



BERMUDA

MARINE AND PORTS SERVICES ACT 2021

2021 : 8

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WHEREAS it is expedient to repeal and re-enact, with substantial amendment, the Marine Board Act 1962 in order to address modern boating practices in Bermuda's territorial waters and to require international standards to be met by local vessels;

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:

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PART 1

PRELIMINARY

Citation

1 This Act may be cited as the Marine and Ports Services Act 2021.

Interpretation

2 In this Act, unless the context otherwise requires—

“Admiralty” means the United Kingdom Government department responsible for the control and direction of Her Majesty’s Naval Service;

“air pollution” means the emission of air pollution at levels as prescribed by regulations;

“Automatic Identification System” means base stations, transmitters, receivers and transceivers in all forms as defined in the SOLAS Convention;

“barge” means a craft used for commercial purposes within the territorial waters that is—

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

“Bermuda Maritime Operations Centre” means the facility at Fort George responsible for Bermuda Radio, the Vessel Traffic Service and providing a rescue coordination centre with such other services as set out in Chapters IV and V of the Annex to the SOLAS Convention;

“Bermuda Radio” means a Coast Radio Station providing Global Maritime Distress & Safety System (GMDSS) A1 and A2 services as defined in Chapter IV of the Annex to the SOLAS Convention;

“boat” includes every description of craft not being a ship and includes an Island boat, rental power-craft and rental sailboat;

“boat master” means the person in charge of any ship or Island boat;

“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;

“BSCV Code of Practice” means the Code of Safety for Small Commercial Vessels operating in Bermuda as issued under section 41;

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“BSMA” or “Bermuda Shipping and Maritime Authority” means the Bermuda Shipping and Maritime Authority established under section 3 of the Bermuda Shipping and Maritime Authority Act 2016;

“Coast Radio station” means the on-shore maritime radio station services that are responsible for monitoring radio distress frequencies and relaying ship-to-ship and ship-to-land communications that are provided by Bermuda Radio in accordance with Chapter IV in the SOLAS Convention;

“Code of Practice” means codes related to marine operations within territorial waters;

“crew member” means a person who is part of an Island boat’s crew who is not a pilot, engineer or engine driver;

“the Department” means the Department of Marine and Ports Services continued in being under section 11(1);

“the Director” means the Director of Marine and Ports Services appointed under section 11(2);

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

“dock owner” means the owner of an ISPS dock which includes the Hamilton docks, the St. George’s docks, the Dockyard docks, the Oil docks, the Morgan’s Point dock and any future ISPS dock;

“Dockyard docks” means the ISPS docks in the ownership of or under the control of the West End Development Corporation within the West End Development Corporation Act 1982 and includes the Freeport (as delineated in the Ireland Island Freeport Act 1956), Kings Wharf and Heritage Wharf;

“e-navigation” means the harmonized collection, integration, exchange, presentation and analysis of marine information on board and ashore by electronic means to enhance berth to berth navigation and related services for safety and security at sea and protection of the marine environment;

“enforcement officer” means—

- (a) a police officer;
- (b) a member of the Royal Bermuda Regiment (coast guard unit person);

“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;

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- “Government boat” means any boat or Island boat in the service of a Government Department;
- “Hamilton docks” means the ISPS docks belonging to or under the control of the Corporation of Hamilton within the municipal boundaries of that Corporation;
- “IALA” means the International Association of Lighthouse Authorities, the technical body providing advice to the IMO on aids to navigation and Vessel Traffic Services;
- “IHO” means the International Hydrographic Organisation responsible for setting standards for hydrographic survey, data collection and chart publication;
- “III Code” means the International Maritime Organisation Instruments Implementation Code adopted by the IMO Assembly in Resolution A.1070(28) on 4 December, 2013;
- “IMO” means the International Maritime Organisation;
- “Island boat” means any type of boat (not being a rowboat) which is operated for hire or reward in the waters of, or from place to place within Bermuda, and not ordinarily employed in voyages to any place beyond the territorial waters;
- “ISPS Code” means the International Ship and Port Facility Security Code;
- “ISPS Dock” means any berth in territorial waters inspected and approved by the Minister for the use by vessels which are classed under IMO Conventions and is a berth that possesses a valid United Kingdom Department for Transport Certificate of Port Facility Security Plan Approval;
- “master” means the person in charge of any ship;
- “Morgan’s Point dock” means the ISPS dock in the waters of Port Royal Bay (the Little Sound);
- “marine construction works” includes any works carried out on the bed of the sea;
- “MARPOL” means the International Convention for the Prevention of Pollution from Ships 73/78 as amended from time to time;
- “Minister” means the Minister responsible 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;
- “Oil docks” means the oil terminal and ISPS dock on the north side of St. George’s Island in the waters of Murray’s Anchorage;

