

Unofficial translation of Danish Act No. 535 of 29 April 2015. In case of discrepancy, the original Danish text shall prevail.

Act to amend the Act on the Use of the Danish Subsoil¹⁾

(To implement the Offshore Safety Directive, secondary liability for the decommissioning of installations, plan for the decommissioning of installations, provision of security, extension of geothermal licences, emergency preparedness for supply issues, insurance, digital communication, etc.)

WE, MARGRETHE THE SECOND, by the Grace of God Queen of Denmark, Make Known:

The Folketing has passed and We have granted our Royal Assent to the following Act:

Section 1

The Act on the Use of the Danish Subsoil, see Consolidated Act No. 960 of 13 September 2011, shall be amended as follows:

1. The *footnote* to the title of the Act shall be worded as follows:

“1) This Act contains provisions to implement Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons, Official Journal 1994, L 164, p. 3, parts of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, Official Journal 1992, L 206, p. 7, as most recently amended by Council Directive 2013/17/EU of 13 May 2013 adapting certain directives in the field of environment, by reason of the accession of the Republic of Croatia, Official Journal 2013, L 158, p. 193, parts of Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, Official Journal 2008, L 328, p. 28, parts of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, Official Journal 2009, L 140, p. 16, as amended by Council Directive 2013/18/EU of 13 May 2013 adapting Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources, by reason of the accession of the Republic of Croatia, Official Journal 2013, L 158, p. 230, parts of Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No. 1013/2006, Official Journal 2009, L 140, p. 114, as amended by Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, Official Journal 2012, L 26, p. 1, parts of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, Official Journal 2010, L 20, p. 7, as amended by Council Directive 2013/17/EU of 13 May 2013 adapting certain directives in the field

of environment, by reason of the accession of the Republic of Croatia, Official Journal 2013, L 158, p. 193, parts of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, Official Journal 2011, L 26, p. 1, and parts of Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC, Official Journal 2013, L 178, p. 66.”

2. In *section 1(2)(ii)*, for the words “raw materials, and” substitute: “raw materials,”.

3. In *section 1(2)(iii)*, for the word “above.” substitute: “above, and”.

4. In *section 1(2)*, insert *(iv)*:

“(iv) emergency procedures for adjoining oil and natural gas pipeline facilities, separation facilities and terminal facilities for crude oil to secure the country’s hydrocarbon supply.”

5. In *section 1(3)*, after “also applies in” insert: “Danish territorial waters,”.

6. After *section 1* insert:

“**1a.** The following definitions apply in this Act:

(i) Operator: The party that carries out activities under a licence issued pursuant to this Act on behalf of the licensee or sole risk activities on behalf of some of the licence holders.

(ii) Offshore (area): Danish territorial waters, the Danish exclusive economic zone or the Danish continental shelf, as defined in the United Nations Convention on the Law of the Sea.

(iii) Licensee: The party or parties that, pursuant to this Act, hold a licence to perform preliminary investigations, to explore for and produce raw materials, to establish and operate pipeline facilities, to explore and use the subsoil for storage or purposes other than production or to perform scientific investigations. A licensee may consist of one or more natural or legal persons holding the licence jointly, including concessionaires and assistants.”

7. *Section 5(3)* shall be repealed.

Accordingly, subsections (4) and (5) shall become subsections (3) and (4).

8. In *section 12a(1)(a)*, for “the applicant’s expertise and financial base” substitute: “the applicant’s technical and financial capacity”.

9. In *section 17(2)*, after “dimensions” insert: “transport capacity,”.

10. After *section 17* insert:

“**17a.**-(1) Licensees holding a licence to explore for and produce hydrocarbons, see *section 5*, or to establish and operate pipeline facilities in connection with the production of hydrocarbons, see *section 17*, shall prepare plans with a view to maintaining and carrying on the supply of hydrocarbons for society in case of crises, including the preparation of contingency plans and the implementation of necessary measures to secure own installations, pipelines, critical systems and data, etc. This shall also apply to owners of adjoining oil and natural gas pipeline facilities, separation facilities and terminal facilities for crude oil, see *section 1* of the Act on the

Establishment and Use of a Pipeline for Transport of Crude Oil and Condensate and section 4 of the Act on the Continental Shelf. Licensees and owners shall coordinate these emergency procedures with those stipulated by other legislation.

