



BERMUDA

MARINE BOARD ACT 1962

1962 : 30

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FIRST SCHEDULE

Repeal or Amendment of Enactments

SECOND SCHEDULE

Amendment of Regulations

[preamble and words of enactment omitted]

PART I

Division of Act into Parts

- 1 *[omitted]*

Interpretation

- 2 (1) In this Act, unless the context otherwise requires—

“barge” means a craft—

- (a) made or adapted for the purpose of transporting material and equipment;
- (b) used or intended to be used for the purpose of dredging; or

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(c) made or adapted for the purpose of carrying out marine construction works,

within the territorial waters of Bermuda but does not include such a craft unless it is used for commercial purposes;

“boat” includes every description of craft not being a ship and includes a barge;

“branch” means the certificate of proficiency granted to pilots by the Minister entitling the holder to pilot ocean-going ships;

“branch pilot” means any pilot holding a branch which is in force, and includes the Warden of Pilots;

“the Department” means the Department of Marine and Ports Services established under section 9;

“the Director” means the Director of Marine and Ports Services appointed under section 9;

“dock” includes every wharf, quay, pier or other landing place, servicing ships and includes the dock area adjacent thereto comprising the buildings and other structures providing facilities for passenger traffic, the handling, storage and clearance of cargo and services ancillary thereto;

“floating dock” means a floating structure—

(a) which is attached to the foreshore or to the bed of the sea;

(b) to which access is provided from the foreshore; and

(c) to which a boat or ship may be moored or secured;

“Freeport docks” means the docks belonging to or under the control of the West End Development Corporation within the Freeport (as delimited in the Ireland Island Freeport Act 1956);

“Hamilton docks” means the docks belonging to or under the control of the Corporation of Hamilton within the municipal boundaries of that Corporation;

“Island boat” means every vessel, hulk, steamboat, lighter or other boat, not being a row-boat, and not ordinarily employed in voyages to any place beyond the sea;

“Island motor boat” means every motor boat plying for hire or reward in the waters of, or from place to place within Bermuda, and not ordinarily plying between Bermuda and places beyond the sea;

“Island steamboat” means every steamboat plying for hire or reward in the waters of, or from place to place within Bermuda, and not ordinarily plying between Bermuda and places beyond the sea;

“licensed pilot” means a pilot licensed by the Minister to pilot Island steamboats or Island motor boats;

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- “marine construction works” includes any works carried out on the bed of the sea;
- “master” means the person in charge of any ship or Island boat;
- “Minister” means the Minister charged with responsibility for marine and ports services;
- “mooring” means a device which is used to secure a boat or ship in a fixed location and includes a mooring pile and a floating dock;
- “mooring pile” means a pole, post or pillar which is fixed or driven into the bed of the sea and to which a boat or a ship may be moored or secured;
- “motor boat” includes every craft usually plying the waters of Bermuda propelled by internal combustion engines or electric motors;
- “owner”, in relation to any wreck or wreckage means any person who was owner or part owner thereof when such wreck or wreckage became an obstruction by reason of being in any ship channel, or in any of the approaches thereto, or so near thereto as to cause danger, obstruction or delay to any ship having occasion to enter, pass through or use such channel, or to any inward or outward bound ship, notwithstanding any subsequent sale, transfer or abandonment; and the expression shall be deemed to include any purchaser or transferee, or other person in possession;
- “pilotage dues” means the amount legally payable for piloting a ship;
- “ports” includes all harbours, anchorages and moorings within the territorial waters of Bermuda and Hamilton docks, St. George’s docks and the Freeport docks;
- “port dues” include shipping wharfage;
- “prescribed” means prescribed by any Act or by any regulation made thereunder or by order of the Minister or Ports Authority;
- “ship” means a sea-going steamer, motor or sailing ship, and includes a hulk or lighter used locally or otherwise; but does not include craft usually plying in the waters of Bermuda;
- “ship channel” includes every channel leading from the high seas to any harbour or anchorage in Bermuda and every approach to, and every extension or prolongation of any or either of them;
- “St. George’s docks” means the docks belonging to or under the control of the Corporation of St. George’s within the municipal boundaries of that Corporation;
- “superyacht” has the meaning given in the Passenger Ships and Other Vessels Act 1972;
- “steamboat” includes every craft usually plying the waters of Bermuda, propelled by steam engines;

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“the Warden” means the Warden of Pilots;

“wreck” means any sunken, foundered, waterlogged, grounded, stranded or abandoned ship, hulk or boat;

“wreckage” means any floating, sunken or submerged portion of any ship, hulk or boat, or any floating, sunken or submerged ship’s materials, cargo, ballast or other things.

(2) For the purposes of Part V any vessel visiting the waters of Bermuda under a charter-party for the purpose of being used to embark and transport passengers within the waters of Bermuda shall be deemed to be a boat plying for hire or reward and Part V and the Marine Board (Island Boats) Regulations 1965 [*title 22 item 3(j)*] to the extent provided in those Regulations shall apply mutatis mutandis to such a vessel.

(3) Subsection (2) does not apply to a superyacht, chartered in accordance with a permit granted under section 3C of the Passenger Ships and Other Vessels Act 1972; accordingly Part V and the Marine Board (Island Boats) Regulations 1965 shall not apply to such a superyacht.

[Section 2 amended by 1991 : 4 effective 7 March 1991; amended by 1997 : 23 effective 11 July 1997; “floating dock”, “mooring” and mooring pile” inserted by 1999 : 47 s.2 effective 22 December 1999; subsection (1) definition “superyacht” inserted, and subsection (3) inserted by 2019 : 27 s. 2 effective 1 January 2020]

Application of Act to Crown

3 (1) Subject to sections 48 and 87 and this section, the provisions of this Act shall apply to ships, vessels, boats and persons in the public service of the Crown.

(2) In relation to ships, vessels and boats used for naval or military purposes or used by the police or the Bermuda Fire and Rescue Service, the provisions of this Act shall not apply.

(3) Where an offence under this Act is alleged to have been committed in connection with a ship, vessel or boat in the public service of the Crown, proceedings may be brought in respect of the offence against any person actually responsible for the offence.

[Section 3 repealed and replaced by 1993:19 effective 29 June 1993; subsection (2) amended by 2007:23 s.17 effective 2 July 2007]

PART II

Ports Authority established

4 (1) For the purposes of this Act there shall be established a board of persons to be called the Ports Authority, who shall have the powers and discharge the duties conferred or imposed upon the Ports Authority by or under this or any other Act.

(2) The Ports Authority shall consist of not more that eleven members appointed by the Minister as follows—

(a) a Chairman;

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- (b) not more than two members from the Corporation of Hamilton;
- (c) not more than two members from the Corporation of St. George's;
- (d) not more than one member from the West End Development Corporation;
- (e) not more than five members from persons who are not members of any of the Corporations specified in paragraphs (b), (c) and (d),

and each member shall hold office during the Minister's pleasure.

(3) The Ports Authority shall be a body corporate under the name of "The Ports Authority", with the exclusive right to use that name in Bermuda, and with perpetual succession under that name, and with power to sue and liability to be sued in its corporate capacity by that name in all courts, and with power to have and use a common seal and to renew or vary the same at pleasure.

(4) The Minister may, from among the members appointed pursuant to subsection (2)(b), (c), (d) or (e), appoint a Deputy Chairman who shall hold office as such during the Minister's pleasure.

(5) If at any meeting of the Board the Chairman is absent, the Deputy Chairman shall preside over that meeting; and if both the Chairman and the Deputy Chairman are absent the members present shall elect one of their number to act as chairman at that meeting.

(6) A moiety or majority of the members of the Ports Authority in Bermuda at the date of any meeting shall form a quorum thereat.

(7) Every question or matter to be determined by the Ports Authority at any meeting shall be decided by a majority of the votes of the members present and voting on the question or matter:

Provided that in the event of an equal division of votes the chairman of the meeting may, if he thinks fit, give a second or casting vote.

(8) Subject to the foregoing provisions of this section the Ports Authority shall have the power to regulate its own procedure.

(9) Fees shall be paid to members of the Ports Authority in accordance with the Government Authorities (Fees) Act 1971 [*title 14 item 6*].

(10) The validity of any business transacted by the Ports Authority and the proceedings thereof shall not be affected by reason of the absence of any member or any vacancy in the numbers thereof.

(11) [*deleted by 1985:19*]

Minister has general management, control and supervision of maritime matters

5 Subject to this Act and any other provision of law the Minister shall have the general management, control and supervision of all maritime matters in Bermuda, and shall perform the functions hereinafter specified—

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- (a) the Minister shall have the administration and control of ship channels, of lighthouses and of lighthouse keepers, of signal stations and of signalmen, of pilotage and of the pilot service, of ferry services, of navigational aids and of tugs and tenders the property of the Government; and the Minister shall have the charge and management of the improvement and dredging of ship channels;
- (b) the Minister shall exercise a general supervision and control over the navigation of ships and boats in the territorial waters of Bermuda and of the ports of Bermuda with the duty of co-ordinating the development, administration and operation thereof;
- (c) the Minister shall exercise a general supervision and control over matters concerning or connected with the use of boats plying for hire;
- (d) the Minister shall cause to be made such inquiries as he thinks expedient in respect of any matters concerning or connected with any of the matters mentioned in paragraphs (a) or (b), or in respect of any matters in respect of which his sanction, approval or consent, or the sanction, approval or consent of any officer of the Department is required under this Act;
- (e) the Minister in respect of matters connected with any of the matters mentioned in paragraphs (a) or (b), shall cause such statistical data to be obtained and recorded, and such records or reports to be published, as he may think expedient.

Powers and duties of Ports Authority

6 Subject to any general direction given by the Minister under section 7, the Ports Authority shall have the powers and duties vested in them or imposed upon them by Part IV or any other provision of law.

Minister may give general directions to Ports Authority

7 (1) The Minister may, after consultation with the Ports Authority, give to the Ports Authority directions of a general character as to the exercise and performance by the Ports Authority of its functions in relation to matters which appear to him to affect the public interest, and the Ports Authority shall give effect to such directions.

