13 of act no. 1563 of 20 December 2006 and section 1 of act no. 249 of 21 March 2012 and most recently by section 1 of act no. 1384 of 23 December 2012, the following amendments shall be made:

1.

... ..

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

“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 hazardous or noxious properties of the HNS substance. If HNS damage is caused by a number of incidents having the same origin, the liability shall attach to the owner at the time of the first of such incidents.

(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 of 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 the International Maritime Solid Bulk Cargoes Code (IMSBC),
- 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
- 5) 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)(i) and (ii).

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

- 1) oils carried in bulk listed in regulation 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 regulation 1.10 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 X, Y or Z in accordance with regulation 6.3 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 and the dangerous products for which the preliminary suitable conditions for the carriage have been stipulated in accordance with paragraph 1.1.6 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 (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 the International Maritime Solid Bulk Cargoes Code (IMSBC) to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code (IMDG) when carried in packaged form, and
- 8) residues from the previous carriage in bulk of substances referred to in paras. (i)-(iii) and (v)-(vii).

(2) The codes and conventions mentioned in subsection (1) and section 211(3)(ii), except the IMDG Code from 1996, shall apply with subsequent amendments when these are adopted by the relevant organs in the United Nations' International Maritime Organization (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, as amended by the Protocol of 2010. 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.

(8) HNS cargo in bulk shall mean any hazardous and noxious substance mentioned in subsection 1(i)-(iii) and (v)-(viii).

(9) HNS cargo in packaged form shall mean any hazardous and noxious substance mentioned in subsection 1(iv).

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, or
- 4) resulted wholly from the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped when the failure either
 - a) has caused the damage, wholly or partly, or
 - b) has led the owner not to obtain insurance in accordance with section 219, provided that neither the owner nor its servants or agents 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 to 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) crewmembers, persons engaged for serving the owner or other persons for whom they vouch,
- 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, consignee, 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 others for whom the persons mentioned in paras. (ii)-(v) vouch, unless the damage resulted from their intentional act or gross negligence.

(3) Notwithstanding the regulation in subsection (2)(iii), liability to pay compensation may be made valid against persons who are guilty of negligence pursuant to section 213(1)(iv) 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)(i), (ii), (iv), (v) or (vi) 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 if the damage is caused by HNS cargo in bulk 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 4. The owner shall have unlimited liability for interest and legal expenses.

(2) The owner shall be entitled to limit the responsibility pursuant to section 211 to 11.5 million SDR for a ship whose tonnage does not exceed 2,000 tonnage entities if the damage is caused by packaged HNS cargo or where the damage is caused by both HNS cargo in bulk and packaged HNS cargo or where it is not possible to establish which HNS cargo has caused the damage. For a ship with a greater tonnage, this amount shall be increased by 1,725 SDR for every tonnage entity from 2,001 to 50,000 tonnage entities and by an additional 414 SDR for every tonnage entity above 50,000 tonnage entities. The total compensation amount shall in no case exceed 115 million SDR, cf. however subsection 4. As regards interest and costs, the owner shall be liable without limitation.

(3) 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.

(4) 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.

(5) The Minister for Business and Growth may change the limits of liability in subsections 1 and 2 in accordance with decisions taken pursuant to article 47 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 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, etc. 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 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 furnished 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 limit 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 furnished with the insurance or guarantee mentioned above, may be furnished 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 Business and Growth, in accordance with the HNS Convention, shall 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 Business and Growth may leave the issue of certificates to others, including private persons.

(5) The Minister for Business and Growth 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 Business and Growth 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 Business and Growth may lay down more detailed regulations on fees for issuing certificates.

220.-(1) If a ship is not furnished 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 Business and Growth 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 willful 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 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(15) of the HNS Convention is raised according to the procedure of article 47 of the Convention, the Minister for Business and Growth 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 receiver unless it is agreed and the relevant authority has been informed that the person who immediately prior to the discharge held title to the substance shall be obliged to pay contribution, notwithstanding the quantity of LNG. If the title holder does not pay the contributions in full or partly, the receiver shall pay these. 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. If the enterprise 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 Business and Growth may, on the basis of an estimate, determine and report the assumed imported quantities.

(5) The Minister for Business and Growth 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.

(6) The Minister for Business and Growth shall lay down more detailed regulations on the reporting and contribution obligation, cf. subsections 1 and 4.

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)(iii), 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)(iii) 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(i), 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 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)(i), 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 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 judgment shall become binding on the Fund, in the sense that any facts and findings in the judgment may not be disputed by the Fund when the judgment is enforceable, if notice has been made promptly so that the Fund could effectively represent its interests.

226.-(1) Enforceable judgment 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 judgment is issued by a court which is competent under article 38 of the HNS Convention.

(2) The same shall apply to judgments issued against the HNS Fund in a State Party by a court competent under article 39(i), (ii) and (iv) of the HNS Convention.

227.-(1) 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)(iii), 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)(iii), 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 paras. (i)-(iii), notwithstanding
- 5) 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)(iii), 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.-(1) 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."

... ..

Section 10

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

Subsection 2. The Minister for 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 mentioned shall enter into force on different dates.

