

MARINE OFFENCES PROCEDURE ACT 2006



BERMUDA

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MARINE OFFENCES PROCEDURE ACT 2006

Date of Assent: 24 July 2006

Operative Date: 24 July 2006

ARRANGEMENT OF SECTIONS

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SCHEDULE

WHEREAS it is expedient to enact the Marine Offences Procedure Act 2006;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Short title

1 This Act may be cited as the Marine Offences Procedure Act 2006.

Interpretation

2 In this Act —

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"court" means a court of summary jurisdiction;

"marine offence" means an offence under a provision of an Act, regulation or municipal ordinance specified in the Schedule.

"Minister" means the Minister of Justice;

"officer" means a police officer, an officer of the Department of Marine and Ports Services who is authorized under section 114 of the Marine Board Act 1962 to prosecute offences against that Act or a person who, under section 2 of the Fisheries Act 1972, is a fisheries inspector;

"ticket" means a ticket issued under this Act;

Authorization of ticketing

3 (1) Without prejudice to the procedure set out in the Summary Jurisdiction Act 1930 for laying an information and for issuing a summons, an information may be laid and a summons issued for a marine offence by means of a ticket in accordance with this Act.

(2) For greater certainty, subsection (1) applies despite section 111 of the Marine Board Act 1962.

Form of ticket

4 (1) A ticket shall, subject to this Act, be in the same form as that prescribed by regulations made under the Traffic Offences Procedure Act 1974 and shall consist of three parts, an information, a summons and a record of conviction.

(2) The use on a ticket of any word or expression in the Schedule describing the offence, or any word or expression substantially to the same effect, in relation to a marine offence is sufficient for all purposes in connection with proceedings for that offence to describe the offence.

Issue of ticket

5 If an officer has reasonable cause to suspect that a person has committed a marine offence, the officer may issue a ticket under this Act to that person by delivering to, or serving on, the person the summons part of the ticket in accordance with section 6.

Summons

6 (1) An officer who issues a ticket shall, upon completing and signing the summons part of the ticket, either deliver the summons part to the person charged with the marine offence in respect of which the ticket is issued or serve it on that person by sending it by registered mail to the person's last known address.

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(2) Unless the contrary is shown, the date of service of a summons served by registered mail is the fourteenth day after it was sent to the address referred to in subsection (1).

(3) Where the summons part is delivered to the person charged, the officer shall request the person charged with the marine offence to sign the ticket in the place provided for it and the person's signature shall be sufficient proof that the person has received the summons.

(4) A person charged with a marine offence who refuses without reasonable excuse to accept delivery of the summons part of a ticket under subsection (1) commits an offence:

Punishment on summary conviction: a fine of \$100.

Payment of penalty out of court

7 (1) An officer who issues a ticket in respect of a marine offence may enter on the summons part of the ticket the amount of any penalty specified in the Schedule for that offence, in which case the officer shall endorse on the back of the summons part of the ticket a notice that the person to whom the summons is directed may, within seven days after delivery or service of the summons as the case may be, pay out of court the specified penalty.

(2) Where a summons is endorsed under subsection (1), it shall provide for a plea of guilty in the following form —

PLEA OF GUILTY

I am aware that I have a right to a hearing in respect of the offence with which I am charged and that by signing this plea of guilty I am waiving my right to a hearing and my signature may result in a conviction against me without a hearing. I hereby plead guilty to the offence as charged and consent to be convicted of the offence in my absence.

[blank]

Signature of Defendant

(3) A signature affixed to the form of Plea of Guilty purporting to be that of the person to whom the summons is directed is prima facie proof that it is the signature of that person.

(4) Upon receipt of a summons duly signed with a plea of guilty and of the amount of the penalty specified in the summons, an officer of the court shall issue an official receipt for the amount of that penalty and shall place the summons before the court.

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(5) The court shall formally convict the person charged of the marine offence specified in the summons and no further penalty may be imposed in respect of the offence.

(6) If a person charged with a marine offence does not plead guilty to the offence and pay the penalty specified in the summons, the person shall appear at the time and place specified in the summons for the hearing of the charge, and, if they fail to appear, the court may proceed in accordance with section 4 of the Summary Jurisdiction Act 1930.