(2) The Ports Authority shall furnish the Minister with such returns, accounts and other information with respect to the exercise and performance by it of its functions as he may from time to time require.

(3) Without prejudice to subsection (2) the Ports Authority shall, as soon as possible after the end of each financial year of the Ports Authority, make to the Minister a report on the exercise and performance by it of its functions during that year and on its policy and programme, and the Minister shall lay a copy of every such report before each House of the Legislature.

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Minister may consult Ports Authority

8 In the exercise of his powers and duties in relation to marine and ports services and related matters, other than his power to give directions under section 7, the Minister may consult with, or take the advice of, the Ports Authority from time to time as he shall think fit, but notwithstanding that the Minister has consulted, or taken the advice of the Ports Authority on any matter he may act in his discretion on such matter.

Department of Marine and Ports Services established

9 (1) There shall be established a Department of Government which shall be charged with the duty of assisting the Minister and the Ports Authority in the discharge of their functions under this Act and any other enactment which shall be known as the Department of Marine and Ports Services.

(2) The Department shall, subject to general direction and control by the Minister, be under the supervision of a public officer who shall be known as the Director of Marine and Ports Services and shall consist of such other public officers as may from time to time be authorized by the Governor.

[Section 9 amended by 1998 : 20 effective 18 June 1998]

PART III

Control of ship channels

10 (1) The Minister may, with respect to the territorial waters of Bermuda, by a Notice to Mariners or other local navigational warning or order, which shall also be published in the Gazette—

- (a) declare speed limits for ships and boats;
- (aa) prohibit or restrict or prohibit and restrict the movement of a ship or a boat in areas of waters designated in the Notice;
[subparagraph (aa) inserted by 1992:31 effective 8 June 1992]
- (b) exercise control over maritime traffic and declare the priority of ships or boats as to right of way;
- (c) specify the signals to be used between ship and ship or between ship and shore; and
- (d) declare any route, other than a ship channel, regularly used by any particular class of ship or boat, to be a subsidiary channel, whether or not such route is marked by buoys or other aids to navigation.

(1A) After consultation with the Ports Authority, the Minister may, subject to any terms and conditions, grant to a boat an exemption from any prohibition or restriction set out in a Notice published under subsection (1)(aa).

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(1B) An exemption granted under subsection (1A) shall be in writing and shall at all times be posted by the owner in a conspicuous part of the boat as the Director may designate.

(2) The Minister may cause to be erected signs declaring speed limits or any other restrictions on the movements of ships or boats within the territorial waters of Bermuda.

(3) The master of any ship or boat commits an offence if he fails to observe the requirements of—

- (a) any Notice to Mariners published under subsection (1);
- (b) any term or condition of an exemption granted under subsection (1A); or
- (c) any sign erected under subsection (2).

(4) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to a Notice to Mariners or other local navigational warning or order given or made under this section.

[Section 10 amended by 2010 : 37 s. 2 effective 16 July 2010]

Minister may make regulations regarding shipping

11 The Minister may, by regulations made under this Act—

- (a) specify the lights, signals, methods of communications, and life-saving apparatus to be carried by boats;
- (b) regulate the navigation, running and conduct of any boat, in such manner as not to endanger the safety of, or to cause annoyance or inconvenience to, other boats or to the public;
- (c) provide for the registration of boats and for the fees to be paid for such registration;
- (d) provide for offences in connection with the ownership, possession or use of boats; and
- (e) provide for the licensing and conduct of pilots, engineers, engine drivers and motormen employed in any craft plying for hire or reward.

Ship not to enter ship channel without clearance or in dangerous weather conditions

12 (1) The master or pilot of any ship shall not permit her to enter any ship channel without first having secured clearance from the Signal Station, Fort George.

(2) The master or pilot of any ship shall not permit her to enter any ship channel when, from the state of the wind or weather or any other circumstances, that ship cannot use such channel without danger to herself, or to any other ship, or to the sides of the channel, or to the buoys, poles or marks in or marking the channel, or the approaches thereto, or their moorings.

(3) Any master of a ship or pilot who contravenes the foregoing provisions of this section commits an offence against this Act.

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Restriction on use of ship channel by disabled ship

13 (1) No disabled ship shall enter or pass through any ship channel without the previous permission of the Director.

(2) Any master or pilot of a disabled ship who allows such ship to enter or pass through any ship channel in contravention of the foregoing provisions of this section commits an offence against this Act.

Conditional permission for use of ship channel by disabled ship

14 (1) The Director, on granting permission for any disabled ship to enter or pass through any ship channel, may specify the time during which, and the conditions under which such permission shall be available.

(2) The master or pilot of a disabled ship which enters or passes through any such channel, except in compliance with the terms of the permission granted by the Director, commits an offence against this Act.

No dumping in ship channel

15 (1) Save under the terms of any permission granted by the Director, which permission shall be subsequently confirmed in writing, the master of every ship shall prevent any ballast, gravel, rubble, ashes, coke, cinders, coal dust, refuse or other solid material, or any fuel oil, to be discharged, dumped, thrown, dropped, deposited or pumped in any ship channel or in any approach thereto.

(2) Any person who contravenes any of the foregoing provisions of this section commits an offence against this Act.

Defence of necessity due to weather

16 No person shall be liable to be convicted of an offence against those provisions of this Act which relate to the protection of ship channels if the court is of the opinion that the act or omission with respect whereto such offence is alleged to have been committed was necessary or reasonable on account of stress of weather or other sufficient cause beyond the control of the person doing the act or making the omission as aforesaid.

Clearance of wreck from ship channel

17 (1) The master and owner of any wreck, and the owner of any wreckage, which is in any ship channel or in any of the approaches thereto, or so near thereto as to cause danger, obstruction or delay to any ship having occasion to enter, pass through or use such channel, or to any inward or outward bound ship, shall effectually clear such channel and the approaches thereto of such wreck or wreckage, to the satisfaction of the Minister, within such time as the Minister may prescribe by written notice given to such master or owner, or to his known agent in Bermuda, or, if such master, owner, or agent is not known or cannot be found in Bermuda, by notices published in the Gazette.

(2) Such master or owner may be required to give sufficient security to the Minister for clearing such channel and the approaches thereto of such wreck or wreckage, to the satisfaction of the Minister within such time as the Minister may allow.

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(3) If such master or owner fails to comply with any notice given by the Minister under subsection (1) or to give the security required by subsection (2), then the master or owner commits an offence against this Act; and the Minister may remove and clear away such wreck or wreckage in such manner as the Minister sees fit, and may cause the wreck or wreckage to be sold or otherwise disposed of, as the Minister deems expedient.

(4) Out of the proceeds of any such sale the Minister shall defray the expenses of and incidental to the sale, and shall then apply such proceeds in or towards payment of the expenses—

- (a) incurred in the removal of such wreck or wreckage; and
- (b) incurred in repairing and making good any damage done to such channel, or to any buoys, marks, poles or moorings, by such wreck or wreckage; and
- (c) incurred in renewing or replacing any lost, sunken or displaced buoys, marks, poles or moorings carried away, sunken, damaged or rendered unserviceable by such wreck or wreckage,

together with any incidental expenses, and shall then pay the surplus (if any) of the proceeds of such sale to the master or owner of such wreck or wreckage, or to his known agent in Bermuda, and if there is no such agent the surplus proceeds of the sale shall be paid into the Consolidated Fund for the use of the owner of such wreck or wreckage or other, person making sufficient proof to the satisfaction of the Accountant-General of his title to such money.

(5) If the proceeds of any such sale are insufficient to meet all the expenses of and incidental to the removal of such wreck or wreckage, and to defray the other charges and expenses hereinbefore authorized to be paid therefrom, then the excess shall be recoverable from the owner of such wreck or wreckage as a debt due to the Crown.

(6) The excess of the expenses of and incidental to the removal of any wreck or wreckage not recovered in the manner hereinbefore provided for, shall be defrayed out of the Consolidated Fund.

(7) Notwithstanding anything in the foregoing provisions of this section the Minister may at any time clear any ship channel of wreck or wreckage to ensure the passage of ships, and any expenses incurred in such clearance shall be recoverable as a debt due to the Crown from the master or owner of such wreck or the owner of such wreckage.

Emission of offensive smoke

18 (1) In this section—

“agent”, in relation to a ship or boat, means the agent in Bermuda for the owner of the ship or boat;

“offensive smoke”, in relation to a ship or boat, means smoke emitted from the ship or boat in such quantity, or having such content of soot, smut, cinders or oil—

- (i) as to be offensive to persons; or

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- (ii) as to cause or be likely to cause damage or injury to buildings, furnishings, goods or other articles;

“owner”, in relation to a ship or boat operated by a person or corporate body other than the registered owner, means such person, or corporate body.

(2) Subject to subsection (5), nothing in this section shall be construed so as to derogate from or abridge—

- (a) any provision of the Public Health Act 1949 [*title 11 item 1*], relating to the control of nuisances; or
- (b) any right of action arising from any damage or injury, caused, or anticipated to be caused, by the emission of smoke from ships or boats.

(3) Subject to subsection (5), the owner, or the agent thereof, of any ship or boat which emits offensive smoke while in the waters of Bermuda, or while at anchor, or while moored or docked, within the ports of Bermuda commits an offence;

Punishment on summary conviction: a fine of \$ 15,000.

[Section 18 amended by 1992:31 effective 8 June 1992]

(4) In any proceedings in respect of an offence under this section—

- (a) such proceedings shall be instituted within six months of the date upon which the offence is alleged to have been committed; and
- (b) where the defendant therein is a corporate body, such proceedings may be brought against any Director thereof resident in Bermuda who may appear by means of a representative.

(5) Notwithstanding anything in subsection (3), it shall be a defence to any charge brought under that subsection to prove that reasonable precautions had been taken to prevent the unnecessary emission of offensive smoke and that the emission of offensive smoke was, in the circumstances, unavoidable.

Minister to buoy and mark ship channels

19 (1) The Minister shall be responsible for the correct buoying and marking of all ship channels and portions of ship channels, the buoying and marking of which are under the control of the Minister.

(2) The Minister shall ensure that the shape and colouring of all buoys shall conform to international practice or regulations.

