

# **Bremen Port Operation Act**

of 21 November 2000

Bremen Official Journal (Brem. GBl.) page 437 (incl. amdts. until 08 January 2002)

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## **Section 1**

### **General Provisions**

#### **§ 1**

#### **Scope of application**

This Act and the Ordinances which will be decreed under authorisation of this Act apply to the port area of the State of Bremen.

#### **§ 2**

#### **Port area**

- (1) Port area for the purpose of this Act is all water and shore area designated for the traffic of ships, for port industry, for the handling, distribution and storage of goods, and for all facilities which are necessary for these activities.
- (2) The port area includes
  - 1. the public and private water area of the docks and of the installations at river Weser and Geeste,
  - 2. the area of port use.

Port area is deemed public if it can be used for its intended purpose on equal terms and conditions by any party.
- (3) The Senate is authorised to determine by Ordinance the water and shore side boundaries of the port area.
- (4) The Senate is authorised to determine by Ordinance that the regulations of this Act and of the Ordinances decreed under this Act are applicable also to water areas and adjacent shore area which are accessible via the port water area.

#### **§ 3**

#### **Application of other regulations**

- (1) Within the port water area the federal shipping regulations are applicable in addition to this Act and to the Ordinances decreed under this Act. Details are stipulated in the Port Bye Laws.
- (2) Where this Act and the Ordinances decreed under this act apply to water area in front of riverside port installations located inside a federal waterway, all federal shipping regulations are not interfered. This Act and the Ordinances decreed under this Act are applicable in addition.

- (3) Where the port water area is located inside a federal waterway the competence of federal authorities is not interfered.

## **§ 4**

### **Definitions**

Terms used in this Act are defined as follows:

1. **Ports**

Docks, entrances to docks, outer harbours and locks;

2. **Port installations**

Cargo handling facilities, berths, jetties, piers and landing places; riverside port installations are installations located at the river Weser including small Weser tributaries and the river Geeste;

3. **Area of port use**

Shore area adjacent to port water area which is designated for cargo operations, particularly unloading and loading of ships, and all other area within the port area which is designated for the intermediate keeping of dangerous goods, including all installations in this area;

4. **Ships**

Sea-going ships and inland barges, harbour crafts, recreational crafts, floating working units and other floating devices, which are normally intended to be used for moving through water, including hydroplanes and non-water displacing crafts;

5. **Shore vehicles**

Road vehicles, railway cars and rolling cargo handling units such as trailers, fork lifts and van carriers;

6. **Shipmaster**

Any person responsible for the conduct of a ship or otherwise responsible for the safety of a ship;

7. **Floating installations**

Floating facilities normally not designated for moving through water such as floating docks and floating landing stages; in case of shifting these installations they shall be considered as ships;

8. **Dangerous goods**

Substances and articles which due to their nature, their properties or their condition when transported represent a danger for the public safety or security, particularly for the general public, for important common heritage, for life and health of men, for animals and property. The Port Bye Laws define in detail the substances and articles falling under this definition.

9. **Cargo handling**

Loading and unloading of ships and containers including the transport of goods on piers, in sheds or storage area; the embarkation and disembarkation of passengers is also considered as cargo handling;

10. **Transit**

Goods not intended for cargo handling and remaining on board of a ship;

11. **Intermediate keeping**

Keeping (storage) of goods after commencement and during the course of transportation for the purpose of changing the transport mode or means for the purpose of onward transport;

**§ 5**

**Competence**

- (1) Competent authority for the enforcement of this Act and of the Ordinances decreed under this Act is the Port Authority unless a different competence is stipulated below in this Act.
- (2) Port Authority for the ports of Bremen and Bremerhaven is the harbour master (Hansestadt Bremisches Hafenamts – Hafenskapitän).
- (3) Port Authority is also the harbour master's staff as far as entrusted with the enforcement of this Act and of the Ordinances decreed under this Act.
- (4) The Port Authority according to (2) is also local regulatory authority for public order (Ortspolizeibehörde) in the meaning of § 67 (2) of the Bremen Police Act.