Information

- 8 (1) The information part of a ticket shall be—
- (a) signed by the officer who issues the ticket;
 - (b) signed by the informant and sworn before a justice of the peace; and
 - (c) deposited with the court, together with the record of conviction part of the ticket.
- (2) The information part of a ticket need not be sworn to before the summons part is delivered or served and the informant need not be the person who delivers or serves the summons.

Amount of penalty

- 9 Nothing in this Act prevents the court from imposing any penalty authorized by law in respect of a marine offence if—
- (a) no amount is entered on the summons; or
 - (b) the person charged does not plead guilty to the offence and pay the penalty specified in the summons.

Record of conviction

10 Where the court makes a conviction on a ticket information in respect of a marine offence, the court shall complete the record of conviction part of the ticket and an officer of the court shall cause a copy of it to be forwarded to the Commissioner of Police.

Amendment of Schedule

- 11 (1) The Minister may make regulations to amend the Schedule, including adding or deleting offences or changing the amounts of penalties specified for offences.
- (2) An amount specified by regulations as the penalty for a marine offence shall not exceed the maximum amount, or be less than any minimum amount, established for the relevant offence by the enactment creating the offence.

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(3) The negative resolution procedure shall apply to regulations made under this section.

SCHEDULE

OFFENCES AND PENALTIES

DESCRIPTION OF OFFENCE	PROVISION OF LAW	PENALTY
<i>Marine Board Act 1962</i>		
Securing a vessel to a navigation aid	Section 21(b)	\$100
Boat plying for hire or reward without a licence	Section 77(1)	\$200
Operating a boat plying for hire or transporting passengers for reward without a licence	Section 89(1)5	\$200
Dangerous operation of a boat and disobeying an order of a police officer to return to a mooring or dock	Section 114C(2)	\$100
<i>Marine Board (Declaration of Speed Limits for Boats) (Mariners) Notice 2001</i>		
Navigating a boat within 100 metres of the shoreline in excess of 5 knots	Regulation 2	\$100
Navigating a boat within 100 metres of the shoreline and creating a wake	Regulation 2	\$100
Navigating a boat in Ferry Reach within 100 metres of the shoreline in excess of 10 knots	Regulation 3(1)	\$100
Navigating a boat in Ferry Reach within 100 metres of the shoreline and creating a wake	Regulation 3(1)	\$100
<i>Marine Board (Diving) Regulations 1997</i>		
Failing to fly a diving flag	Regulation 6(1)	\$100
Exceeding 5 knots within 100 metres of a diving boat	Regulation 6(3)(a)	\$150

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Failing to have regard to the safety of persons taking part in a diving operation	Regulation 6(3)(b)	\$150
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***Marine Board (Navigation) (Ship Channels) (No.3)
Regulations 1962***

Failing to give way to a ship	Regulation 8	\$150
Anchoring in a channel	Regulation 9	\$100

Marine Board Safety Regulations 1993

Failing to carry required safety equipment	Regulation 4	\$100
Failing to carry required safety equipment	Regulation 5	\$150
Failing to carry required safety equipment	Regulation 6	\$150
Failing to carry required safety equipment	Regulation 7	\$200

***Marine and Ports Authority (Berthing and Anchoring)
Regulations 1967***

Failing to keep a public landing clear	Regulation 7	\$100
Throwing rubbish into harbours or waters	Regulation 9(b)	\$50

Marine and Ports Authority (Dumping) Regulations 1967

Depositing or discharging ballast, oil or rubbish into harbours or waters	Regulation 2	\$200
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Marine and Ports Authority (Moorings) Regulations 1967

Putting down a mooring without a licence	Regulation 2(1)	\$150
Mooring a boat to a mooring without a licence	Regulation 2(2)	\$100
Failing to affix licence to a mooring buoy	Regulation 4(5)	\$50
Failing to produce certificate for mooring licence within 7 days	Regulation 7	\$50