Buoys and beacons to be refitted

20 The Minister shall once at least in every year, and as much oftener as necessary, cause all buoys, beacons and poles under his control or authority, and all shore marks and other aids to navigation, to be cleaned, and, if necessary, repaired; and from time to time shall renew any such buoy, beacon or pole as is requisite, and shall provide and place in position such new ones as are, in the opinion of the Minister, necessary or desirable for proper navigation.

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Interference with buoy or beacon an offence

21 Any person who, without the authority of the Minister—

- (a) takes up or removes any buoy, beacon or pole under the control of the Minister or any shore mark or other aid to navigation; or
- (b) makes fast any ship, boat or craft to any such buoy, beacon or pole; or
- (c) wilfully destroys or injures any such buoy, beacon or pole, or any attachment thereto; or
- (d) places any buoy, beacon or pole in or near any of the channels or waters of Bermuda similar in appearance to any of the buoys, beacons or poles under the control of the Minister,

commits an offence against this Act.

Use of dredging and other equipment by Minister

22 The Minister shall employ all dredgers, rock breakers and other craft, plant, machinery and equipment intended or used for that purpose in the deepening and widening of the channels and the removal of shoals and other obstacles to navigation in such manner and in such order of priority as may from time to time be prescribed by the Minister.

Control of ship channels in time of war or emergency

23 On the outbreak of hostilities or on any grave national emergency arising, the Governor may by proclamation declare the channel authority to be vested in the Admiralty or such other authority as the Governor may by proclamation appoint, and the Admiralty or such other authority shall thereupon become, in lieu of the Minister, the channel authority, and shall have all the power and authority incident thereto or necessary therefor.

Lighthouses

24 (1) The Minister shall have the management and care of existing lighthouses and of lighthouses which may hereafter be erected by the Government and shall have power to regulate the admission of visitors to any such lighthouses.

(2) The Minister shall procure all oil, machinery, implements, apparatus, materials and other things required for lighthouses and lights.

(3) The Minister shall provide for the necessary renovation, repair and improvement of the lanterns, machinery, apparatus and appurtenances of lighthouses and for the proper, regular and efficient lighting of lighthouses and for the preservation of lighthouses in efficient and good order.

Light tolls

25 (1) All ships (other than ships declared to be exempted ships for the purpose of this section) coming to anchor or berthing in Bermuda from beyond the seas shall on their arrival be liable for light tolls calculated in accordance with regulations made under this Act.

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(2) The following ships are declared to be exempted ships for the purpose of this section,—

- (a) Her Majesty's ships;
- (b) transports and store ships wholly employed on Her Majesty's service;
- (c) ships under commission from any foreign power recognized by Her Majesty;
- (d) ships exclusively employed in any scientific voyage, and not in any way engaged in trade;
- (e) ships exclusively employed in voyages of pleasure and not carrying any passengers or freight for hire or reward;
- (ea) superyachts, chartered in accordance with a permit granted under section 3C of the Passenger Ships and Other Vessels Act 1972;
- (f) ships calling at Bermuda for the sole purpose of landing persons picked up or rescued at sea, or of bringing in derelicts, and not landing, discharging or taking on board cargo, except when required to do so under the Quarantine Act 2017, or under any of the Acts of the Parliament of the United Kingdom referred to as the Imperial Shipping Acts;
- (g) ships which, having paid light tolls in Bermuda, return from sea owing to stress of weather within ten days after leaving Bermuda, without having reached any port out of Bermuda;
- (h) ships which are wrecked or stranded and which do not arrive in any port in Bermuda;
- (i) ships which, having been brought into Bermuda as derelicts—
 - (i) are sold under any order or decree; and
 - (ii) are sold as aforesaid, together with their cargo, for not more than two hundred and forty dollars; and
- (j) ships which are exclusively employed as sail-training ships.

[Section 25 amended by 1998 : 10 effective 1 April 1998; subsection (2)(f) amended by 2017 : 11 s. 17 effective 24 April 2017 ; subsection (2)(ea) inserted by 2019 : 27 s. 2 effective 1 January 2020]

Maritime lien for unpaid light tolls

26 (1) No ship shall be permitted to clear until all light tolls are paid or until such time as satisfactory arrangements have been made with the Accountant-General for the payment of light tolls.

(2) Light tolls shall constitute a maritime lien on a ship, her boats, tackle, guns, apparel, furniture and cargo.

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Minister has control of signal stations

27 The Minister shall be the authority for the management and control of signal stations, and for the regulation of the signalling and reporting of ships at any signal station.

Minister may regulate branch and pilotage

28 The Minister shall be the authority for—

- (a) specifying qualifications as to age, service, character and other particulars required from candidates for branch;
- (b) determining the terms and conditions of examination as to fitness and the grant of branch to pilots;
- (c) regulating the organization of pilots, apprentices and persons acting as pilot of any craft operated by the Government, and for promoting their good conduct and effectual performance of duty afloat and ashore.

29 *[repealed by 1973:33]*

Duties of Warden of Pilots

30 The Warden—

- (a) shall have immediate control over branch pilots, apprentice pilots, public officers training as pilots and crews of pilot boats;
- (b) shall detail branch pilots, apprentice pilots and persons under training as pilots to such duties, whether afloat or ashore, in respect of the pilot service as he may consider advisable;
- (c) shall investigate all complaints against pilots and all cases in which it has come to his knowledge that there is a probability that any pilot has failed in his duty; and
- (d) shall be responsible for the care and maintenance of pilot boats.

Appointment of pilots and grant of branch

31 (1) Pilots shall be appointed from among persons who have been granted branch by the Minister.

(2) Branch granted by the Minister shall be under the seal of the Minister and in such form as the Minister may from time to time determine.

Application for branch

32 Every applicant for branch shall apply in writing to the Clerk and shall enclose with such application originals or certified copies of all certificates and documents in his possession relating to his qualifications therefor.

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Examining board

33 The Warden (who shall be Chairman) and two members of the Ports Authority appointed by the Ports Authority shall constitute the Examining Board for a candidate for branch or for pilot apprenticeship, and such Examining Board may arrange for the physical or optical testing of a candidate to be conducted by a registered medical practitioner or oculist:

Provided that the Examining Board may in any particular case appoint a qualified person to assist them in the conduct of the examination, and any such person shall be entitled to receive such fee not exceeding twelve dollars, as may be determined by the Ports Authority.

Technical requirements and issue of branch

34 (1) For the information of prospective candidates for branch, the Minister shall from time to time cause to be published in the Gazette a statement of the technical and other matters upon which such candidates will be required to satisfy the Examining Board.

(2) Whenever a candidate for branch has satisfied the Examining Board—

- (a) that he is a Commonwealth citizen of not less than eighteen years of age; and
- (b) that he is duly qualified for branch as regards technical competence, character, and mental and physical attributes,

then the Examining Board shall report the fact to the Minister, who may, if deemed fit, issue branch to such candidate.

[Section 34 subsection (2)(a) amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001]

Copies of branch

35 The Director shall make and file a copy of every branch, and if a pilot at any time satisfies the Minister that his branch has been destroyed or lost or has become so worn or defaced as to require replacing, the Minister may direct the Director to issue to the pilot a true copy of the branch; and such copy shall for the purposes of this Act be deemed to be the branch held by such pilot.

Candidates for pilot apprenticeship

36 Applicants for pilot apprenticeship must satisfy the Examining Board that they are Commonwealth citizen of not less than sixteen years of age, that they can read and write with reasonable facility, that their eyesight and hearing are good, that they can readily distinguish colours and that they are in all respects mentally and physically competent to be instructed in the duties of a pilot.

Binding of apprentices by indenture

37 Apprentices shall be bound by indenture to the Minister for a period of two years and during such period shall assist in manning the pilot boats, or in performing such other duties as the Minister may direct, and shall be subject to the supervision and orders of the Warden, and also the supervision and orders for the time being of any pilot on whom they

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may be in attendance, when on board any pilot boat or on board any ship in charge of a pilot.

Pilot Station

38 At the Pilot Station quarters and accommodation shall be provided—

- (a) for the Warden;
- (b) for pilots on duty; and
- (c) for apprentices on duty.

Pilot boats and equipment

39 (1) Pilot boats shall be of such models and designs and shall be equipped in such manner and stationed in such places as the Minister may from time to time direct.

(2) Pilot boats shall, so far as is practicable, be manned by apprentice pilots, or public officers under training as pilots, but there may be arranged from time to time the hiring of such extra hands for the manning of the boats as may be necessary.

Distinguishing marks of pilot boat

40 Every pilot boat shall be distinguished by the following characteristics, that is to say—

- (a) on her stern there shall be painted in white letters at least one inch broad and three inches long the words "Bermuda Pilot Service";
- (b) on each side, in a conspicuous place, there shall be painted in white letters at least one inch broad and six inches long the word "PILOT"; and
- (c) by day a flag known as the pilot flag at least three feet square of which the upper horizontal half shall be white and the lower horizontal half red shall be flown at her mast.

Pilot signals

41 (1) A pilot when cruising, or going off to, or approaching or in search of, any inward bound ship or ships, between sunset and sunrise, shall not show on his pilot boat the lights prescribed for sea-going vessels by the regulations for the time being in force under the Merchant Shipping Act 2002, but shall conspicuously exhibit and keep exhibited a white light as high above the deck or gunwhale of his pilot boat as is reasonably practicable under the circumstances, and in such position that the light is visible from any inward bound ship in sight when such pilot may be approaching, and shall also exhibit a flare-up light or flare-up lights at short intervals, which shall never exceed fifteen minutes.

(2) On the near approach of, or to, other vessels a pilot shall have the usual green and red side lights, or a lantern with a green glass on one side and red glass on the other side lighted and ready for use on his pilot boat, and shall flash or show such lights or lantern

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at short intervals, to indicate the direction the pilot boat is heading, but the green light shall not be shown on the port side nor the red light on the starboard side.