**§ 6**

**Competence of the Port Authority**

- (1) The Port Authority may:
  1. require information on the type, equipment, cargo, crew and incidents on board of all ships and require also the submission of all ship's and cargo documents;
  2. enter and inspect ships and be present on board during ships' navigation in port area;
  3. enter installations and floating installations;
  4. enter residential buildings against the will of the resident, as far as this is necessary to avert a imminent considerable threat for the public safety and security;
  5. enter and inspect vehicles and cargo transport units, particularly for the inspection of dangerous goods;
  6. to remove or to have removed ships which obstruct the traffic or which occupy a berth without permission;
  7. to have removed to a certain location ships which represent a danger for the public safety and security due to their condition or their cargo;
  8. to take all measures which are necessary to avert a danger for the safety or for the efficiency of traffic;
  9. to use all public water area in front of private port installations for the allocation of berths for ships in waiting position or ships carrying out ship to ship cargo handling, as

long as the respective berth is not used by the operator of the installation for own operations;

10. to enforce orders by means of the common legal provisions.

- (2) On board ships, in port installations and in facilities within the assigned area for port use the Port Authority is entitled to give orders which are necessary to avert dangers for the life and the health of employees and to suspend operations until the orders are followed. Details are stipulated in the Port Bye Laws.

## **§ 7**

### **Competence of the Police**

- (1) For the enforcement of this Act the Bremen Police have the competence of the police force according to § 64 (1) of the Bremen Police Act. Unless otherwise stipulated, the competence is limited to such measures which upon dutiful discretion are considered unavoidably necessary to avert a danger.
- (2) The personnel of the Bremen Police have the same competence as the Port Authority according to § 6 (1) No. 1 to 5 and 10.
- (3) Apart from the competence according to (1) the Bremen Police shall
  1. monitor compliance with all regulations serving the safety and efficiency of traffic, particularly regulations referring to the navigation, the equipment, the crew and the signals of ships and of floating installations;
  2. check ships' documents including safety certificates, permits, approvals, record books, documents of compliance, cargo documents and certificates of masters, officers, ratings and pilots.

## **§ 8**

### **Responsibilities of port users**

- (1) Unless otherwise stipulated, the shipmaster or the owner or the operator of an installation or of a floating installation is obligated to ensure compliance with the regulations of this Act and of the Ordinances decreed under this Act. Additional responsibilities may be stipulated by the Port Bye Laws.
- (2) The responsibilities are in particular:
  1. The shipmaster or the owner or the operator of an installation or of a floating installation shall tolerate measures according to §§ 6 and 7 and shall assist the persons entrusted with the enforcement of this Act and of the ordinances decreed under this Act in exercising their tasks.
  2. The shipmaster is obligated to immediately notify to the Port Authority if a ship is sinking, is leaking water pollutant substances, is on fire, did run aground or did become unable to manoeuvre due to an accident.
  3. The shipmaster is obligated to inform the Port Authority and the Police particularly about type, equipment and cargo of a ship and about incidents on board, if so requested, and to allow these authorities to look at all documents concerning ship, equipment and cargo.

4. Owners and operators of installations or floating installations shall allow port authority and police officers to enter these premises when executing their duties.
  5. Owners and operators of installations or floating installations located at or in public water area shall tolerate the mooring of ships according to § 6 (1) No. 9.
- (3) All orders of port authority and police officers shall immediately be followed.

## **§ 9**

### **Electronic data processing and data protection**

- (1) Within the scope of handling of dangerous goods, traffic management, passenger transportation, determination of port dues and occupational safety the Port Authority is entitled to process personal data to the extent that is necessary for the lawful exercise of duties. Personal data is permitted to be used only for the purpose stipulated in (2).
- (2) Within the scope of activities stipulated in (1) it is permitted to collect the necessary personal data for the exercise of the duties according to
  1. this Act and the Ordinances decreed under this Act,
  2. the Law on the Transport of Dangerous Goods and the related Ordinances,
  3. the Law on Competence in Sea Transport and the Law on Competence in Inland Waterway Transport and the related Ordinances,
  4. the Law of 10 February 1976 on the Convention for Safe Containers of 2 December 1972 and the related Ordinances,
  5. the Code of Public Budget of the Free Hanseatic City of Bremen,
  6. the Bremen Fees and Contributions Act.

