

## **Consolidated decree on the entry into force for Greenland of the act on diving operations and diving equipment, etc.**

Decree no. 728 of 19 August 2003 on the entry into force for Greenland of the act on diving operations and diving equipment, etc. is hereby promulgated with the amendments deriving from decree no. 212 of 23 March 2005 and decree no. 1350 of 27 November 2015.

### Part 1

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

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

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

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

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

### Part 2

#### *Diving operations*

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

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

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

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

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

*Subsection 6.* In special cases, the Danish Maritime Authority may permit persons holding a certificate for recreational diving at a level corresponding more or less to the Nordic Sports Diving Certificate, level 3 (CMAS\*\*\*) or having completed training as a PADI instructor to carry out diving operations covered by this act.

#### *Professional diving training programme*

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

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

**Section 5.** (Repealed)

#### *Professional diving certificate*

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

*Subsection 2.* (Repealed).

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

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

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

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

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

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

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

*Subsection 4.* (Repealed).

*Subsection 5.* (Repealed).

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

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

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

**Section 11.** A person holding a foreign professional diving certificate who is, pursuant to Danish law on the recognition of professional qualifications, entitled to carry out diving operations shall also be entitled to carry out diving operations in Greenland.

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

#### *General obligations*

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

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

#### *Performance of the work*

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

### Part 3

#### *Diving equipment*

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

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

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

#### *Surveys*

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

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

#### Part 4 *(Repealed)*

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

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

#### *Communication*

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

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

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

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

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

### *Payment*

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

### *Deviations*

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

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

### *Complaints*

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

## Part 6

### *Penalty clauses, etc.*

**Section 23.** If a diver is found by judgment responsible for injury to persons in connection with the performance of diving operations, his diving certificate acquired under this act may in aggravating circumstances be suspended for a specific period not longer than five years or forever. The diving certificate may also be suspended in case of repeated neglect or contraventions of the provisions of this act or regulations issued pursuant to this act. In such cases, the prosecution shall forward the diving certificate of the person concerned and a transcript of the judgment to the Danish Maritime Authority. If a diving certificate has been suspended for longer than three years, the issue of re-acquiring the right before the expiry of the suspension may be brought before the courts. The case shall be brought before the courts in accordance with the provisions of section 114(3) of the penal code (*kriminalloven*) and may, at the earliest, be brought before the courts when three years of the suspension period have passed. The right may be re-acquired only under very special circumstances.

**Section 24.** Measures under the penal code (*kriminalloven*) may be imposed upon anyone who

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

*Subsection 2.* Measures under the penal code (*kriminalloven*) may be imposed for contraventions of provisions issued in pursuance of the act.

*Subsection 3.* If the contravention has been committed by companies etc. (legal entities), liability to pay a fine may be incurred by the legal entity as such. If the contravention has been committed by the State, the

Government of Greenland, a municipality, a municipal cooperative covered under section 64 of the Landsting Act on municipal councils and local authorities etc. or a local authority, liability to pay a fine may be incurred by the relevant public authority as such.

*Subsection 4.* If criminal proceedings are instigated outside Greenland or if they concern a person or company, cf. subsection 3, domiciled or established outside Greenland, the contravener may be penalised by means of a fine or imprisonment instead of measures.

#### Part 7

#### *Entry into force, etc.*

Decree no. 1350 of 27 November 2015 contains the following entry into force and interim provisions:

#### **Section 2**

*Subsection 1.* This decree shall enter into force on 15 September 2003.

*Subsection 2.* At the same time, the diving act no. 214 of 23 May 1979, as amended, cf. consolidated act no. 583 of 29 September 1988, shall be repealed.

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

*Subsection 4.* Provisions issued in pursuance of the act shall also apply to Greenland with the deviations deriving from the special Greenland conditions.

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Decree no. 212 of 23 March 2005 contains the following entry into force and interim provisions:

#### **Section 7**

*Subsection 1.* This decree shall enter into force on 1 April 2005.

*Subsection 2.* As regards ships which, in pursuance of the act mentioned in section 6, have been issued with a tonnage certificate valid when this decree enters into force, section 8 of the act on the tonnage measurement of ships shall also apply.

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Decree no. 1350 of 27 November 2015 contains the following entry into force and interim provisions:

#### **Section 2**

This decree shall enter into force on 1 January 2016.

*Danish Maritime Authority, 16 December 2015*  
Troels Blicher Danielsen / Palle Kristensen