[Section 41 subsection (1) amended by 2002:35 s.255(2) & Sch 10 para 3 effective 7 April 2003]

Master of piloted ship to show International Code flag H

42 When a ship is navigating within the waters of Bermuda and has on board a branch pilot, the master of the ship shall cause the International Code flag "H" to be exhibited and if he fails without reasonable cause to do so he commits an offence against this Act.

Offences by branch pilots

43 (1) Every pilot—

- (a) who neglects or refuses on the request of the master of a ship which he has boarded as pilot, to produce his branch, and to permit the master to inspect and peruse the branch; or
- (b) who without permission of the master leaves any inward bound ship before she arrives at her destined port or anchorage, or any outward bound ship before she is at sea; or
- (c) who corruptly accepts, or agrees or offers to accept, or demands or receives from any ship-master or other person, any sum of money whatsoever; or
- (d) who refuses or wilfully delays to go to, or to take charge of any ship signalling for a pilot, or on being requested so to do; or
- (e) who, being in charge of a ship and being requested by her master to pilot her into any particular port or anchorage or harbour in Bermuda, into which it is safe to conduct her, refuses or neglects so to do; or
- (f) who refuses or neglects to continue piloting a ship before the service for which he took charge of her has been performed; or
- (g) who, when able to warn the persons on board a ship running into danger near any of the reefs around Bermuda of such danger, wilfully abstains from doing so; or
- (h) who hoists, exhibits or displays any flag or signal other than the pilot flag or the pilot light, or who hoists or exhibits such flag or light other than in the manner prescribed by this Act; or
- (i) who through ignorance, negligence or carelessness—
 - (i) causes a ship of which he is in charge to run aground or to strike on any reef or rock in Bermuda; or,
 - (ii) destroys, damages or injures any ship of which he is in charge, or the tackle or furniture thereof, or any goods laden therein; or
 - (iii) conducts or pilots a ship of which he is in charge into danger; or

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- (iv) causes a ship of which he is in charge to run into or against any buoy or pole placed or fixed for the purpose of facilitating the piloting of ships, or into or against the moorings of any ship; or
- (j) who wilfully and improperly obstructs or attempts to obstruct the passage of any ship; or
- (k) who through drunkenness is incapable of properly piloting a ship or of attending to any duty required of him as a pilot, or who is drunk when reporting or warned for duty; or
- (l) who by false statement or wilful misrepresentation induces the master of an inward bound ship to proceed to any harbour or anchorage other than the harbour or anchorage which the master of such ship requires and into which it is safe to conduct such ship; or
- (m) who procures or solicits or endeavours to procure the agency or consignment of any ship for himself or for any other person, or who recommends any agent for a ship or accepts any gratuity or reward for having procured or solicited or endeavoured to procure the agency or consignment of a ship for any other reason; or
- (n) who permits any person other than the crew or a Health Officer or Visiting Officer (within the meaning of the Quarantine Act 2017) visiting a ship to accompany him in any pilot boat alongside any ship,

commits an offence against this Act.

(2) No person shall be charged with an offence under subsection (1)(c) committed wholly on or after the commencement date of the Bribery Act 2016.

[Section 43 paragraph (n) amended by 2017 : 11 s. 17 effective 24 April 2017; Section 43 amended by 2016 : 47 s. 24(1) & Sch 2 effective 1 September 2017]

Pilot may be tried by Supreme Court

44 Without prejudice to any disciplinary proceedings which may be taken against him, a pilot alleged to be guilty of an offence against this Act may be tried by the Supreme Court.

Proceedings against pilot in Supreme Court

45 If it appears to the Director that an offence against this Act may have been committed and that that offence, if committed, is of such a serious nature as to require greater powers of sentence than may be available in disciplinary proceedings, the Director shall forward to the Director of Public Prosecutions such particulars and evidence as may be available to him and the Director of Public Prosecutions may, if he sees fit, direct that criminal proceedings be instituted against the pilot in respect of the offence; and where criminal proceedings are instituted upon any direction as aforesaid the pilot may be tried and convicted as if the offence with which he is charged were an indictable offence.

[Section 45 amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

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Conviction on indictment; punishment

46 Where any pilot is convicted on indictment in accordance with section 45:

Punishment: imprisonment for five years, or to a fine of \$1,200, or both such imprisonment and fine.

Assessor may be employed

47 On the hearing of any case against a pilot under this Act, the Supreme Court may employ as assessor a master mariner or other competent person acquainted with the navigation of the waters of or adjacent to Bermuda, the ship channels and the handling of ships, who shall be sworn to assist the Court to the best of his skill and ability and who shall be allowed from the Consolidated Fund a fee of twenty five dollars and twenty cents for each day's attendance.

Compulsory pilotage

48 (1) Except as hereinafter provided every ship (other than an excepted ship) shall, while navigating in the waters of Bermuda, be piloted by a branch pilot.

(2) The master of any ship who fails to comply with the foregoing provisions of this section commits an offence against this Act:

Punishment on summary conviction: a fine of \$720:

Provided that it shall be a defence to a person charged with an offence under this section to prove that the navigation took place in emergency or that the ship was in danger or distress.

(3) The following are declared to be excepted ships for the purposes of this section—

- (a) Her Majesty's Ships;
- (b) foreign ships of war;
- (c) fishing vessels;
- (d) ships of less than fifty tons gross tonnage;
- (e) ships outward bound from Five Fathom Hole; and
- (f) pleasure yachts taking part in ocean races, or cruising in or about the waters of Bermuda; and
- (g) ships of less than two hundred and fifty tons gross tonnage engaged exclusively in oceanographic research or in the development of techniques or equipment for such research, where—
 - (i) the master of any such ship has made not less than three voyages into and out of or out of and into a port in Bermuda; and
 - (ii) the Warden is satisfied that he is competent to navigate any such ship in the waters of Bermuda without a pilot on board.

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(4) A certificate may be issued by the Minister excepting from subsection (1) any ship which comes within subsection (3)(g) upon being satisfied that payment has been made of such fee as is payable under the Government Fees Act 1965 [*title 15 item 18*].

(5) The Minister may issue a certificate exempting a superyacht from subsection (1) if, on the advice of the Director, he is satisfied—

- (a) that the master of the superyacht is competent to navigate it in the waters of Bermuda without a pilot on board;
- (b) as to the safety and navigational equipment on the superyacht;
- (c) as to the extent of public liability insurance held in respect of the superyacht.

(6) A certificate issued under subsection (5) may be subject to such terms and conditions as the Minister considers appropriate.

(7) No fee shall be payable for the issue of a certificate under subsection (5).

[Section 48 subsections (5), (6) and (7) inserted by 2019 : 27 s. 2 effective 1 January 2020]

Liability of owner or master

49 The owner or master of a ship navigating in the waters of Bermuda and within the territorial jurisdiction of Bermuda under circumstances in which pilotage is compulsory shall be answerable for any loss or damage caused by the ship or by any fault in the navigation of the ship in the same manner as he would if the pilotage were not compulsory.

Limited liability of pilot

50 (1) A pilot employed as such on a ship navigating in the waters of Bermuda shall not be liable in damages for neglect or want of skill in respect of any damage done to or by such ship to any greater extent than six hundred dollars.

(2) Subject to subsection (1) and section 52, no person, body corporate or other authority whatsoever shall be liable in respect of any damage arising from the neglect or want of skill of a pilot when employed as such on a ship navigating in the waters of Bermuda.

No unlicensed person may pilot ship

51 (1) No person other than a branch pilot shall pilot, or offer or attempt to pilot, any ship, not then being in danger or distress and in want of a pilot.

(2) Any person who contravenes the foregoing provisions of this section commits an offence against this Act:

Punishment on summary conviction: a fine of \$720.

(3) Nothing in the foregoing provisions of this section shall apply or have effect in relation to the piloting of an excepted ship (within the meaning of section 48) by an officer or pilot of the Royal Navy or of the Navy of any Foreign State in the case, respectively, of

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one of Her Majesty's Ships or a foreign ship of war or by the owner, master or other person approved by the Minister in the case of any other excepted ship.

Unlicensed person must yield to branch pilot

52 Any person (other than a branch pilot) who has taken charge as pilot of a ship then being in danger or distress shall resign the charge of such ship to the first branch pilot who offers his services.

Shipmaster not to employ unlicensed person as pilot

53 A shipmaster shall not knowingly employ as pilot any person other than a branch pilot.

Pilot may require information from master

54 A pilot may require the master of any ship which he is piloting to declare her correct draught of water, length and beam, method of propulsion and any other information he may require, and the master shall comply with such request.

Master to facilitate pilot's boarding

55 The master of every ship entering the waters of Bermuda shall by all practicable means consistent with the safety of his ship facilitate the pilot in boarding.

Master to take pilot

56 Except as hereinafter provided, the master of every ship (not being an excepted ship within the meaning of section 48) navigating in the waters of Bermuda, shall have on board his ship while so navigating a branch pilot.

Master not to allow pilotage by person other than pilot

57 The master of any ship (not being an excepted ship within the meaning of section 48) within the waters of Bermuda who, except under unavoidable circumstances arising from stress of weather or as hereinafter in this Act provided, or otherwise, himself acts as pilot, or who allows any person other than a qualified pilot to act as pilot, commits an offence against this Act.

Master not to evade pilot approaching ship

58 The master of any ship who evades or attempts to evade a pilot approaching his ship commits an offence against this Act.

Master not to enter ship channel without pilot

59 The master of any inward bound ship which, except under unavoidable circumstances arising from stress of weather, or otherwise, or as hereinafter in this Act provided, enters or attempts to enter any channel within Bermuda without having a branch pilot on board commits an offence against this Act.

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Improper payment to pilot an offence

60 The master of a ship or any other person liable to pay pilotage who knowingly pays or offers to pay to the pilot of such ship any money or other valuable consideration except as provided in this Act commits an offence against this Act.

Master to notify estimated time of arrival

61 The master of a ship making for Bermuda shall report his estimated time of arrival to the Signal Station, Fort George, at least three hours before the estimated hour of arrival.