The data may be collected without knowledge of the affected person as long as there is no substantiated assumption that protection worthy interests of the affected person might be impaired. The collection may be effected automatically. The automatic collection is permitted only if non-authorized data processing is excluded by technical and organisational means. Personal data of third parties outside the scope of public organisations may be collected only with the consent of the affected person. The collection of these data without consent of the affected person is permitted only if seeking for consent is not reasonably possible and as long as there is no substantiated assumption that protection worthy interests of the affected person might be impaired.

- (3) For the purpose of port development, port administration and port safety the Port Authority is entitled to collect data of cargo handling with respect to sea going ships and inland barges.
- (4) The Senator of Economy and Ports regulates by Ordinance further details of the type of data, the purpose of collection, the receivers of collected data and the mode of transmission. § 14 (2) of the Bremen Data Protection Act is not interfered.
- (5) Personal data shall be deleted,
  1. if their storage was not permitted or

2. if their storage is no longer necessary for the lawful exercise of duties. In case data is expected to be needed again, they may be stored up to two years after their last use unless the affected person requires their deletion.
- (6) Unless otherwise regulated in this Act, the provisions of sections 4 and 6 of the Bremen Data Protection Act applies.

## **Section 2**

### **General Provisions**

#### **§ 10**

##### **Use of the ports**

- (1) Navigation in the public water area of the ports is permitted without permission of the Port Authority provided the requirements of this Act and of the Ordinances decreed under this Act are complied with.
- (2) Navigation inside port area and dangerous goods due to be brought into the port area shall be notified to the Port Authority.
- (3) Navigation and cargo handling may be prohibited or restricted in the port area in general or in parts of the port area in order to avert a danger for public safety and security.
- (4) When navigating in the port the shipmaster shall be assisted by a harbour pilot. Exemptions from compulsory pilotage may be granted.
- (5) Berthing in the port area requires the permission of the Port Authority. The Port Authority allocates the berths under consideration of efficient port operation and public safety and security.
- (6) Details are stipulated in the Port Bye Laws.

#### **§ 11**

##### **Traffic permission**

- (1) Ships need a Port Authority permission to navigate in the port area, when
  1. they or their cargo endanger persons, environment or installations;
  2. they are due to be scrapped;
  3. they are due to be laid up;this applies also to wrecks and parts of ships. The permission may be refused if the public safety is impaired.
- (2) Ships which by fault of shipmaster or crew or due to insufficient condition of maintenance or equipment pollute port area or installations or cause a damage to them, or ships which are suspected having caused such pollution or damage are allowed to leave the port only with the permission of the Port Authority. Details are stipulated in the Port Bye Laws.

- (3) The permission according to (2) shall be granted, if
  1. the preconditions according to § 917 of the Code of Civil Procedure are not at issue;  
or
  2. a bail was posted up and an authorised representative was nominated.

