

Harbours Act

This unofficial version is based on the latest official Act No. 326 of 28 May 1999 from the Ministry of Transport.

We Margrethe II, by the grace of God Queen of Denmark hereby witness:

Folketinget has adopted and We with Our consent hereby enact the following Act:

Part I *Area and scope*

S.1-(1) This Act shall apply to harbours which are used for the commercial handling of freight, vehicles, people, and for the landing of fish.

(2) The provisions of Ss3, 4, and 15 also apply to harbours which are not harbours used commercially.

Part II *Construction, maintenance, and demolition of harbours*

S.2-(1) Construction of a new harbour or extension of an existing harbour requires the authorisation of the Minister for Transport in pursuance of this Act.

(2) Extension of an existing harbour by establishing a permanent construction, deepening, and reclaiming the sea territory within the defence infrastructure of a harbour may be carried out without the authorisation referred to in (1) above unless such extension requires an environmental impact assessment of construction. The Minister for Transport shall lay down regulations hereon.

(3) In connection with notification of authorisation under (1) above conditions may be stipulated, including guarantees for expenditure on removing a harbour or parts of its infrastructure.

S.3 On request, the Minister for Transport shall determine the allocation of expenditure between harbours in situations where several harbours located in the same fjord or channel

shall jointly carry out works to ensure the necessary water depth on the fjord or channel, or where several harbours shall jointly carry out buoying and ice-breaking. Further, the Minister may order a harbour to contribute to expenditure on work of a specific nature which is carried out by one or more harbours on the same fjord or channel..

S.4-(1) The Minister for Transport may order appropriate repair of the infrastructure of a harbour or necessary removal of such.

(2) The Minister for Transport may order a harbour to be removed when it is no longer in use.

Part III *Access to use a harbour*

S.5 Harbours have a duty to receive ships to the extent that this is allowed by the harbour space available unless otherwise determined by the Minister for Transport in permits issued in accordance with previous legislation.

Part IV *Type of administration etc.*

S.6-(1) A harbour may be administered as

- 1) a state harbour
- 2) a municipal harbour
- 3) an independent municipal harbour
- 4) a limited company owned wholly or partly by a local authority, or
- 5) a private harbour which is not covered by 4) above.

(2) Two or more local councils may operate one or more harbours as mentioned in (1) No. 2 or 3 above as a joint local-authority enterprise, c.f. S60 of the Local Government Act. A regional council may participate in a joint local-authority enterprise as mentioned in the point above. The determinations of municipal supervision authorities on authorisation of a joint local-authority enterprise to operate one or more harbours shall be made according to statements obtained from the Minister for Transport.

S.7-(1) A state harbour shall be managed by the Minister for Transport or a person authorised by the Minister for Transport.

(2) The Minister may establish a harbour council to conduct the daily operations. If a harbour council is established, the local council in the local authority wherein the harbour is located shall elect two of the members of the harbour council. The Minister shall lay down the powers of the harbour council.

(3) The harbour shall be responsible for construction and operation of the harbour infrastructure, including defence infrastructure, quays, harbour basins, and adjacent land areas, and may also make available cranes, warehouses, and similar with a view to serving ships, stevedores, tenants, etc.

(4) The Minister for Transport, or a person authorised by the Minister for Transport, shall lay down fees for using state harbours.

(5) The Minister for Transport may decide that a state harbour is to be transferred to a local authority, c.f. S6(1), nos. 2) and 3), or that it is to be converted into a limited company, c.f. S6(1), nos. 4) and 5).

S.8-(1) A municipal harbour shall be managed by a local council in the local authority wherein the harbour is located.

(2) The harbour shall be responsible for construction and operation of the harbour infrastructure, including defence

infrastructure, quays, harbour basins, and adjacent land areas.

(3) If a municipal harbour has an annual turnover of goods of more than 0.5 million tonnes, or has fish landings which amount to an annual value of more than DKK 100 million, the local council may decide that the harbour shall be converted to one of the types of harbour mentioned in S6(1), nos. 3)-5).