When master of trading ship may act as pilot

62 Where a ship trading to Bermuda is under the charge of a master who has, whilst in charge of such ship, entered the channel at least six times, and is, on arrival in Five Fathom Hole, unable for half an hour after so arriving and signalling for a pilot to obtain the services of a pilot, the master of such ship may enter the channel and take her to her port of destination; and where a pilot having been duly notified to take such ship to sea fails to join the ship for half an hour after the appointed time, the master may take the ship to sea; and in either such case the master shall not thereby be guilty of any offence against this Act.

Pilotage dues

63 All ships which have availed themselves of the services of a pilot shall be liable for pilotage dues calculated in accordance with regulations made under this Act.

64 *[repealed by 1975:16]*

Increased pilotage dues for detention of pilot

65 (1) If the pilot is detained on board, or in attendance on, any ship under the circumstances hereinafter mentioned he shall be entitled to be supplied at the ship's expense with provisions similar to those supplied to the officers of such ship—

- (a) whenever an outward bound ship before she gets to sea, or an inward bound ship before she gets to her destined port of anchorage, is obliged to anchor for more than three hours; or
- (b) whenever an outward bound ship after breaking ground, or an inward bound ship before arriving at her destined port or anchorage, is detained by order of the master, owner, consignee or agent for more than three hours; or
- (c) whenever an outward bound ship does not proceed to sea within three hours after the time appointed for her sailing.

(2) The pilotage dues shall be increased accordingly by such sum as may be prescribed for every day or part of a day on which such detention takes place.

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Where extraordinary care required in piloting ship

66 Whenever a ship in consequence of being dismasted, crippled, or otherwise injured requires extraordinary care or trouble in piloting, or whenever a pilot is detained aboard a ship beyond the normal requirements for the execution of his duties, the pilotage dues shall be increased in addition to the ordinary pilotage dues in respect of the ship by such sum as may be agreed upon between the Warden and the master of the ship, or in case of their failure to agree, reasonable remuneration for such extra service may be recoverable by the Warden by of a Crown action within the meaning of the Crown Causes Act 1951 [*title 8 item 101*].

Where pilot detained in quarantine

67 If a pilot is detained in quarantine, in consequence of the ship on which he was pilot being placed in quarantine, on board such ship, then the master shall supply the pilot, at the ship's expense, with provisions and accommodation similar to those supplied to the officers of the ship.

Where pilot carried to sea

68 A pilot who is carried from Bermuda in any ship by stress of weather, or otherwise against his will, shall be supplied by the master, at the ship's expense, with provisions and accommodation similar to those supplied to the officers of such ship, and shall be entitled to receive his salary at the same monthly rate as he is entitled to receive from the Consolidated Fund during his enforced absence from and until his return to Bermuda by the quickest route, and the reasonable expense of his return to Bermuda from the port or place at which he is landed, or shall leave.

Persons liable for payment of pilotage dues

69 (1) The master, owner and consignee of a ship, and the agent reporting, entering, or clearing such ship, shall be jointly and severally liable for pilotage dues and for any other amount payable under this Act in respect thereof; and any consignee or agent may retain in his hands out of any moneys received on account of such ship or her owner, all amounts which he has paid, or is or may be liable to pay, under this Act.

(2) The pilot of an outward bound ship may, before she breaks ground, demand prepayment of outward pilotage dues, and if such demand is not complied with, the master of such ship commits an offence against this Act.

PART IV

Ports Authority to regulate berthing, anchoring and mooring

70 The Ports Authority shall constitute the Ports Authority for Bermuda and in that capacity shall regulate the berthing, anchoring and mooring of all ships and boats within the ports of Bermuda and matters incidental thereto.

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Directions concerning berthing, anchorage or mooring

71 (1) Without prejudice to any regulations made under this Act, the Director, or any officer duly authorized in that behalf, may, subject to such general or special instructions issued by the Ports Authority, give written or verbal directions to the owner, master or agent of any ship relating to the berthing, anchorage or mooring of that ship.

(1A) Without prejudice to any regulations made under this Act, the Director, or any officer (including, in the case of Hamilton docks or St. George's docks, but not otherwise, any officer of the Corporation of Hamilton or the Corporation of St. George's, respectively,) duly authorized in that behalf, may, subject to such general or special instructions issued by the Ports Authority, give written or verbal directions to the owner, master or agent of any boat relating to the berthing, anchorage, mooring or moving of that boat.

(1B) For the purposes of subsection (1A), the Corporation of Hamilton, in the case of Hamilton docks, and the Corporation of St. George's, in the case of St. George's docks, may designate berthing facilities in respect of boats.

(1C) The owner, master or agent of a boat who berths that boat in Hamilton docks or St. George's docks shall pay to the Corporation of Hamilton, or as the case may be, to the Corporation of St. George's, such fee, in respect of such berthing as may, from time to time, subject to subsection (1D), be prescribed by the Corporation of Hamilton or the Corporation of St. George's, as the case may be; and for the purposes of this subsection the Corporation of Hamilton and the Corporation of St. George's are authorized to prescribe such fees.

(1D) No fees shall be prescribed pursuant to section (1C) except with the prior written approval of the Minister.

(1E) In this section and in section 75 "prescribed" means levied by ordinance under the Municipalities Act 1923.

(2) Without prejudice to the generality of subsections (1) and (1A)—

- (a) directions given under subsection (1) may regulate the location, timing, manner and period of the berthing, anchorage and mooring of any ship; and
- (b) directions given under subsection (1A) may regulate the location, moving, timing, manner and period of the berthing, anchorage and mooring of any boat.

(2A) The Director or any officer referred to in subsection (1A) may, if the owner, master or agent of a boat fails to comply with a direction given under that subsection move the boat to a berth which the Director or the officer, as the case may be, considers safe.

(3) The owner, master or agent—

- (a) of any ship, who fails to comply with a direction given under subsection (1); or
- (b) of any boat, who fails to comply with a direction given under subsection (1A)

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commits an offence against this Act.

[Section 71 amended by 1994:28 effective 20 July 1994; subsections (1C), (1D) and (1E) repealed by 2010 : 45 s. 11 effective 1 April 2011; subsections (1C),(1D) and (1E) revived by 2013 : 39 s. 19 effective 1 April 2014]

Ports Authority control over capital works

72 Without prejudice to any other provision of law, no extension of or improvement to Hamilton docks or St. George's docks or Freeport docks, of a capital nature, shall be commenced or continued by the Corporation of Hamilton or the Corporation of St. George's or the West End Development Corporation or any other person, without the prior approval in writing of the Ports Authority or otherwise than in accordance with any such written approval.

Saving for powers of Municipality

73 (1) Nothing in this Act shall derogate from the powers and responsibility of the Corporation of Hamilton or the Corporation of St. George's or the West End Development Corporation to maintain, supervise and operate their respective docks efficiently and safely and to provide the funds and labour necessary therefor:

Provided that, in so doing, the Corporation of Hamilton and the Corporation of St. George's and the West End Development Corporation shall comply with such general or special directions relating to the maintenance, supervision and operation of their respective docks as the Ports Authority may from time to time issue in writing.

(2) Notwithstanding sections 72 and 73 or any regulations made under this Act no vicarious liability shall attach to the Ports Authority by reason of any act or omission of the Corporation of Hamilton or the Corporation of St. George's or the West End Development Corporation, or any servant or agent of any of those authorities, whether or not such act or omission was in consequence or furtherance of any permission or refusal of permission or condition attached to any permission or any general or special directions given pursuant to those sections or any regulations:

Provided that, if any liability attaches to the Corporation of Hamilton or the Corporation of St. George's or the West End Development Corporation as a direct consequence of giving effect to any general or special direction of the Ports Authority in the manner specified in such direction, without any negligence or malfeasance on the part of any of those authorities, then the Minister shall indemnify the Corporation of Hamilton or the Corporation of St. George's, as the case may be, accordingly.

Ports Authority to have access to docks

74 For the purpose of carrying out its functions under this Act, any member of the Ports Authority and any officer of the Department duly authorized in that behalf shall, subject to the provisions of any other law, have access to Hamilton docks, St. George's docks and the Freeport docks and all facilities thereof.

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Port dues and wharfage

75 (1) The Corporation of Hamilton, the Corporation of St. George's and the West End Development Corporation shall remain responsible for the collection of port dues and wharfage pursuant to any provision of law and the moneys so collected shall, subject to subsection (2), form part of the revenue of the authority so responsible for the collection thereof.

(1A) The Corporation of Hamilton and the Corporation of St. George's shall be responsible for the collection of fees prescribed pursuant to section 71(1C) in respect of the berthing of boats and the moneys so collected shall form part of the revenue of the authority so responsible for the collection thereof.

(2) The authority responsible for the collection of port dues pursuant to subsection (1) and any other provision of law shall pay to the Accountant-General, at such intervals as the Ports Authority may direct, all port dues so collected other than those referable to the berthing of any ship alongside the docks of that authority.

[Section 75 amended by 1994:28 effective 20 July 1994; section 75 substituted by 2010 : 45 s. 11 effective 1 April 2011; repealed and replaced by 2013 : 39 s. 19 effective 1 April 2014]

Ports Authority may make regulations

76 The Ports Authority may, by regulations made under this Act—

- (a) control and regulate the ports of Bermuda and the use thereof;
- (b) make provision for the levy, payment and collection of port dues;
- (c) make provision for co-ordinating the development, administration and operation of the ports of Bermuda.

PART V

No boat to ply for hire or reward without licence

77 (1) No boat shall ply for hire or reward unless she has been licensed by the Minister as hereinafter in this section provided.

(2) Licences shall be in such form as the Minister may prescribe, and shall be recoverable at the pleasure of the Minister and shall be in force from the date of issue until the end of the current year.

(3) A licence shall be renewable as the Minister sees fit during the month of April in every year, and shall, if renewed continue in force until 30 April of the following year.

(4) The Minister, before issuing or renewing any such licence, shall be satisfied that the boat in respect of which the licence is to be issued or renewed is in every way properly ordered, repaired and equipped for the service in respect of which she is to be licensed; and for that purpose the Minister may order the person applying for the licence to bring the boat to any convenient place for inspection.