## **§ 12**

### **Towage assistance**

- (1) Enterprises offering professional towage assistance services require the approval of the Port Authority. The approval may be granted under limited duration, supplementary provisions and subject to withdrawal.
- (2) The enterprise and the shipmaster of the assistance tug is obligated to render towage assistance unless the assistance is prevented by circumstances they can neither avert nor remedy.
- (3) To avert a danger the Port Authority is entitled to give the order that a ship shall use the towage assistance of an approved enterprise.
- (4) For the purpose of safety and efficiency of traffic, the Senator for Economy and Ports is authorised to decree Ordinances regulating towage assistance. The Ordinances may contain provisions on
  1. the preconditions for the granting, limitation and withdrawal of approvals according to (1), including determination of supplementary provisions for such approvals;
  2. the proof of the reliability of the enterprise and of the responsible managers and proof of the reliability and financial competitiveness of the enterprise, including procedures to evaluate these preconditions;
  3. the requirements for the qualification, training and certification of the shipmasters of assistance tugs, including the procedures to evaluate these requirements;
  4. the requirements for construction, equipment and operation of assistance tugs according to the applicable international regulations and, under consideration of safety aspects, to the latest state of technology;
  5. the requirements for a safe and efficient towage assistance service;
  6. the supervision by the competent authority;
  7. the extent of the assistance obligation according to (2);
  8. the availability and readiness of assistance tugs

## **§ 13**

### **Mooring**

- (1) The shipmaster and the owner or operator of a floating installation shall ensure the safe mooring of a ship using the designated mooring equipment. The mooring shall be

supervised and adjusted according to the changes of the water level due to the tide and according to the changes of the ships draught due to loading and unloading.

- (2) The mooring shall not obstruct the traffic in the water area and on shore unless otherwise permitted by the Port Authority.
- (3) The owner or operator of an installation or of a floating installation shall inspect the mooring equipment in regular intervals to ensure their safe working condition.
- (4) Enterprises offering professional mooring services require the approval of the Port Authority. The approval may be granted under limited duration, supplementary provisions and subject to withdrawal.
- (5) The enterprise according to (4) is obligated to render the mooring service unless the service is prevented by circumstances they can neither avert nor remedy.
- (6) To avert a danger the Port Authority is entitled to give the order that a ship or a floating installation shall use the mooring service of an approved enterprise for a mooring or unmooring operation.
- (7) For the purpose of safety and efficiency of traffic, the Senator for Economy and Ports is authorised to decree Ordinances regulating mooring services. The Ordinances may contain provisions on
  1. the preconditions for the granting, limitation and withdrawal of approvals according to (4), including determination of supplementary provisions for such approvals;
  2. the proof of the reliability of the enterprise and of the responsible managers and proof of the reliability and financial competitiveness of the enterprise, including procedures to evaluate these preconditions;
  3. the requirements for the qualification, training and certification of employees, including the procedures to evaluate these requirements;
  4. the requirements for equipment for and operation of mooring services according to the applicable international regulations and, under consideration of safety aspects, to the latest state of technology;
  5. the requirements for a safe and efficient mooring service;
  6. the supervision by the competent authority;
  7. the extent of the mooring obligation according to (2);
  8. the availability and readiness of the mooring service.

## **§ 14**

### **Hazards, pollution, damages**

- (1) In the port area everybody shall behave in a manner that nobody gets endangered or damaged.
- (2) In the port area it is prohibited to pollute or to damage water, quays, embankments, bank reinforcement and port installations. Pollution and damages shall immediately be notified to the Port Authority. Details are stipulated in the Port Bye Laws.

- (3) Other regulations of the law of public order and safety, security, environment, in particular of water, waste disposal and emission control, are not interfered.

## **§ 15**

### **Evacuation of port area**

- (1) The Port Authority is entitled to order the evacuation of the port area when a risk for the public safety and security is imminent.
- (2) In this case no reimbursement or waiver of port dues can be claimed.

## **Section 3**

### **Provisions for port fees**

## **§ 16**

### **Port dues**

- (1) Port dues are charged for the use of the ports and the facilities on the rivers Weser and Geeste. These dues are subdivided as follows:
1. tonnage charge
  2. berth charge
  3. harbour pilot charge
  4. ancillary charges.
- (2) For the purpose of regulating the port dues the Senator for Economy and Ports is authorised to decree the Ordinance of Port Dues and to specify in this Ordinance, subsequently to a hearing by the Chamber of Commerce,
1. detailed provisions governing the calculation and collection of the port dues;
  2. the harbour pilot charge;
  3. the individual ancillary charges and detailed provisions on the calculation and collection of these charges;
  4. the level and the preconditions for exemption, deferred payment and waiver of all charges

## **§ 17**

### **Assignment of competence to third parties**

The Senator for Economy and Ports is authorised to assign third parties with the calculation and collection of the port dues stipulated in § 16 (8) No. 1 to 4. The details are regulated in the Ordinance on Port Dues.