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“owner”, in relation to any wreck or wreckage means any person who is, or was, owner or part owner when such wreck or wreckage became an obstruction by reason of—

- (a) being in any ship channel;
- (b) being attached to any mooring or anchor in any port; or
- (c) being in any of the approaches,

or so near to a ship channel, mooring or approaches as to cause danger, obstruction or delay to any ship or small craft 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;

“port” includes all harbours, anchorages and moorings within the territorial waters;

“port dues” include shipping wharfage;

“prescribed” means prescribed by any Act or by any regulation made by order of the Minister or the Ports Authority;

“ship” means a vessel engaged in international trade, but does not include vessels usually plying in the territorial waters;

“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;

“SSAS” means Ship Security Alerting System as defined in regulation 6 of Chapter XI-2 of the SOLAS Convention;

“SOLAS Convention” means the Safety of Life at Sea Convention (SOLAS) 1974/78 as amended from time to time;

“St. George’s docks” means the ISPS 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;

“territorial waters” has the meaning given in section 5 of the Interpretation Act 1951;

“the Warden” means the Warden of Pilots;

“vessel” means any ship or craft, or any structure capable of navigation, and includes a power boat, row boat, sailboat, wind sailboard, surfboard, canoe or kayak;

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“Vessel Traffic Service” means the Vessel Traffic Information Service as defined by the International Association of Lighthouse Authorities (IALA);

“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, pollution or other things.

[Section 2 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Application to Crown

3 (1) Subject to this section, the provisions of this Act shall apply to ships, vessels and boats used for naval or military purposes or used by an enforcement officer or the Bermuda Fire and Rescue Service in the public service of the Crown.

(2) 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 in force on 23 January 2023 by BR 3 / 2023 para. 2]

PART 2

PORTS AUTHORITY

Ports Authority

4 (1) There shall continue to be a board of persons 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 less than five and no more than seven members appointed by the Minister from persons appearing to be qualified as having had experience of or having shown capacity in matters relating to—

- (a) maritime affairs;
- (b) maritime policy development;
- (c) the maritime industry;
- (d) transportation;
- (e) law;
- (f) government;
- (g) municipal administration.

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(3) The Director or his nominee shall be an additional ex-officio member of the Ports Authority, but shall not be entitled to vote.

(4) The Ports Authority shall be a body corporate under the name of “The Ports Authority” with—

- (a) the exclusive right to use that name in Bermuda;
- (b) perpetual succession under that name; and
- (c) power to sue and liability to be sued in its corporate capacity by that name in all courts; and
- (d) power to have and use a common seal.

(5) In appointing the members of the Ports Authority, the Minister shall appoint persons who in the Minister’s opinion have the experience and expertise required under subsection (2) and other suitable qualifications.

(6) The Minister shall appoint a Chairman and a Deputy Chairman from among the members appointed pursuant to subsection (2).

(7) Fees shall be paid to members of the Ports Authority in accordance with the Government Authorities (Fees) Act 1971.

(8) No action, suit, prosecution or other proceeding shall lie against the members of the Ports Authority or any public officer acting on behalf of the Authority in respect of any act done in good faith in execution or intended execution of any function under this Act.

(9) The provisions of Schedule 1 have effect with respect to procedures, meetings and other matters relating to the Ports Authority.

[Section 4 in force on 1 April 2021 by BR 42 / 2021 para. 2]

Functions of the Ports Authority

5 The principal functions of the Ports Authority are as follows—

- (a) to advise the Minister on the control of ship channels;
- (b) to regulate and licence berthing, anchoring and mooring of any ship;
- (c) to regulate capital works over docks;
- (d) to regulate dock operations with respect to international convention obligations;
- (e) to issue port dues;
- (f) to license ferry services;
- (g) to determine light tolls rates;
- (h) to manage the repair and maintenance of buoys and moorings;

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- (i) to provide certificates or licences of competency;
- (j) to regulate marine matters in the territorial waters.