(5) The Minister, in addition to his duties as prescribed in subsection (4), before issuing or renewing any such licence to a boat under charter-party, shall be satisfied that

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no appropriate boat is available in Bermuda and to assist him in arriving at his decision he shall direct the person applying for such licence to advertise in the Gazette and in one other newspaper published in Bermuda for an appropriate boat not less than one month before the boat is required.

(6) The advertisement mentioned in subsection (5) shall specify the size and capacity of the boat and such other particulars as the Minister may indicate in writing to the person applying for the licence.

[Section 77 subsection (3) repealed and replaced by 2012 : 20 s. 2 effective 15 June 2012]

Minister may make regulations concerning Island boats

78 (1) The Minister may (and shall, as respects the matters specified in paragraph (b)) by regulations made under this Act make provision—

- (a) with respect to the registration, classification and licensing of any boat—
 - (i) used for carrying passengers or cargo; or
 - (ii) used for any other purpose,
within the territorial waters of Bermuda, and for specifying the conditions subject to which such registration, classification or licensing may from time to time be renewed, amended or cancelled;
- (b) for regulating and controlling the running of Island steamboats and Island motor boats in such manner as not to endanger the safety of, or cause annoyance or inconvenience to, the public.

(2) The conditions mentioned in of subsection (1)(a) may include provisions as to the minimum crew to be carried by any Island steamboat or Island motor boat and as to the qualifications which should be held by any particular members of the crew.

[Section 78 amended by 1997 : 23 effective 11 July 1997]

Seaworthiness of certain Island boats; inspection

79 (1) The Minister shall, at least once in every year, cause every Island steamboat and every Island motor boat to be boarded by such officer or officers as the Minister may direct, and such officer or officers

shall make a thorough examination of her hull, machinery, working gear and supplies, and the officer appointed to be in charge of the examination shall report on their condition and sufficiency to the Minister.

(2) The Minister may by regulations made under this Act, provide for the inspection of the hulls, masts, tackle, boilers, engines, machinery, life-saving and other equipment, and the passenger and cargo accommodation of any boat used for carrying passengers or cargo in the waters of Bermuda.

Director may require Island boat to be brought for inspection

80 The Director may, by writing under his hand addressed to the owner, agent or master of any Island steamboat or Island motor boat, require him to take or send her for

inspection to such place in Bermuda at such date and time as the Director may appoint, and every such master or owner shall, at the owner's charge, comply with such order, and leave her at the appointed place until she has been completely surveyed.

Restriction on use of Island boat pending inspection

81 An owner, agent or master of any Island steamboat or Island motor boat shall not, after the time appointed for inspection, employ such Island steamboat or Island motor boat, or allow her to be employed in the carrying of passengers, mails or freight, or to be employed in towing or other service in Bermuda, until after she has been duly inspected, or until such alterations, additions and repairs (if any) as the Minister may require have been effected to the Minister's satisfaction, and a certificate of survey has been issued by the Director in respect of such Island steamboat or Island motor boat or (as the case may be) of her machinery, that the boat or machinery is safe and sufficient for the service in which the boat is intended ordinarily to be employed, or for the service specified in the certificate.

Director may grant certificate of survey of Island boat

82 (1) If on inspection the officer appointed by the Minister finds an Island steamboat or Island motor boat and her hull, machinery, working gear and supplies, or such part or parts thereof as he is specifically appointed to survey, in good and safe condition, regard being had to the service in which such boat is, or is intended to be, ordinarily employed, or if on any second or subsequent inspection he finds that such alterations, additions and repairs as the Minister has required have been efficiently made, effected or applied, and that such boat, her hull, machinery, working gear and supplies, or such part or parts thereof as he has been appointed to inspect or survey is or are in good and safe condition, regard being had to the service in which such boat is or is intended to be, ordinarily employed, the Director shall grant a certificate of survey thereof, with such qualifications or particulars as he may deem necessary, to the owner, agent or master; and the last certificate of survey so granted shall at all times be kept posted by the owner, agent or master, in such conspicuous part of such boat as the Director may designate.

(2) Any person who, being the owner, agent or master of an Island steamboat or Island motor boat, fails duly to keep posted any such certificate of survey, commits an offence against this Act.

Director to send duplicate certificate to Minister

83 The Director granting a certificate of survey under this Part shall forward a duplicate copy thereof under his hand to the Minister, who may make and issue any such order with respect to such Island steamboat or Island motor boat as the circumstances of the case or the certificate of survey seem to render necessary for the security of persons travelling in such Island steamboat or Island motor boat.

Minister may require repairs to Island boat

84 (1) The Minister may order the owner or master of an Island steamboat or Island motor boat to make such alterations in, or additions or repairs to her hull, machinery, gear and supplies as may be deemed necessary or advisable by the Minister for the safety and security of persons travelling in such Island steamboat or Island motor boat.

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(2) The Minister may order that any such Island steamboat or Island motor boat shall cease to be used until such alterations have been completed; and a copy of such order shall be sent to the Commissioner of Police and thereupon every police officer shall on occasion arising enforce such order, and shall restrain and prevent the use of such Island steamboat or Island motor boat until the order has been withdrawn by the Minister.

Obstructing inspection

85 Any person who prevents or hinders any inspection or who attempts to do so, or who disobeys any order of the Minister, or who obstructs, prevents or resists the execution by any person carrying or attempting to carry the order into effect, commits an offence against this Act.

Prohibition of running Island boat in disrepair

86 Every owner and master of an Island steamboat or Island motor boat who runs her or permits her to be run while her hull, engines, machinery, gear or supplies, or any part thereof, are or is in such a state of imperfection, decay, insufficiency or disrepair, as to render her running unsafe or hazardous to any person, commits an offence against this Act.

Inspection of Government boats

87 (1) Nothing in sections 79 to 82 inclusive shall impose any duty on the Minister in respect of any Island steamboat or Island motor boat owned or operated by the Government.

(2) In respect of every Island steamboat or Island motor boat owned or operated by the Government, the duties imposed on an officer appointed under sections 78 to 81 inclusive shall be performed by an independent surveyor appointed by the Minister for the purpose (hereinafter in this section called "the Surveyor").

(3) The Surveyor granting a certificate of survey under this Part shall forward a duplicate copy thereof under his hand to the Governor who may make and issue any such order with respect to such Island steamboat or Island motor boat as the circumstances of the case or the certificate of survey seem to render necessary for the security of persons travelling in such Island steamboat or Island motor boat.

Crews of Island boats; Minister may make regulations

88 The Minister shall by regulations made under this Act prescribe the classes of Island motor boats—

- (a) which are required to carry as their regular crew a licensed pilot and a licensed engineer or engine driver;
- (b) in which the duties of pilot and engineer or engine driver can safely be performed by one man holding the requisite licences, and
- (c) for which no particular qualifications are required in respect of crew thereof.

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Crews of Island boats plying for hire; licensing

89 (1) No person shall act as pilot, waterman, boatman or otherwise be in charge of any boat plying for hire or transporting any passenger for reward unless he has first obtained a licence from the Minister.

(2) The Minister may cancel or suspend any licence for any reason which, in the opinion of the Minister, renders it expedient to do so; and, on any order of suspension or cancellation being made, the person so licensed shall on demand return the licence to the Director to be dealt with according to the Minister's order.

Crews of Island boats; examination of applicants for licence

90 (1) For the information of prospective applicants for a pilot's, engineer's or engine driver's licence, the Minister shall from time to time cause to be published in the Gazette a statement of the technical and other matters upon which such candidates will be required to satisfy the Examining Board.

(2) Every applicant for a pilot's, engineer's or engine driver's licence shall make written application to the Director and shall forward therewith the prescribed fee for such licence which, if the applicant is examined, shall be paid into the Consolidated Fund; and the Minister may thereupon, if he sees fit, direct the Examining Board to examine such applicant as to his fitness to receive a licence, and on being satisfied thereof by the Examining Board's report the Minister may grant him a licence in such form as he may determine.

(3) The examination shall be conducted by the Minister or by an Examining Board, either with or without such other professional or technical assistance as may be considered advisable.

Crews of Island boats; suspension or cancellation of licence

91 The Minister may suspend or cancel any licence, for any reason which in the opinion of the Minister renders it expedient to do so; and on any suspending or cancelling order being made, the pilot, engineer, or engine driver shall on demand return the licence to the Director to be dealt with according to the Minister's order.

PART VA HOVERCRAFT

Hovercraft; importation, use and operation prohibited

91A (1) No person shall import, use or operate any hovercraft in Bermuda.

(2) Any person who contravenes subsection (1) commits an offence against this Act:

Punishment on summary conviction: a fine of \$75,000.

(3) For the purposes of this section "hovercraft" means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a

cushion of which the boundaries include the ground, water or other surface beneath the vehicle.

PART VI

Interpretation of Part VI

92 In sections 93 to 99 inclusive—

- (a) “ferry contractor” has the meaning assigned to it by section 94;
- (b) “ferry service” means any regular or systematic service by which transport by water of passengers from one place in Bermuda to another place in Bermuda is provided for the use of the general public;
- (c) “Bermuda” includes the territorial waters of Bermuda;
- (d) “power boat” means any boat or vessel propelled by mechanical power.

Minister to operate a ferry service

93 (1) The Minister shall operate, or to cause to be operated, ferry services in Bermuda by means of power boats.

(2) In the discharge of the duty imposed upon him by subsection (1) the Minister shall use his best endeavours to provide or to secure the provision of an efficient, adequate, economical, safely operated and properly integrated system of public transport within Bermuda by means of ferry services; and in particular the Minister, in collaboration with the Public Transportation Board, shall endeavour to ensure as far as practicable that public transport by ferry services and public transport by omnibus services are, as between the one and other, complementary and not competitive.

Ferry contractors

94 (1) If it appears to the Minister to be desirable in furtherance of the purposes of this Act, the Minister may enter into and carry out an agreement with any person for the operation by that person of a ferry service by means of power boats.

(2) Any person with whom the Minister has entered into such an agreement as aforesaid is hereinafter in this Act referred to as a “ferry contractor”.

Exclusive rights

95 No person other than the Minister, or a ferry contractor acting within the scope of his authority shall operate any ferry service by means of power boats; and if any person acts in contravention of this section he commits an offence against this Act:

Punishment on summary conviction: a fine of \$360 for every day during which the offence occurs or continues.