## **§ 18**

### **Supplementary application of the Bremen Fees and Contributions Act**

Unless this Act or the Ordinance on Port Dues contain a provision to the contrary, the provisions set forth in the Bremen Fees and Contributions Act shall also apply.

## **§ 19**

### **Ship owner as debtor**

In addition to the parties liable for costs as specified in the Bremen Fees and Contributions Act the ship owner shall also be liable for the costs when port dues are levied. If more than one party is liable for costs, these parties shall be jointly and separately liable.

## **Section 4**

### **Authorisation**

## **§ 20**

### **Authorisation**

To carry out this Act the Senator for Economy and Ports is entitled

1. to regulate by Ordinance the use the of port area, the navigation, the port operation and the maintenance of public safety and security in the port area;
2. to regulate by Ordinance the port pilotage;
3. to regulate by Ordinance the requirements for the qualification of the crews of harbour crafts;
4. to regulate by Ordinance the requirements for the design and preparation of emergency plans for the port area and for port installations.

## **Section 5**

### **Administrative offences**

## **§ 21**

### **Administrative offences**

- (1) An administrative offence is committed by any person who wilfully or negligently
1. contrary to § 6 (1), No. 1 to 5 hampers measures of control, violates information requirements or refuses assistance;
  2. contrary to § 6 (1) No 6 to 9 and (2) does not follow authority orders;
  3. contrary to § 7 (2) and (3) No. 1 and 2 hampers measures of control;
  4. contrary to § 8 (1) does not ensure compliance with the regulations of this Act;

5. contrary to § 8 (2) No. 1 does not assist authorised persons to exercise their tasks;
6. violates notification requirements of § 8 (2) No. 2;
7. violates information requirements of § 8 (2) No. 3;
8. contrary to § 8 (2) No. 4 does not allow authorised persons to enter a port installation;
9. contrary to § 8 (2) No 5 does not tolerate the mooring of ships;
10. contrary to § 8 (3) does not immediately follow the orders;
11. contrary to § 10 (2) does not comply with notification requirements;
12. contrary to § 10 (4) does not use harbour pilot assistance;
13. contrary to § 10 (5) uses a berth without permission;
14. contrary to § 11 (1) navigates in the port area without permission;
15. contrary to § 11 (2) leaves the port area without permission;
16. contrary to § 12 (1) renders towage assistance or leaves tugs to third parties for this purpose without permission;
17. contrary to § 12 (2) does not comply with his obligation to assist;
18. contrary to § 13 (1) does not moor safely ships and floating installations;
19. contrary to § 13 (2) obstructs cargo handling and traffic;
20. contrary to § 13 (3) does not check regularly the mooring equipment;
21. contrary to § 13 (4) renders mooring services without permission;
22. contrary to § 13 (5) does not comply with his obligation to moor;
23. violates a general rule of conduct of § 14 (1);
24. contrary to § 14 (2) pollutes or damages water, quays, embankments, bank enforcement and other port and navigational installations and does not comply with the notification requirements;

Where the regulations are related to ships the responsibility rests with the shipmaster unless otherwise stipulated.

- (2) An administrative offence is committed also by any person who wilfully or negligently violates a regulation of an Ordinance decreed under this Act, as far as, for the specific violation, the Ordinance refers to this administrative offence provision.
- (3) An administrative offence is committed also by any person who wilfully or negligently violates a provision of a federal regulation made applicable by § 3 of this Act, as far as the specific violation can be prosecuted according to the referred federal regulation.

- (4) In the cases of (1) and (2) the administrative offence can be punished with a fine up to fifty thousand Euro, in the cases of (3) up to the amount stipulated in the referred federal regulation.
- (5) The Ordinances decreed under this Act may provide that also the attempt of an administrative offence can be punished.
- (6) Competent authority for the prosecution and punishment of administrative offences is the Port Authority.