[Section 5 in force on 1 April 2021 by BR 42 / 2021 para. 2]

Powers and duties of Ports Authority

6 Subject to any general direction given by the Minister under section 9, the Ports Authority shall have the powers and duties vested in it or imposed upon it by Part 7 or any other provision of law.

[Section 6 in force on 1 April 2021 by BR 42 / 2021 para. 2]

PART 3

FUNCTIONS OF THE MINISTER

Minister has general management, control and supervision of maritime matters

- 7 (1) Subject to this Act and any other provision of law, the Minister—
- (a) shall exercise a general supervision and control over the navigation of ships and boats in the territorial waters and of the ports of Bermuda with the duty of coordinating the development, administration and operation thereof;
 - (b) shall exercise a general supervision and control over matters concerning or connected with the use of boats plying for hire;
 - (c) may issue any Code of Practice or prescribe any provisions related to marine operations that the Minister may determine from time to time.
- (2) In particular, and without prejudice to the generality of subsection (1), the Minister shall have the administration, control and supervision of the following—
- (a) radio-communications services;
 - (b) meteorological services and warnings;
 - (d) hydrographic services;
 - (e) ship routeing;
 - (f) ship reporting systems;
 - (g) Vessel Traffic Services;
 - (h) lighthouses;
 - (i) Automatic Identification System services;
 - (j) ship channels, including their dredging and improvement;

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- (k) removal of wrecks, derelict or abandoned vessels or unregistered moorings in territorial waters;
 - (l) marine pollution including oil spills, air pollution and sewage as prescribed in regulations;
 - (m) pilotage and the branch pilot service;
 - (n) ferry services;
 - (o) passenger boats (whether or not the property of Government);
 - (p) tugs, tenders, workboats and barges (whether or not the property of Government);
 - (q) the BSCV Code of Practice;
 - (r) the ISPS Code;
 - (s) waste reception facilities in ports;
 - (t) dangerous goods in ports;
 - (u) Port Marine Safety Codes;
 - (v) any other Codes of Practice issued under international maritime conventions that may be adapted for the management of vessels in territorial waters;
 - (w) marine accidents in territorial waters.
- (3) In addition, the Minister may regulate the operation of the Bermuda Maritime Operations Centre that is responsible for—
- (a) rescue coordination services;
 - (b) providing marine safety information to mariners;
 - (c) life saving signals which include but are not limited to—
 - (i) Global Maritime Distress and Safety System (GMDSS) functions;
 - (ii) registration of satellite distress system beacons;
 - (iii) Ship Security Alerting System (SSAS) monitoring;
 - (iv) Bermuda Long Range Identification and Trafficking (LRIT) Data Centre management;
 - (d) Coast Radio Station services;
 - (e) Vessel Traffic Services;
 - (f) aids to navigation services involving e-navigation and the transmission of data to and from ships;
 - (g) Voyage Data Recorders (VDR);

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(h) the reporting of incidents referred to in the SOLAS Convention and MARPOL.

(4) The Minister may make regulations for the operation and control of the responsibilities in this section.

(5) For the avoidance of doubt, this Act is subject to the Submarine Communications Cables Act 2020.

[Section 7 in force on 23 January 2023 by BR 3 / 2023 para. 2]

General powers of the Minister

8 Without prejudice to the generality of this Act, the Minister shall—

- (a) make such inquiries as he thinks expedient in respect of any of the matters mentioned in section 7 in respect of which his sanction, approval or consent, or the sanction, approval or consent of any officer of the Department or a suitably qualified official surveyor is required under this Act;
- (b) appoint an official surveyor to ensure conformance with the BSCV Code of Practice and licensing of Government crews in the case of Government vessels;
- (c) in respect of matters connected with any of the matters mentioned in section 7(2), cause such statistical data to be obtained and recorded, and such records or reports to be published, as he may think expedient.

[Section 8 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Minister may give general directions to Ports Authority

9 (1) The Minister may, after consultation with the Ports Authority, give 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 the Minister 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 the Minister 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 on the following matters—

- (a) the exercise and performance of the duties of the Ports Authority;
- (b) the operations of the Bermuda Maritime Operations Centre;
- (c) with the assistance of the Department, the condition of the aids to navigation;

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- (d) compliance with the requirements for hydrographic services in section 13,

and the Minister shall lay a copy of the report in paragraph (a) before each House of the Legislature and publish the reports in paragraphs (b) to (d) on the Department website.