Marine and Ports Authority (Navigation) Regulations 1967

Failing to keep safe distance from a ship	Regulation 3(a)	\$150
Allowing a boat to cross the bow of a ship within 300 feet	Regulation 3(b)	\$150
Allowing a boat to come within 100 feet of a ship	Regulation 3(c)	\$150

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Failing to navigate a boat at a reasonable speed	Regulation 4(a)	\$100
Failing to navigate at a safe distance from another boat	Regulation 4(b)	\$100

Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 2005

Failing to maintain a proper lookout (rule 5)	Regulation 5(1)	\$100
Failing to proceed at a safe speed (rule 6)	Regulation 5(1)	\$100
Failing to take action to avoid a collision (rule 8)	Regulation 5(1)	\$100
Failing to keep out of the way of a vessel being overtaken (rule 13)	Regulation 5(1)	\$100
Failing to alter course to avoid a collision (rule 14)	Regulation 5(1)	\$100
Visibility of lights not sufficient (rule 22)	Regulation 5(1)	\$100
Failing to display required lights – power-driven vessel (rule 23)	Regulation 5(1)	\$100
Failing to display required lights – sailing vessel (rule 25)	Regulation 5(1)	\$100
Failing to display required navigation lights – vessel at anchor (rule 30)	Section 5(1)	\$100
Failing to give warning signal (rule 34)	Section 5(1)	\$100

Power-craft Regulations 1960

Operating a power-craft over 6hp while under age 16	Regulation 4(a)	\$100
Operating a power-craft in a dangerous manner or at a dangerous speed	Regulation 4(b)	\$200
Operating a power-craft without due care and attention	Regulation 4(e)	\$150
Operating a power-craft without reasonable consideration for other persons	Regulation 4(f)	\$100
Towing a water skier with less than two persons on board	Regulation 5(1)	\$100
Towing a water skier during hours of darkness	Regulation 5(2)(a)	\$100

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Towing a water skier within 200 feet of the foreshore	Regulation 5(2)(b)	\$100
Allowing a person under age 12 to operate a power-craft	Regulation 6(1)	\$100
Failing to give name, address and registered number	Regulation 7	\$100
Operating a power-craft where certificate has been cancelled or suspended	Regulation 10(2)	\$200

Registration of Boats Regulations 1990

Using, keeping or operating an unregistered boat	Regulation 3(1)(a)	\$150
Allowing another person to use, keep or operate an unregistered boat	Regulation 3(1)(b)	\$150
Failing to notify change of ownership	Regulation 10(2)(a)	\$100
Failing to apply for re-registration	Regulation 10(2)(b)	\$100
Failing to display registration number	Regulation 12(1)(a)	\$50
Failing to display annual registration decal	Regulation 12(1)(a)	\$50

Fisheries Regulations 1972

Taking, selling or purchasing fish other than for bait or human or animal consumption	Regulation 12(1)	\$100
Possession of tail of lobster separated from body	Regulation 12(2A)	\$100
Taking a lobster out of season or in contravention of conditions of licence	Regulation 12(7)	\$100
Taking a lobster without a licence	Regulation 12(8)	\$100
Possession, without a licence, of instrument capable of taking a lobster	Regulation 12(8A)	\$100
Taking or injuring a lobster by spear fishing	Regulation 16(3)(a)	\$100
Spear fishing within one mile of the shore	Regulation 16(3)(c)	\$100
Carrying a spear, harpoon or similar device in area where spear fishing is prohibited	Regulation 16(8)	\$100

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Possession of an aqua lung together with equipment for taking lobsters	Regulation 16(9)	\$100
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Fisheries (Protected Species) Order 1978

Taking fish of a protected species within the exclusive economic zone	Regulation 2	\$100
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Hamilton (Barr's Bay Park) Ordinance 1989

Leaving a boat at the waterside of Barr's Bay Park	Article 4(g)	\$100
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Hamilton Boat Ordinance 1996

Berthing a boat alongside Hamilton docks without authorization	Article 14(a)	\$100
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Leaving a boat alongside Hamilton docks unattended	Article 14(d)	\$100
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Playing music while berthed alongside Hamilton docks	Article 14(l)	\$100
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Berthing a boat alongside Hamilton docks overnight without authorization	Article 14(m)	\$100
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