(2) If the licensee or owner consists of one or more natural or legal persons holding the licence jointly, subsection (1) shall apply to each individual natural or legal person.

(3) The Minister for Climate, Energy and Building may lay down more specific rules and regulations regarding the performance of the duties set out in subsection (1) above, including regarding the submission of relevant information about such work to the Minister, and more specific rules and regulations regarding the implementation of EU legislation.”

11. In *section 18b(1)(a)*, for “the applicants’ expertise and financial base” substitute: “the applicants’ technical and financial capacity”.

12. *Section 18c(1)* shall be worded as follows:

“Licences pursuant to section 5 for the exploration for and production of geothermal energy shall be granted for a term of up to six years, which term may be extended by up to two years at a time for the purpose of further exploration, where warranted by special circumstances. The total term of exploration may only exceed ten years in exceptional cases.”

13. In *section 18c*, after subsection (2) insert:

“(3) The term for production, as fixed in pursuance of subsection (2) or in the relevant licence, may be prolonged where warranted by special circumstances. In the event that the total licence term will thus exceed 50 years, the provisions of section 6 shall apply *mutatis mutandis*.”
Accordingly, subsection (3) shall become subsection (4).

14. In *section 23c(1)(a)*, for “the applicants’ expertise and financial base” substitute: “the applicants’ technical and financial capacity”.

15. After Part 7 insert:

“Part 7a

Requirements for technical and financial capacity, appointment and approval of operators, insurance, provision of security and division of licences, etc.

24a.-(1) A licensee holding a licence pursuant to sections 3, 5, 17, 23 or 24 shall have the necessary technical and financial capacity and shall be expected to carry on the activities in a manner so as to ensure that society gains maximum insight into and benefit from the activities.

(2) The licensee’s technical capacity, see subsection (1), shall be adequate for carrying out the activities with a view to responsible resource management and to handling unforeseen events in a safe and appropriate manner. Accordingly, the licensee shall have the necessary technical capacity, etc. to ensure the appropriate preparation, immediate launch and uninterrupted continuation of all measures necessary for effective emergency response and subsequent remediation.

(3) The licensee’s financial capacity, see subsection (1), shall be adequate for the licensee to carry out all activities forming part of the next phase of the activities comprised by the licence, including

to have a reserve for unforeseen expenses and security to cover potential liability in damages resulting from the activities. Accordingly, the financial capacity shall include means for the immediate launch and uninterrupted continuation of all measures necessary for effective emergency response and subsequent remediation, including the removal of installations once production has been discontinued.

24b.-(1) If the activities under the licence are divided into phases, a licensee holding a licence pursuant to sections 3, 5, 17, 23 or 24 shall be able to document that it has the necessary technical and financial capacity to carry out the activities comprised by the licence. Such documentation shall be provided prior to the transition to a new phase of a work programme, prior to the approval of an exploration or appraisal well, see section 28, or a plan for production activities, see sections 10 and 17, and prior to the initiation of a plan for the decommissioning of production installations and transport facilities; see section 32a.

(2) If a licensee holding a licence cannot document the necessary technical and financial capacity, see subsection (1), no preliminary investigations or exploration, production and decommissioning activities may be carried on under the licence, and no approvals and licences may be granted in pursuance of section 10(2) and (3) and sections 17 and 28. In such cases, upon application the licensee can be granted a time limit of up to three months for remedying the situation. In special circumstances, a further extension of the time limit may be granted. If the situation cannot be remedied within the time limit stipulated, the licence will be revoked; see section 30.

(3) If the licensee is granted a time limit for procuring the documentation required according to subsection (2), the Minister for Climate, Energy and Building may permit the licensee to carry on certain activities and may lay down terms and conditions in this respect.

24c.-(1) The Minister for Climate, Energy and Building may at any time request that a licensee holding a licence granted pursuant to sections 3, 5, 17, 23 or 24 shall document that it has the necessary technical and financial capacity to carry out the activities comprised by the licence; see section 24a.