[Section 9 in force on 1 April 2021 by BR 42 / 2021 para. 2]

Minister may consult Ports Authority

10 In the exercise of the Minister's powers and duties in relation to marine and ports services and related matters, other than his power to give directions under section 9, 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.

[Section 10 in force on 1 April 2021 by BR 42 / 2021 para. 2]

Department of Marine and Ports Services

- 11 (1) There shall continue to be a Department of Marine and Ports Services.
- (2) The Department shall—
- (a) subject to the 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
 - (b) consist of such other public officers as may from time to time be authorized by the Minister.

[Section 11 in force on 23 January 2023 by BR 3 / 2023 para. 2]

PART 4

SHIP CHANNELS

Control of ship channels

12 (1) The Minister may, with respect to the territorial waters, by a Notice to Mariners or other local navigational warning or order, which shall also be published in the Gazette and on the Department website—

- (a) declare speed limits for ships and boats;
- (b) prohibit or restrict or prohibit and restrict the movement of a ship or a boat in areas of waters designated in the Notice;
- (c) exercise control over maritime traffic and declare the priority of ships or boats as to right of way;
- (d) specify the signals to be used between ship and ship or between ship and shore; and

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(e) 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.

(2) 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).

(3) An exemption granted under subsection (2) 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.

(4) 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.

(5) 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 (2); or
- (c) any sign erected under subsection (4).

(6) Section 6 of the Statutory Instruments Act 1977 shall not apply to a Notice to Mariners or other local navigational warning or order given or made under this section.

[Section 12 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Hydrographic services

13 (1) The Minister in consultation with the Minister responsible for public works shall maintain hydrographic services and data in accordance with obligations under the provisions of Chapter V of the SOLAS Convention and guidance provided by the IHO and IALA in compliance with the III Code.

(2) The Minister may make regulations specifying the requirements to comply with hydrographic services requirements.

[Section 13 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Minister may make regulations regarding shipping

14 The Minister may, with regard to the applicable III Code provisions, 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 ships or boats or to the public;

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- (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 boat masters, engineers, engine drivers and crew members.

[Section 14 in force on 23 January 2023 by BR 3 / 2023 para. 2]

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

15 (1) The master or pilot of any ship shall not permit her to enter any ship channel without first having secured clearance from either the Pilot Station or Bermuda Maritime Operations Centre.

(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 any of the approaches, or their moorings.

(3) Any master of a ship or pilot who contravenes this section commits an offence.

[Section 15 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Restriction on use of ship channel by disabled ship

16 (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 this section commits an offence.

[Section 16 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Conditional permission for use of ship channel by disabled ship

17 (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.

[Section 17 in force on 23 January 2023 by BR 3 / 2023 para. 2]

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No dumping in ship channel

18 (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, refuse, solid material or other marine pollutant, which means substances which are subject to the provisions of Annex II of MARPOL, to be discharged, dumped, thrown, dropped, deposited or pumped in any ship channel or in any of the approaches.

(2) Any person who contravenes this section commits an offence.

[Section 18 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Defence of necessity due to weather etc.

19 No person shall be liable to be convicted of an offence against sections 15 to 18 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.

[Section 2 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Clearance of wreck from ship channel and berth

20 (1) The master and owner of any wreck, and the owner of any wreckage located—

- (a) in a ship channel;
- (b) in any of the approaches;
- (c) so near to a ship channel as to cause danger, obstruction or delay to any ship attempting to enter, pass through or use the channel or to any inward or outward bound ship; or
- (d) next to a berth,

shall effectually clear the berth of the wreck or wreckage, clear the ship channel and the approaches of the wreck or wreckage.

(2) The master or owner of a wreck referred to in subsection (1) shall remove the wreck to the satisfaction of the Minister within such time as the Minister may prescribe by written notice given to such master, owner or agent, or, if such master, owner, or agent is not known or cannot be found in Bermuda, by notice published in the Gazette.

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

(4) If such master, owner or agent fails to comply with any notice given by the Minister under subsection (2) or to give the security required by subsection (3), then the master or owner commits an offence.

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(5) Where a person commits an offence under subsection (4), 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.

(6) 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 berth, 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.