S.9-(1) An independent municipal harbour is an independent enterprise which is managed by the local council in the local authority wherein the harbour is located.

(2) The harbour is managed by a harbour board which is elected by the local council. The harbour board shall comprise an odd number of members. A proxy shall be appointed for each member who may be called in when a member is prevented from attending. Elections shall be held at the initial meeting of the local council and shall be effective for the entire tenure of the local council. The harbour council shall elect a chairman.

(3) Following submission from the harbour board, the local council shall approve the board's articles and financial statements, as well as decisions on raising loans and recruitment and dismissal of the harbour master.

(4) The local council and the harbour board shall safeguard the interests of the harbour in the execution of their duties. The harbour board is responsible to the local council for the operation and maintenance of the harbour.

(5) The harbour shall be responsible for construction and operation of the harbour infrastructure, including defence infrastructure, quays, harbour basins, and adjacent land areas and may also make available cranes, warehouses, and similar with a view to serving ships, stevedores, tenants, etc.

(6) Provided it is warranted by conditions in particular circumstances, and at the request of the local council, the Minister for Transport may permit that harbour, in addition to the

tasks mentioned in S5, be responsible for harbour-related operator functions either alone, or in co-operation with private enterprises.

(7) The harbour shall be operated so that its income at least covers its expenses. Within the financial framework laid down by the local council, and in connection with the resolutions adopted hereon, the harbour board shall have independent control of capital and operating resources solely for the purpose of serving the interests of the harbour.

(8) Harbour resources shall be separated in the financial statements from the resources of the local authority, however see (11), point 2 below. The harbour shall prepare profit and loss accounts and balance sheets according to the rules in the Danish Company Accounts Act. Audit of the harbour's financial statements shall be carried out by an auditor elected by the local council.

(9) The Minister for Transport shall lay down regulations on remuneration and disbursements for the chairman of the harbour board and other members, as well as their proxies. The expense for this purpose shall be defrayed from harbour funds.

(10) An independent municipal harbour, following a determination by the local council, may be converted to a municipal harbour when the harbour is no longer in a competitive situation. A harbour is considered to be no longer in competition when it has an annual turnover of goods of less than 0.5 million tonnes, or has fish landings which amount to an annual value of less than DKK 100 million and an annual turnover of goods of less than 0.3 million tonnes. Furthermore, a harbour may be considered not to be in competition when it only serves a small number of enterprises in the vicinity of the harbour and the goods turnover of these enterprises cannot be moved to other harbours.

(11) An independent municipal harbour shall be converted to a municipal harbour when it has suffered an operating loss after interest payments but before depreciation for three

consecutive years. In special circumstances however, the local council may, with the approval of the Minister for Transport, decide to inject new capital into the harbour.

S.10-(1) A harbour which is organised as a limited company owned wholly or partly by a local authority is a commercial enterprise. A harbour organised as a limited company owned wholly by a local authority shall be treated as a state-owned limited company under the Danish Companies Act and under the Danish Company Accounts Act.

(2) When an independent municipal harbour or a municipal harbour is converted to a limited company and when in this connection a non-cash contribution of plant etc. is made, dividends etc. to shareholders shall only be paid after provisions for maintenance and new construction in the harbour have been made.

(3) A harbour organised as a limited company owned wholly or partly by a local authority, in addition to operating a business as an independent municipal harbour, c.f. S9(5), shall only carry out harbour-related operations.

S.11 A privately organised harbour is a commercial enterprise which is not limited from operating other business by this Act.

Part V *Employment*

S.12-(1). If a state harbour is converted to a state-owned limited company, c.f. S7(5), the civil servants who at such time are serving in the state harbour shall serve in the limited company under the same terms and conditions as those which apply in their employment by the state. In the same way, the limited company shall be responsible to the state to employ them. This provision shall also apply to civil servants who serve in the state harbour administration at Esbjerg and at Frederikshavn.

(2) The limited company shall, within a period of two years from the establishment of

the company, offer the civil servants mentioned in (1) above the opportunity to serve in the limited company under special terms and conditions.