(2) If one or more parties jointly holding a licence, see subsection (1), cannot document having the necessary technical and financial capacity, the Minister for Climate, Energy and Building may order such party or parties to remedy the situation within a specified time limit. Moreover, the Minister may order the party or parties to discontinue the activities in whole or in part.

24d.-(1) The Minister for Climate, Energy and Building shall appoint an operator in connection with granting licences pursuant to sections 3, 5, 17, 23 or 24. Only operators assessed to have the necessary technical and financial capacity are eligible for appointment as operators. The Minister for Climate, Energy and Building may lay down specific terms and conditions for such appointment. The Minister for Climate, Energy and Building shall consult the supervisory authority pursuant to the Offshore Safety Act before appointing an operator.

(2) The Minister for Climate, Energy and Building shall approve any subsequent replacement of the operator. The Minister for Climate, Energy and Building may lay down specific terms and conditions for such approval. The Minister for Climate, Energy and Building shall consult the supervisory authority pursuant to the Offshore Safety Act before approving an operator.

(3) The licensee shall continuously ensure that the operator appointed or approved pursuant to subsection (1) or (2) has the capacity to meet the requirements for carrying out specific operations

within the framework of the licence, and shall also take all reasonable steps to ensure that the operator meets the requirements, performs its functions and fulfils its obligations.

(4) If the supervisory authority pursuant to the Offshore Safety Act or the Act on the Protection of the Marine Environment makes a decision to the effect that an operator no longer has the capacity to meet the relevant requirements laid down by Directive 2013/30/EU of 12 June 2013 on safety of offshore oil and gas operations, the supervisory authority shall notify the Minister for Climate, Energy and Building accordingly. The Minister for Climate, Energy and Building shall notify the licensee holding the relevant licence of the decision.

(5) In situations where a decision has been made to the effect that an operator does not have the capacity to meet the requirements for carrying out specific operations within the framework of a licence, see the first sentence of subsection (4) above, the licensee holding the relevant licence shall take over the responsibility for the operator's duties from the time when the notification pursuant to the second sentence of subsection (4) has reached the licensee. The licensee shall immediately propose another operator for approval by the Minister for Climate, Energy and Building pursuant to subsection (2) above.

(6) Where no operator has been appointed by the Minister for Climate, Energy and Building in respect of a licence pursuant to sections 3, 5, 17, 23 or 24, the licensee shall submit an application for approval of an operator to the Minister for Climate, Energy and Building, such application to be submitted within six months from the commencement of this Act. The operator shall meet the requirements for technical and financial capacity; see subsection (1) above. Where the operator recommended by the licensee does not meet with the approval of the Minister for Climate, Energy and Building, the licensee shall submit a proposal for another operator within a specified time limit for the approval of the Minister for Climate, Energy and Building. The Minister for Climate, Energy and Building shall consult the supervisory authority pursuant to the Offshore Safety Act before approving an operator. The Minister for Climate, Energy and Building may lay down specific terms and conditions for such approval.

24e.-(1) A licensee's liability in damages under licences issued pursuant to this Act shall be covered by insurance. The insurance shall provide reasonable cover, in light of the risks involved in the performance of the activity and the premiums to be paid.

(2) The Minister for Climate, Energy and Building may order that additional insurance shall be taken out. The Minister for Climate, Energy and Building may allow the provision of security instead of insurance.

(3) A licensee holding a licence pursuant to sections 3, 5, 17, 23 or 24 shall establish a procedure for prompt and adequate handling of claims for damages, including damages for transboundary incidents.

(4) The procedure pursuant to subsection (3) shall be approved by the Minister for Climate, Energy and Building, and the Minister may lay down specific terms and conditions for such approval.

(5) The licensee shall make the procedure pursuant to subsection (3) known to the public.

(6) The Minister for Climate, Energy and Building may lay down rules and regulations regarding insurance on and security for the activities comprised by the licence, regarding procedures and their publication, and regarding the submission of information about existing insurance cover for the purpose of the Minister's supervision of the activities.

24f. Licences granted in pursuance of this Act may lay down detailed provisions regarding a licensee's provision of security for the fulfilment of all its obligations under the licence. An order requiring changes or supplements to such security may be issued subject to a period of notice. The Minister for Climate, Energy and Building shall approve such security and may lay down specific terms and conditions for its approval.