(7) Where the Minister has deducted the expenses to the sale, he shall pay any surplus of the proceeds of such sale to the master, owner or agent of such wreck or wreckage, and if no master, owner or agent can be located in Bermuda, 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.

(8) 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 authorized to be paid in this section, then the excess shall be recoverable from the owner of such wreck or wreckage as a debt due to the Crown.

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

(10) Notwithstanding anything in this section, the Minister may at any time clear any ship channel or berth 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.

[Section 20 in force on 23 January 2023 by BR 3 / 2023 para. 2]

PART 5

AIDS TO NAVIGATION

Minister to buoy and mark ship channels

21 (1) The Minister shall be responsible for the correct buoying, lighting and marking of all ship and small boat channels.

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(2) The Minister shall ensure that the shape, colouring and lighting of all buoys shall conform to the IALA standards and to any international practice or regulations relating to buoys.

[Section 21 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Buoys and beacons to be regularly maintained and refitted

22 The Minister shall—

- (a) once at least in every year, or as often 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, maintained and repaired; and
- (b) from time to time, renew any such buoy, beacon or pole as is required, and provide and place in position such new ones as are, in the opinion of the Minister, necessary or desirable for proper navigation.

[Section 22 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Interference with buoy or beacon an offence

23 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;
- (b) makes fast any ship, boat or craft to any such buoy, beacon or pole;
- (c) wilfully destroys or injures any such buoy, beacon or pole, or any of the attachments; or
- (d) places any buoy, beacon or pole in or near any of the channels or territorial waters similar in appearance to any of the buoys, beacons or poles under the control of the Minister,

commits an offence.

[Section 23 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Use of dredging and other equipment by Minister

24 The Minister shall employ all dredgers, 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.

[Section 24 in force on 23 January 2023 by BR 3 / 2023 para. 2]

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Control of ship channels in time of war or emergency

25 On the outbreak of war 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 become, in lieu of the Minister, the channel authority, and shall have all the power and authority of the Minister under this Act or necessary for the resolution of matters in this section.

[Section 25 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Lighthouses and beacons

26 (1) The Minister shall have responsibility for the management and care of existing lighthouses and beacons and shall have the power to regulate the admission of visitors to any such lighthouses.

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

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

[Section 26 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Light tolls

27 (1) All ships, other than the exempted ships in subsection (2), coming to anchor or berthing in Bermuda from beyond the territorial waters shall on their arrival be liable for light tolls calculated in accordance with regulations made under this Act.

(2) The following ships are exempted ships for the purpose of this section—

- (a) Her Majesty's ships;
- (b) transport 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 engaged in trade;
- (e) ships exclusively employed in voyages of pleasure and not carrying any freight for hire or reward;
- (f) superyachts, chartered in accordance with a permit granted under section 3C of the Passenger Ships and Other Vessels Act 1972;
- (g) 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,

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discharging or taking on board cargo, except when required to do so under the Quarantine Act 2017, or under any other enactment;

- (h) ships which, having paid light tolls in Bermuda, return from beyond the territorial waters owing to stress of weather within ten days after leaving Bermuda, without having reached any port out of Bermuda;
- (i) ships which are wrecked or stranded and which do not arrive in any port in Bermuda;
- (j) ships which, having been brought into Bermuda as derelicts—
 - (i) are sold under any order or decree; and
 - (ii) are sold, together with their cargo, by the Receiver of Wrecks; and
- (k) ships which are exclusively employed as sail-training ships.

[Section 27 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Maritime lien for unpaid light tolls

28 (1) No ship shall be permitted to be cleared 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, equipment and cargo.

[Section 28 in force on 23 January 2023 by BR 3 / 2023 para. 2]

PART 6

PILOTAGE

Minister may regulate pilotage in Bermuda

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

- (a) provide for the functions, duties and responsibilities of the Warden of Pilots;
- (b) in relation to pilots and branch pilots for service in Bermuda—
 - (i) specify the qualifications as to age, service, character and other particulars required from candidates to be branch pilots;
 - (ii) determine the terms and conditions of examination as to fitness and the grant of branch to pilots;
 - (iii) regulate 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;

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- (iv) prescribe the general requirements for employment, training, examination and appointment of pilots and branch pilots for service in Bermuda;
- (c) prescribe the requirements for the usage of pilots for service in Bermuda by boats, Island boats and ships;
- (d) prescribe penalties for breaches of the regulations;
- (e) provide for all matters and things required or permitted by this Act in relation to the branch pilot service.