(3) The state shall pay salaries etc. and pensions in accordance with the regulations in the Public Servants legislation to those civil servants who do not wish to take up employment in the limited company under (2) above.

(4) On taking over the operation of the harbour, the limited company shall refund to the state such salaries etc. which have been paid under (3) above, and the limited company shall pay regular pension contributions to the state for civil servants who take up employment in the limited company with a right to continue to earn a civil-service pension from the state. The amount of such pension contributions shall be laid down by the Minister for Finance.

S.13 The provisions in S12 shall also apply for civil servants employed at state harbours when operation of the state harbour is taken over by a local authority, a joint local-authority enterprise, or a limited company owned wholly or partly by a local authority, or when it is taken over fully or partly by a state-owned limited company. The local authority, the joint local-authority enterprise, or the limited company owned wholly or partly by a local authority shall be responsible to the state and the civil servants in the same way as a state-owned limited company. When a local authority or a joint local-authority enterprise take over the operation of a state harbour, the offer of employment under special terms and conditions, c.f. S12(2), may be replaced by an offer of employment as a public servant in the local authority or the joint local-authority enterprise.

S.14-(1) Election of employee representatives to the board of directors in limited companies, c.f. S49(2) of the Danish Companies Act, shall take place no longer

than four months after the company has taken over operation of a harbour.

(2) Civil servants who are seconded to a limited company in pursuance of Ss12 and 13 above have the right to vote employee representatives to the board of directors on equal terms with employees in the limited company, and in the same way they are eligible for election to the board. The same applies for local-authority public servants who are seconded to a limited company owned wholly or partly by a local authority.

Part VI

Regulations for good order and rights of appeal

S.15 The Minister for Transport may lay down regulations for good order in harbours.

S.16-(1) Appeals regarding the allocation of berthing space in harbours which have a duty to receive shall be submitted to a board set up by the Minister for Transport, c.f. (2) and (3) below. The decisions of the Board may not be referred to other administrative authorities.

(2) The Board shall comprise five members who are appointed by the Minister for Transport. The Chairman shall have a masters degree in law. The other four members shall possess harbour-technology, maritime, shipping, and fishing expertise respectively. Alternates for the Chairman and the other members shall be appointed.

(3) The Minister for Transport shall lay down the rules of procedure for the Board.

S.17-(1) Appeals regarding the administration of a state harbour shall be submitted to the Minister for Transport.

(2) Appeals regarding the administration of an independent municipal harbour may be submitted to the local council. If the harbour is operated as a joint local-authority enterprise, appeals may, however, be submitted to the board of the joint local-authority enterprise.

(3) Determinations pursuant to this Act made by the local council or the board of a joint local-authority enterprise may be referred to the Minister for Transport.

(4) Furthermore, the Minister for Transport may determine other questions covered by this Act.

Part VII

Penalties, commencement, transitional provisions etc.

S.18-(1) The following offences shall subject to a fine;

- 1) failure to comply with a determination under S3, or
- 2) failure to comply with an order issued in pursuance of S4.

(2) In rules and regulations which are issued in pursuance of this Act, penalties of fines may be laid down for violations of the provisions in such rules and regulations.

(3) Companies etc. (legal persons) may be subject to penalties according to the regulations in Part V of the Penal Code.

S.19-(1) This Act shall enter into force on 1 January 2000. However, S26 shall enter into force on 1 June 1999.

(2) The Commercial Harbours etc. Act No. 316 of 16 May 1990 is repealed.

(3) The rules and regulations issued by the Minister for Transport in pursuance of the Commercial Harbours etc. Act No. 316 of 16 May 1990 shall remain in force until they are replaced by rules and regulations issued in pursuance of this Act. Violations are subject to the same penalties as previously applied.

(4) In the period until 1 January 2002 permits for the construction of new harbours under S2(1) above shall only be issued in special circumstances.

S.20-(1) Irrespective of S9(5), permits issued by the Minister for Transport to harbours under the regulations applying hitherto which allow them to carry out stevedore work, shall remain in force.