24g.-(1) The Minister for Climate, Energy and Building may grant an application from a licensee to the effect that a licence issued pursuant to section 5 or section 23 shall be divided into two or more licences comprising areas within the original licence area. The terms and conditions of the licence will be applicable to the individual areas following division of the licence.

(2) The division of an area comprised by a licence granted pursuant to section 5 or section 23 may not lead to the division of an accumulation or a geological structure that can be or is used for storage or purposes other than the production of raw materials in the event that the division would impede appropriate exploitation of the relevant accumulation or appropriate use of the relevant geological structure."

16. *Section 27(2)* shall be worded as follows:

"(2) Licences granted in pursuance of this Act may provide that representatives of the supervisory authority shall be entitled to attend meetings held by the licensees' decision-making bodies and other joint committees established in connection with activities comprised by the licence. The supervisory authority shall receive the same notice and be given the same material, including minutes of meetings, as the remaining participants."

17. In *section 28*, insert after "case": ", but see subsections (2) and (3)".

18. In *section 28*, insert *subsections (2)-(4)*:

"(2) Works in connection with drilling or modifying wells in the offshore area with a view to exploration and production of hydrocarbons under licences issued pursuant to section 5 are not comprised by subsection (1), but see subsection (3).

(3) Works in connection with drilling or modifying wells in the offshore area with a view to exploration and production of hydrocarbons under licences issued pursuant to section 5 may not be initiated until the approval of the Minister for Climate, Energy and Building has been obtained for resource-related issues concerning equipment, working programme and working methods in each individual case.

(4) The Minister for Climate, Energy and Building may lay down terms and conditions for approvals granted pursuant to subsections (1) and (3)."

19. After *section 28c* insert:

"**28d.**-(1) In an offshore area where the exploration target is hydrocarbons, the drilling of an exploration well from installations not used for production may only be initiated subject to early and efficient public participation with respect to any impact of the planned activities on the environment pursuant to provisions implementing EU legislation other than Directive 2013/30/EU of 12 June 2013 on safety of offshore oil and gas operations, including Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment

or Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

(2) Where the initiatives referred to in subsection (1) above have not been taken, the Minister for Climate, Energy and Building shall ensure public participation. The Minister shall lay down rules and regulations on the notification and consultation of members of the public and the public authorities and organizations affected, including time limits for such notification and consultation.”

20. In *section 29*, after subsection (1) insert:

“(2) The Minister for Climate, Energy and Building may only approve an assignment as referred to in subsection (1) above if, following such assignment, the licensee is still considered to have the necessary technical and financial capacity and can be expected to carry on the activities in a manner so as to ensure that society gains maximum insight into and benefit from the activities. The Minister may lay down specific terms and conditions for the approval of any such assignment.”

Accordingly, subsection (2) shall become subsection (3).

21. After *section 29* insert:

“**29a.**-(1) A holder of a licence granted pursuant to sections 5, 17 or 23 that assigns such a licence in whole or in part has secondary financial liability towards the remaining licence holders as regards expenses for the decommissioning of any installations, including the decommissioning of installations on which work has begun, etc., see section 32a, that existed at the time of assignment. The assignor has secondary financial liability towards the Danish state if the expenses referred to in the first sentence hereof are not covered by another licence holder.

(2) An assignor also has secondary financial liability towards the Danish state for the expenses referred to in subsection (1) above if the state has been compelled to take over the decommissioning for the licensee’s account.

(3) The financial liability referred to in subsections (1) and (2) above shall be calculated based on the amount of expenses for implementing the decommissioning that is attributable to the assigned licence share.

(4) The assignor’s financial liability shall apply notwithstanding any subsequent assignment of the licence share, or parts thereof, but any claims shall first be advanced against the licence holder most recently assigning the licence share.

(5) An approval of any assignment, as referred to in section 29, of a licence granted pursuant to sections 5, 17 or 23 or a share of such licence is subject to the condition that the assignor has issued a declaration accepting secondary liability, see subsections (1)-(4) above, towards the parties from time to time jointly holding the licence (the licensee) and towards the Danish state.

(6) The Minister for Climate, Energy and Building shall approve declarations issued pursuant to subsection (5) above and may lay down terms and conditions for such approval.”