[Section 29 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Compulsory pilotage

30 (1) Except as provided in this section, every ship (other than an excepted ship) shall, while navigating in the territorial waters, be piloted by a branch pilot.

(2) The master of any ship who fails to comply with this section commits an offence, and shall be subject on summary conviction to a fine of \$2,500.

(3) It shall be a defence for a person charged with an offence under this section to prove that the navigation took place in an emergency, or that the ship was in danger or distress.

(4) 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 of less than 30 metres;
- (d) ships of less than 50 gross registered tons (GRT);
- (e) ships outward bound from Five Fathom Hole;
- (f) pleasure yachts taking part in ocean races, or cruising in or about the territorial waters;
- (g) ships of less than 450 gross registered tons (GRT) 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 ten voyages into and out of a port in Bermuda; and
 - (ii) the Warden is satisfied that the master of the ship is competent to navigate in the territorial waters without a pilot on board, and a branch pilot cannot be provided.

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

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- (a) that the master of the superyacht is competent to navigate it in the territorial waters 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 30 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Liability of owner or master for navigating without a pilot

31 The owner or master of a ship navigating in the territorial waters 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.

[Section 31 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Limited liability of pilot

32 A pilot employed as such on a ship navigating in the territorial waters 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 \$5,000.

[Section 32 in force on 23 January 2023 by BR 3 / 2023 para. 2]

PART 7

BERTHING, ANCHORING OR MOORING WITHIN THE PORTS OF BERMUDA

Ports Authority to regulate berthing, anchoring and mooring

33 The Ports Authority shall regulate the berthing, anchoring and mooring of all ships and boats within the ports of Bermuda and all incidental matters.

[Section 33 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Licence for floating dock or a mooring pile

34 The Ports Authority 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 responsible for planning.

[Section 34 in force on 23 January 2023 by BR 3 / 2023 para. 2]

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Directions concerning berthing, anchorage or mooring

35 (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 oral directions to the owner, master or agent of any ship relating to the berthing, anchorage or mooring of that ship.

(2) Without prejudice to any regulations made under this Act, the Director, or any officer of the Department (including a dock owner duly authorized in that behalf) may, subject to such general or special instructions issued by the Ports Authority, give written or oral directions to the owner, master or agent of any boat relating to the berthing, anchorage, mooring or moving of that boat.

(3) For the purposes of subsection (2), a dock owner may designate berthing facilities in respect of boats.

(4) Subject to subsection (5) and (6), the owner, master or agent of a boat who berths that boat at an ISPS dock shall pay a berthing fee as may be determined under this section.

(5) For the purposes of subsection (4), the Corporation of Hamilton or the Corporation of St. George's is authorized to prescribe berthing fees levied by ordinance under the Municipalities Act 1923.

(6) No fees shall be prescribed pursuant to subsection (4) or (5) except with the prior written approval of the Minister.

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

- (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 (2) may regulate the location, moving, timing, manner and period of the berthing, anchorage and mooring of any boat.

(8) The Director or any officer of the Department referred to in subsection (2) 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 and the Director or officer shall not be liable for any damage caused during the move of said boat.

(9) 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 (2),

commits an offence.

[Section 35 in force on 23 January 2023 by BR 3 / 2023 para. 2]

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Ports Authority control over capital works

36 Without prejudice to any other provision of law, no extension of a capital nature shall be commenced or continued by any dock owner or any other person, without the prior approval in writing of the Ports Authority, after consultation with the Minister responsible for public works, or otherwise than in accordance with any such written approval.

[Section 36 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Saving for powers of Municipality

37 (1) Nothing in this Act shall derogate from the powers and responsibility of the entities responsible for the Hamilton docks, St. George's docks and the Dockyard docks to maintain, supervise and operate their respective docks efficiently and safely and to provide the funds and labour necessary for that purpose.

(2) Subject to subsection (1), the entities responsible for the Hamilton docks, St. George's docks and the Dockyard docks 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, including any provisions of the III Code.

(3) Notwithstanding sections 35 and 36 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 entities responsible for the Hamilton docks, St. George's docks and the Dockyard docks, 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.