## **Section 6**

### **Terminatory provisions**

#### **§ 22**

#### **Restriction of constitutional rights**

By this Act the constitutional right of the liberty of person (article 2 of the Constitution) and the constitutional right of the immunity of private home (article 13 of the Constitution) are restricted.

#### **§ 23**

#### **Amendment of regulations**

- (1) In § 2 sentence 1 of the Bremen Fees and Contributions Act of 16 July 1979 (Brem. GBl. S. 279), last amended by article 3 of the Act of 24 November 1999 (Brem.GBl. S. 305) the wording "Bremen Port Act" is replaced by "Bremen Port Operation Act".
- (2) In § 16 (2) No 2 of the Bremen Act for the Implementation of the Federal Waste Disposal Act in the version of the announcement of 23 November 1998 (Brem. GBl. S. 289), last amended by article 1 of the Act of 1 June 1999 (Brem.GBl. S. 95) the wording "Bremen Port Act" is replaced by "Bremen Port Operation Act".
- (3) In § 71 (6) of the Bremen Water Act in the version of the announcement of 26 February 1991 (Brem. GBl. S. 65), last amended by article 2 of the Act of 1 June 1999 (Brem.GBl. S. 95) the wording "Bremen Port Act" is replaced by "Bremen Port Operation Act".
- (4) In § 1 No. 2 of the Ordinance Regulating the Prosecution and Punishment of Administrative Offences according to the Explosives Act of 17 November 1998 (Brem. GBl. S. 334) the wording "Bremen Port Act" is replaced by "Bremen Port Operation Act".
- (5) In § 4 (1) 1 No. 2 of the Ordinance of Competent Authorities according to the Explosives Act of 17 November 1998 (Brem. GBl. S. 333) the wording "Bremen Port Act" is replaced by "Bremen Port Operation Act".
- (6) The Bremen Fishery Act of 17 September 1991 (Brem. GBl. S. 309), amended by article 1 of the Act of 1 June 1999 (Brem. GBl. S. 95) is amended as follows:
  1. In § 9 (1) the wording "Bremen Port Act" is replaced by "Bremen Port Operation Act".

2. In § 30 (2) the wording “Bremen Port Act” is replaced by “Bremen Port Operation Act”.
- (7) In § 1 of the Announcement on the Competent Authorities according to the Transport of Dangerous Goods by Sea Ordinance of 10 November 1986 (Brem. Abl. S. 550) the wording “Bremen Port Act” is replaced by “Bremen Port Operation Act”.
- (8) In § 48 (1) of the Ordinance for the Harbour Pilotage in Bremerhaven of 28. November 1974 (Brem. GBl. S.431) the wording “according to § 16 of the Bremen Port Act” is replaced by “according to § 21 of the Bremen Port Operation Act”.

## **§ 24**

### **Return to uniform status of Ordinances**

The parts of the Ordinances referred to in § 23 (4), (5), (7) and (8) can be amended under the individually applicable legal authorisations.

## **§ 25**

### **Entry into force**

- (1) § 16 (2) and § 20 Nr. 1 of this Act enter into force the day after announcement.
- (2) All other parts of this Act enter into force on 1 January 2001. The same day the following regulations are repealed:
  1. Bremen Port Act of 27 September 1966 (Brem. GBl. S.131), last amended by the Act of 1 June 1999 (Brem. GBl. S. 95);
  2. Ordinance on the Port Inspector of the City of Bremerhaven of 10 January 1902 (SaBremR 9511-e-1), last amended by article 28 to 30 of the Act of 24 March 1970 (Brem. GBl. S.37; and
  3. Ordinance on the Port Inspector of the City of Bremen of 9 December 1910 (SaBremR 9511-e-2), last amended by article 157 of the Act of 18 December 1974 (Brem. GBl. S.37.