(2) Irrespective of S7(3), S8(2), and S9(5), harbours which have hitherto carried out shipping-related services, including pilotage, towing, and hawser towing may continue these services.

S.21-(1) A harbour with restricted use shall be managed by the harbour owner in accordance with the conditions which, pursuant to previous legislation, have been laid down by the Minister for Transport in permits for the establishment or extension of the harbour. Violations of these conditions are subject to the penalties in the regulations which applied hitherto.

(2) Conditions which restrict the use of a harbour as mentioned in (1) above shall lapse if the harbour owner notifies the Minister for Transport that the harbour wishes to extend its use in relation to the original permit. However, these conditions may only lapse for notifications which take effect no earlier than 1 January 2004.

(3) In special circumstances the Minister for Transport may permit that conditions which restrict the use of a harbour lapse before the end of the period mentioned in (2) above.

(4) When the conditions mentioned in (2) and (3) above have lapsed, the harbour shall be subject to a duty to receive, c.f. S5 above.

S.22-(1) Decisions regarding the type of administration a harbour falls under according to this Act may be made before 1 January 2000 so that the decision may come into effect from this date.

(2) Harbours which are administered as municipal commercial harbours as at 1 January 2000 shall be converted to independent municipal harbours unless the relevant local council decides on some other type of administration within the framework of this Act.

(3) When a municipal commercial harbour is converted to an independent municipal harbour, the local council shall elect a harbour board, c.f. S9(2). The local council may, however, decide that the harbour board shall

be composed of members of a harbour committee which is set up pursuant to S19(2) of the Local Government Act.

(4) The period referred to in S9(11) shall be calculated from a date no sooner than 1 January 2000.

S.23 The Port of Copenhagen Act No. 504 of 24 June 1992 shall be amended as follows:

1. S6(1) shall be worded as follows:

'The Harbours Act shall be applied for the operation of the Port of Copenhagen except for S2(2) and Part IV.'

S.24 The Local Government Act, c.f. Consolidated Act No. 59 of 29 January 1998 shall be amended as follows:

1. In S16(5) 'S16a(3)' shall be amended to 'S16a(2)'.
2. In S16(8) 'S16a(3) and (4)' shall be amended to 'S16a(2) and (3)'.
3. S16a(2) shall be repealed.
(3)-(8) shall hereafter become (2)-(7).
4. In S16a(4), which shall become (3), '(3)' shall be amended to '(2)'.
5. In S16a(6), which shall become (5), '(1)-(4)' shall be amended to '(1)-(3)'.
6. In S16a(8), which shall become (7), '(7)' shall be amended to '(6)'.
7. In S19(1) 'c.f., however, (2)' shall be omitted.

8. S19(2) shall be repealed.

9. S64a(1), point 3 shall be repealed.

10. In S65a(1), 'c.f., however, S19(2)' shall be omitted.

11. In S65c(1), 'S19(1)' shall be amended to 'S19'.

12. S67(1), point 2 shall be worded as follows:

'Furthermore the board shall approve provisions on salaries and employment terms and conditions for personnel at independent municipal harbours, c.f. the Harbours Act.'

S.25 In the Hanstholm Harbour Act No. 173 of 29 April 1960, S3 shall be repealed.

S.26 The Commercial Harbours etc. Act No. 316 of 16 May 1990, as amended by Act No. 234 of 4 April 1995 and Act No. 294 of 28 April 1997 shall be amended as follows:

1. S3(3) shall be worded as follows:

'(3) Extension of an existing commercial harbour by establishing a permanent construction, deepening, and reclaiming the sea territory within the defence infrastructure of a harbour may be carried out without the authorisation referred to in (2) above unless such extension requires an environmental impact assessment construction. The Minister for Transport shall lay down regulations hereon.'

S.27 This Act shall not apply in the Faeroe Islands or Greenland.

Fredensborg Slot, 28 May 1999
Under our Royal Seal and Hand

Margrethe R.

/Sonja Mikkelsen