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Minister may engage generally in business of transport by water

96 In addition to the operation of ferry services the Minister may use power boats or other boats for any other purpose involving the transport by water of passengers or goods within Bermuda or the waters adjacent thereto, and for the purpose of providing towing and docking services and, in particular but without prejudice to the generality of the power conferred on the Minister by the foregoing provision, the Minister may engage in the business of transporting by water passengers or goods to and from ocean-going ships.

Fares, dues and charges

97 The Minister may make regulations for the purpose of levying and recovering fares, dues or other charges in respect of any services or facilities provided by him or a ferry contractor in the discharge of their duties or in the exercise of their powers under sections 93 to 99 (inclusive).

[Section 97 amended by 1991:4 effective 7 March 1991]

Minister may make regulations

- 98 (1) Subject to this Act, the Minister shall have power to make regulations—
- (a) for prescribing the conditions subject to which passengers and goods will be carried in vessels used by the Government;
 - (b) for regulating the conduct of persons carried as passengers in vessels used by the Government;
 - (c) for regulating the conduct of persons who are embarking or waiting to embark on, or who are disembarking from, vessels used by the Government;
 - (d) for regulating the safe custody and re-delivery or disposal of property accidentally left in vessels used by the Government, and for prescribing charges in respect of the safe custody and re-delivery of property so left;
 - (e) for the administration in detail of any matters arising out of or connected with any of the functions of the Minister in the operation of ferry services either by the Minister or a ferry contractor.

(2) Any reference in this section to vessels used by the Government as includes a reference to power boats used by a ferry contractor while being used by him in the operation, as agreed between him and the Government, of a ferry service.

Time-tables and tables of fares etc.

99 The Minister shall cause to be published in the Gazette and in at least one other newspaper time-tables of ferry services and particulars of any alteration in any such time-tables, shall cause such time-tables as well as tables of the fares, dues or the charges levied in respect of the ferry services provided by the Minister or the ferry contractor or on their behalf to be prepared in a convenient form, and shall supply printed copies of such time-tables and tables free of charge to persons applying for them.

[Section 99 amended by 1991:4 effective 7 March 1991]

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Salvage operations

100 (1) The Minister may employ any vessels or equipment under his control or management for the purpose of rendering assistance to any ship in distress or requiring assistance.

(2) The Minister shall be entitled to levy such charges for salvage operations as may be agreed upon between the Minister and the master of the ship concerned, or in the case of failure to reach agreement, such sum as may be awarded by way of arbitration or such sum as may be recoverable by the Minister by way of a Crown action within the meaning of the Crown Causes Act 1951 [*title 8 item 101*].

Minister may control movement of waterborne traffic through bridges

101 In respect of bridges in Bermuda, the Minister shall have the following powers—

- (a) to control the movement of water-borne traffic through or under any bridge;
- (b) to specify, by notice published in the Gazette, the signal to be displayed when an opening bridge will not be open to water-borne traffic:

Provided that nothing in this section shall be construed so as to confer powers on the Minister in respect of bridges in Bermuda under the control of the United States Government.

Minister may make regulations controlling diving

102 (1) The Minister may make regulations for the control and regulation of diving to promote the safety of persons engaged therein and for matters incidental thereto and, without prejudice to the generality of the foregoing, may make regulations for—

- (a) the examination and licensing of diving instructors and diving guides and the fees payable in respect thereof;
- (b) the control and regulation of persons offering their services for hire or reward as diving instructors or diving guides, including their duties, responsibilities and powers;
- (c) the periodical inspection and safety of diving equipment used or let out for hire or reward and the fees payable in respect thereof;
- (d) the prohibition of diving in areas designated by the Minister as unsuitable or dangerous for diving;
- (e) the restriction of diving in areas designated by the Minister save in accordance with such conditions as the Minister may specify;
- (f) the regulation of water traffic in areas where persons are diving and for the control of vessels from which persons are diving.

(2) For the purpose of this section “diving” means the submersion in the waters of Bermuda of a person equipped with apparatus for underwater breathing.

(3) Section 104 shall apply to regulations made under this section.

PART VII

Minister and Ports Authority may each make regulations

103 (1) Subject to this Act, the Minister and the Ports Authority shall make regulations for implementing such provisions of this Act as relate to their respective functions under this Act and for giving effect to the objects and intentions of those provisions.

(2) Without prejudice to the generality of subsection (1) but subject to subsection 2A, the Minister may make regulations—

- (i) providing for the examination for, and the granting, suspension and cancellation of, certificates of efficiency of supervising engineers, engine drivers, motormen and pilots employed in any boat used for carrying passengers or cargo in the waters of Bermuda; and
- (ii) providing for the holding of inquiries into the conduct of the persons mentioned in subparagraph (i);
- (iii) specifying the manner in which light tolls payable by any ship under this Act shall be calculated;
- (iv) specifying the scale on which pilotage dues payable by any ship under this Act shall be calculated; and
- (v) in respect of the control and siting of all buoys and moorings in the territorial waters of Bermuda.

(2A) The Minister shall, prior to issuing a licence in respect of a floating dock or a mooring pile, consult with and act in accordance with the advice of the Minister for the time being responsible for planning.

(3) In the event of any conflict between any regulation made under the Act and any Ordinance made under the Municipalities Act 1923 [*title 4 item 1*], the regulation shall prevail.

[Section 103 subsection (2) amended, and (2A) inserted, by 1999:47 s.3 effective 22 December 1999]

Penalty for late payment of light tolls, etc.

103A (1) Where—

- (a) light tolls payable pursuant to section 25;
- (b) pilotage dues payable pursuant to section 63;
- (c) increased pilotage dues payable pursuant to section 65 or 66;
- (d) wharfage payable pursuant to any provision of law;
- (e) port dues payable pursuant to section 76; or
- (f) dues payable in respect of sea-borne services pursuant to section 97,

have not, within a period of forty-five days commencing on the date of a demand therefor, been paid by the person liable to make such payment there shall thereafter, in addition to

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the amount specified in the demand, be payable by the person so liable a penalty in the amount of ten per centum of the amount for which the demand was made, and the provisions of sections 26 and 108 shall apply to every such penalty levied in respect of light tolls and pilotage dues.

(2) Where licence fee payable pursuant to regulation 4(4) of the Marine and Ports Authority (Moorings) Regulations 1967 is not paid prior to or on the date of expiration of a licence issued under those Regulations, there shall be payable after such expiration date, in addition to the licence fee, a penalty in the amount of fifteen dollars or such amount as may from time to time be specified in the Government Fees Regulations 1976.

[Section 103A inserted by 1997 : 23 effective 11 July 1997, and amended by 1998 : 10 effective 1 April 1998]

Parliamentary scrutiny of regulations

104 (1) The affirmative resolution procedure shall apply to regulations made under this Act which provide for the levying, recovering or the payment of fares, dues, fees or other charges.

(2) Subject to section 10, the negative resolution procedure shall apply to regulations made under this Act, other than those to which subsection (1) applies.

Notices

105 (1) All notices, orders, consents, demands and other documents authorized or required by or under this Act or by or under regulations made thereunder to be given, made or issued by the Minister or the Ports Authority, and all notices and applications authorized or required by or under this Act or by or under any such regulations to be given or made to, the Minister, the Ports Authority, or to any officers of the Department shall, except where otherwise expressly provided, be in writing.

(2) Provision may be made by regulations made under this Act for prescribing the form of any notice, order, certificate or other document to be used for giving effect to any of the provisions of this Act and, if forms are so prescribed, those forms or forms to the like effect may be used in all cases to which those forms are applicable.

Authentication of documents

106 (1) Any notice, order, consent, demand or other document which the Minister or the Ports Authority are authorized or required by or under this Act, or by or under regulations made thereunder, to give, make or issue may be signed on behalf of the Minister or the Ports Authority by any officer of the Department authorized by the Minister or the Ports Authority in writing to sign documents of the particular kind or, as the may be, the particular document.

(2) Any document purporting to bear the signature of an officer expressed to be duly authorized by the Minister or the Ports Authority to sign such a document or the particular document, shall for the purposes of this Act, and of any regulations made in pursuance of any provision thereof, be deemed, until the contrary is proved, to have been duly given, made or issued by or under the authority of the Minister or the Ports Authority.

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Service of notices

107 Any notice, order, consent, demand or other document which is required or authorized by or under this Act to be given to or served on any person may, where no other provision is made by this Act, be given or served—

- (a) by delivering it to that person; or
- (b) in the case of the Minister or any officer of the Department, by leaving it at his office or sending it in a prepaid letter addressed to him at his office; or
- (c) in the case of any other person, by leaving it, or by sending it in a prepaid letter addressed to him, at his usual or last known residence; or
- (d) in the case of a corporate body or other body of persons, by delivering it to the secretary or clerk thereof at their registered or principal office, or by sending it in a prepaid letter addressed to the secretary or clerk at that office.

Recovery of light dues and pilotage dues; Consolidated Fund

108 (1) All light tolls and pilotage dues payable under this Act shall be paid to and received by the Accountant-General or the senior customs officer for the time being at St. George's, and shall form part of the general revenue of Bermuda; and such light tolls and pilotage dues shall, without limit of amount, be recoverable before a court of summary jurisdiction in the manner provided by the Magistrates Act 1948 [*title 8 item 15*], for the recovery of a debt or liquidated demand, and in any such case, the amount of the light tolls or pilotage dues, as the case may be, and of the cost of the suit (if any) may be levied on the ship, her boats, tackle, guns, furniture or cargo.

(2) Any additional pilotage dues paid or recovered in accordance with section 66 shall be paid out of the Consolidated Fund to the pilot performing the service in respect of which such dues were paid.

(3) All sums recoverable by the Minister for salvage operations under section 100 shall be paid and received by the Accountant-General and shall form part of the general revenue of Bermuda.

(4) The Accountant-General shall pay out of the Consolidated Fund such sums as may have been awarded by arbitration to the persons involved in the salvage operation, or in the event of such an award not having been made, such sum shall be paid to the said persons as the Governor may direct.