22. After *section 32* insert:

“**32a.**-(1) Applications for licences or approvals pursuant to sections 10, 17, 23 or 28 shall be accompanied by a plan for the decommissioning of all facilities and installations, etc. comprised by the application and any facilities and installations, etc. previously approved under the licence pursuant to sections 5, 17 or 23 that the application concerns.

(2) The decommissioning plan shall include a calculation of the estimated expenses for implementing the decommissioning plan and a description of how security will be provided for availability of the funds necessary for implementing the decommissioning plan. The decommissioning plan shall be approved by the Minister for Climate, Energy and Building. The Minister may lay down terms and conditions for such approval.

(3) An approval pursuant to section 28(1) or (3) of a programme for the temporary abandonment of an exploration or appraisal well may only be granted if the licensee has provided security for the expenses connected with permanent abandonment.

(4) Licensees holding licences that comprise facilities and installations, etc. for the purpose of activities covered by the Act that were established prior to 19 July 2015 and facilities and installations, etc. approved pursuant to sections 10, 17 or 23, but not yet established by that date, shall submit decommissioning plans for such facilities and installations prior to 19 July 2018 for approval by the Minister for Climate, Energy and Building. But decommissioning plans shall be submitted no later than two years before the expiry of a licence or no later than two years before the date on which one or more facilities or installations are expected to be abandoned or disused. The Minister for Climate, Energy and Building shall approve such decommissioning plans and may lay down specific terms and conditions for their approval.

(5) Licensees and owners of facilities and installations, etc. established pursuant to the Act on the Establishment and Use of a Pipeline for Transport of Crude Oil and Condensate, see Consolidated Act No. 277 of 25 March 2014, shall also submit decommissioning plans for facilities from the North Sea until the first terminal on shore. The Minister for Climate, Energy and Building shall approve such decommissioning plans and may lay down specific terms and conditions for their approval.

(6) Decommissioning plans pursuant to subsections (1) and (3) above shall comprise the decommissioning of all facilities and installations, etc. and a calculation of the estimated expenses for implementing the plan. The decommissioning plan shall state how and at which times security will be provided for availability of the funds necessary for implementing the decommissioning plan.

(7) The Minister for Climate, Energy and Building may lay down more detailed rules and regulations regarding the content of a decommissioning plan, including the assumptions to be used for decommissioning facilities and installations, etc., the calculation of expenses, and the requirements regarding provision of security for the funds necessary for removal. Moreover, the Minister may lay down more specific rules and regulations regarding the calculation of expenses and requirements for the provision of security covering the funds necessary for the permanent abandonment of exploration and appraisal wells.”

23. After section 34a insert:

“**34b.**-(1) The Minister for Climate, Energy and Building may lay down rules and regulations to the effect that written communication to and from the Minister about issues comprised by this Act or rules and regulations laid down in pursuance thereof shall be transmitted digitally.

(2) The Minister may lay down more specific rules and regulations regarding digital communication, including about the use of specific IT systems, special digital formats, digital signatures and the like.

(3) For the purposes of this Act, a digital message shall be considered to have reached the recipient when it is available to the addressee of the message.”

24. In *section 37a(3), the first sentence, and subsection (5)*, for “sections 28a and 28b” substitute: “sections 28a or 28b”.

Section 2

This Act shall come into force on 19 July 2015.

Section 3

(1) Section 28(2) and (3) of the Act on the Use of the Danish Subsoil, as set out in section 1, item 18, of this present Act, shall apply to works that are in progress or initiated on or after 19 July 2016.

(2) Section 28d(1) of the Act on the Use of the Danish Subsoil, as set out in section 1, item 19, of this present Act, shall not apply to exploration wells drilled on the basis of licences granted prior to 18 July 2013.

(3) Section 1, item 21, shall apply to assignments approved pursuant to section 29(1) of the Act on the Use of the Danish Subsoil if the approval has been granted after the commencement of this present Act.

Given at Christiansborg Palace, 29 April 2015

Under Our Royal Hand and Seal

MARGRETHE R.

/ Rasmus Helveg Petersen

¹⁾ This Act contains provisions implementing parts of Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC, Official Journal 2013, L 178, p. 66.