Obstructing execution of Act

109 No person shall wilfully obstruct any persons acting in the execution of any provision of this Act or of any regulation, order or warrant made or issued in pursuance thereof.

Offences

110 Any person who contravenes any provision of this Act or of any regulations made thereunder commits an offence against this Act.

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Summary prosecution of offences

111 Unless otherwise expressly provided in this Act, offences against this Act or against any regulations made thereunder shall be prosecuted before a court of summary jurisdiction.

Punishment in general

112 Where a person commits an offence under this Act for which no special punishment is provided:

Punishment on summary conviction: a fine of \$180 in respect of each offence;

Punishment on summary conviction of a second or subsequent offence: imprisonment for 3 months or a fine of \$360 or both such imprisonment and fine;

Additional punishment on summary conviction in the case of a continuing offence a further fine of \$36 for every day during which the offence continues.

Daily penalties

113 Where provision is made by or under this Act for the imposition of a daily penalty in respect of a continuing offence after conviction, the court by which a person is convicted of the original offence may specify a reasonable period to run from the date of conviction within which the defendant is to comply with any directions given by the court; and, where a court has specified such a period, no daily penalty shall be imposed in respect of any day before the expiration of the period.

Officers of Department may prosecute

114 (1) *[deleted by 1975:16]*

(2) A prosecution for an offence against this Act may be conducted before a court of summary jurisdiction by any officer of the Department duly authorized by the Minister or the Ports Authority in that behalf.

Police may board ship to investigate

114A Where a police officer has reason to believe that an offence has been committed under this Act or any regulations made thereunder or that an offence has been committed aboard any ship or boat within the territorial waters of Bermuda such officer may stop and board any such ship or boat or to board any such ship or boat lying at anchor or alongside any dock for the purpose of making investigations into the suspected offence.

Arrest without warrant

114B A police officer may arrest without warrant any person who, being aboard a boat or ship, is reasonably suspected of having committed an offence and refuses to give his name and address when requested to do so by the police.

[Section 114B amended by 1991:4 effective 7 March 1991]

Dangerous operation of boat; powers of police

114C (1) Where any boat within the territorial waters of Bermuda—

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- (a) is being operated in such a manner as to constitute a danger to any person in the boat or to other users of the said waters; or
- (b) is being operated in conditions of sea or weather which are of such a nature as to constitute a danger to the persons in the said boat; or
- (c) by reason of its construction or the lack of adequate safety equipment constitutes a danger to persons therein,

a police officer may stop such boat and either direct the operator of the boat to return to a mooring or dock or take over the operation of the boat for the purpose of returning it as aforesaid.

(2) Any person who—

- (a) operates a boat in any of the circumstances mentioned in of subsection (1) (a), (b), or (c); and
- (b) disobeys an order of a police officer to return to a mooring or dock,

commits an offence:

Punishment: imprisonment for 12 months or a fine of \$500 or both such imprisonment and fine.

Piloting etc. a boat when impaired by alcohol or a drug

114D Any person who, while his ability to pilot or to be at the helm of a boat is impaired by alcohol or a drug, pilots or is at the helm of or attempts to pilot or to be at the helm of a boat which is within the territorial waters of Bermuda when such boat is under way shall be guilty of an offence.

[Section 114D inserted by 1991:4 effective 7 March 1991]

Piloting etc. a boat with more than 100mg of alcohol in blood

114E Any person who pilots or is at the helm of, or attempts to pilot or to be at the helm of a boat which is within the territorial waters of Bermuda, when such boat is under way, having consumed alcohol in such a quantity that the proportion thereof in his blood exceeds 100 milligrammes of alcohol in 100 millilitres of blood, shall be guilty of an offence.

[Section 114E inserted by 1991:4 effective 7 March 1991]

Arrest without warrant, and breath samples

114F (1) Where a police officer on reasonable and probable grounds believes that a person is committing, or at any time within the preceding two hours has committed, an offence under section 114D or 114E, he may arrest him without a warrant, and by demand made to that person forthwith or as soon as practicable, require him to provide then or as soon thereafter as is practicable such samples of his breath as, in the opinion of a qualified technician referred to in section 114H(5), are necessary to enable a proper analysis to be made in order to determine the proportion, if any, of alcohol in his blood, and to accompany the police officer to a police station for the purpose of enabling such samples to be taken.

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(2) Any person who, without reasonable excuse, fails or refuses to comply with a demand made to him by a police officer under subsection (1) shall be guilty of an offence.

[Section 114F inserted by 1991:4 effective 7 March 1991]

Punishments for offences

114G Any person guilty of an offence under section 114D, 114E or 114F(2) shall for the first offence be liable on summary conviction to a fine of one thousand dollars or to imprisonment for twelve months or to both or for a second or subsequent offence to a fine of four thousand dollars or to imprisonment for two years or to both.

[Section 114G inserted by 1991:4 effective 7 March 1991]

Proceedings under s.114D or 114E

114H (1) In any proceedings under section 114D or 114E—

- (a) the result of an analysis of a sample of breath of the accused (other than a sample taken pursuant to a demand made under section 114F(1)) may be admitted in evidence notwithstanding that before he gave the sample he was not warned that he need not give the sample or that the result of the analysis of the sample might be used in evidence;
- (b) where samples of the breath of the accused have been taken pursuant to a demand made under section 114F(1), if—
 - (i) each sample was taken as soon as practicable after the time when the offence was alleged to have been committed and in any event not later than two hours after that time, with an interval of at least fifteen minutes between the times when samples were taken;
 - (ii) each sample was received from the accused direct into an approved container or into an approved breath analyzing instrument operated by a qualified technician; and
 - (iii) an analysis of each sample was made by means of an approved breath analyzing instrument operated by a qualified technician,

evidence of the results of the analyses so made is, in the absence of any evidence to the contrary, proof that the proportion of alcohol in the blood of the accused at the time when the offence was alleged to have been committed was, where the results of the analyses are the same, the proportion determined by such analyses and, where the results of the analyses are different, the lowest of the proportions determined by such analyses;

- (c) a certificate of an analyst stating that he has made an analysis of a sample of the breath of the accused and stating the result of his analysis is evidence of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate;

- (d) where samples of the breath of the accused have been taken pursuant to a demand made under section 114F(l), a certificate of a qualified technician stating —
 - (i) that each analysis of the samples has been made by means of an approved breath analyzing instrument operated by him in which a substance or solution suitable for use in that approved breath analyzing instrument and identified in the certificate was used;
 - (ii) the results of the analyses so made; and
 - (iii) if the samples were taken by him—
 - (A) the time when and place where each sample was taken, and
 - (B) that each sample was received from the accused directly into an approved breath analyzing instrument operated by the technician,
- is evidence of the statements contained in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.

(2) In any proceedings under section 114D, evidence that the accused, without reasonable excuse, failed or refused to comply with a demand made to him by a police officer under section 114F(1) is admissible and the court may draw an inference therefrom adverse to the accused.

(3) An accused against whom a certificate described in subsection (1)(c) or (d) is produced may, with leave of the court, require the attendance of the analyst or of the qualified technician, as the case may be, for the purpose of cross-examination.

(4) No certificate shall be received in evidence pursuant to subsection (1)(c) or (d) unless the party intending to produce it has, before the trial, given to the accused not less than ten days notice of his intention together with a copy of the certificate.

(5) In this section—

“analyst” means a person designated by the Minister charged with responsibility for transport as an analyst for the purposes of section 35D of the Road Traffic Act 1947 [*title 21 item 3*];

“approved container” means a container of a kind designed to receive a sample of the breath of a person for analysis and that is approved as suitable for the purposes of section 35D of the Road Traffic Act 1947 [*title 21 item 3*] by order of the Minister charged with responsibility for transport;

“approved breath analyzing instrument” means an instrument of a kind that is designed to receive and make an analysis of a sample of the breath of a person in order to measure the proportion of alcohol in the blood of that person and that is approved as suitable for the purposes of section 35D of the Road Traffic Act 1947 [*title 21 item 3*] by order of the Minister charged with responsibility for transport;

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“qualified technician” means a person designated by the Commissioner of Police as being qualified to operate an approved breath analyzing instrument.

[Section 114H inserted by 1991:4 effective 7 March 1991; Section 114H amended by 2018 : 37 s. 5 effective 31 July 2018]

Civil servant required to act as master, engineer or wireless operator within territorial waters

115 (1) Where, in the opinion of the Director, it is in the public interest for an established or non-established civil servant working under the direction of the Minister to act as master, engineer or wireless operator, outside normal working hours, in the service of overseas shipping enterprises, within the territorial waters of Bermuda, the Director may require such civil servant to perform such duties.

(2) Where services are performed by an established or non-established civil servant pursuant to the direction of the Director under subsection (1), he shall be entitled to be paid over and above his normal salary and other emoluments overtime pay at the rate of time and a half for each hour so worked.

Civil servant required to act as master, engineer or wireless operator outside territorial waters

116 (1) Where, in the opinion of the Director, it is in the public interest for an established or non-established civil servant working under the direction of the Minister to act as master, engineer or wireless operator, outside normal working hours, in the service of the Minister outside the territorial waters of Bermuda, the Director may require such civil servant to perform such duties.

(2) Where services are performed by an established or non-established civil servant pursuant to the direction of the Director under sub-section (1), he shall be entitled to be paid over and above his normal salary and other emoluments overtime pay at the rate of eight hours pay at his basic rate of salary for each day or part of a day spent at sea.

PART VIII

Saving for Bermuda Board of Trade

117 *[omitted]*

Repeals and amendments

118 *[omitted]*

Commencement

119 *[omitted]*

MARINE BOARD ACT 1962

FIRST SCHEDULE
REPEAL OR AMENDMENT OF ENACTMENTS

[omitted]

MARINE BOARD ACT 1962

SECOND SCHEDULE
AMENDMENT OF REGULATIONS

[*omitted*]

[Assent Date: 31 March 1962]

[This Act was brought into operation on 1 January 1963 by GN 467/1962]

[*Amended by:*

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1967 : 238
1968 : 367
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1971 : 43
1971 : 83
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