(4) Subject to subsection (3), if any liability attaches to the entities responsible for the Hamilton docks, St. George's docks and the Dockyard docks in 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 entities responsible for the Hamilton docks, St. George's docks and the Dockyard docks as the case may be, accordingly.

[Section 37 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Ports Authority to have access to ISPS docks

38 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 any ISPS dock and all its facilities.

[Section 38 in force on 23 January 2023 by BR 3 / 2023 para. 2]

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Port dues

39 (1) The entities responsible for the Hamilton docks, St. George's docks and the Dockyard docks shall remain responsible for the collection of port dues 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 their collection.

(2) The entities responsible for the Hamilton docks and the St. George's docks shall be responsible for the collection of fees prescribed pursuant to section 35(5) 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.

(3) 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 39 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Minister may make regulations

- 40 The Minister, after consultation with the Ports Authority, may make regulations—
- (a) that control and regulate the ports of Bermuda and the use thereof in accordance with the III Code and the ISPS Code;
 - (b) to make provision to inspect and license ports and marinas annually;
 - (c) to make provision for the levy, payment and collection of port dues;
 - (d) to make provision for coordinating the development, administration and operation of the ports and marinas of Bermuda;
 - (e) that require each port and marina to develop and adopt a Code of Practice pertaining to its operations;
 - (f) to make provision for the development of a Code of Practice for the reporting and investigation of accidents in ports and ship channels by the Department in conjunction with the BSMA.

[Section 40 in force on 23 January 2023 by BR 3 / 2023 para. 2]

PART 8

BSCV CODE OF PRACTICE

BSCV Code of Practice

41 (1) Subject to this Act, the Minister shall, for the purposes of prescribing standards of construction and emergency equipment for Island boats, issue a Code of Practice, and different Codes may be issued for different sizes and types of Island boats.

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(2) Without limiting the generality of subsection (1), the BSCV Code of Practice may provide for—

- (a) the granting of safety certificates;
- (b) the provision of stability test procedures;
- (c) load line requirements;
- (d) fire testing requirements;
- (e) the requirement of standards of ignitability tests for combustible insulations;
- (f) recommended emergency broadcast instructions;
- (g) requirements for anchor and cable lengths;
- (h) requirements for first aid kits;
- (i) estimating guidelines for holding tank capacities;
- (j) the form of boat engineer licences, engine driver licences and crew endorsements and the requirements for obtaining such licences and endorsements;
- (k) the proper prevention of pollution by garbage from ships;
- (l) the provision of determining the length of ships;
- (m) the standards for crew accommodation and recreation;
- (n) the inspection report;
- (o) the forms for on-board complaint-handling procedures.

(3) In preparing any BSCV Codes of Practice under this section, the Minister shall consult—

- (a) the Ports Authority;
- (b) the Bermuda Shipping and Maritime Authority; and
- (c) such other persons as he considers appropriate.

(4) Subject to subsection (5), the Minister shall inform the public by means of a notice published in the Gazette, on the Department website and the Bermuda Shipping and Maritime Authority website at least three months in advance of the date on which a BSCV Code of Practice comes into effect, and shall state in the notice whether the Code replaces or amends any previous BSCV Code of Practice.

(5) The Minister may waive or reduce the period of three months mentioned in subsection (4) as the Minister thinks fit where a Code amends a previous Code—

- (a) to correct a mistake; or
- (b) in any circumstances where safety is an issue.

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(6) Notwithstanding that a BSCV Code of Practice has replaced or amended a previous Code of Practice with effect from a specified date, the old Code of Practice—

- (a) shall continue to apply; or
- (b) shall continue to apply without the amendments,

(as the case may be) to any Island boat in respect of which the application for an inspection or safety certificate was received by the Department or the Bermuda Shipping and Maritime Authority before that date (whether or not a safety certificate has been issued or an inspection has commenced).

(7) Copies of the BSCV Codes issued from time to time under this section shall be made available on the Department website.

(8) Section 6 of the Statutory Instruments Act 1977 shall not apply to the BSCV Codes of Practice issued under this section.

[Section 41 in force on 23 January 2023 by BR 3 / 2023 para. 2 except 41(2)(j) not in force]

Enforcement of BSCV Code of Practice

42 (1) Where it appears to an officer of the Department or the official surveyor that any person using an Island boat in the territorial waters has failed to comply with any provision of the BSCV Code of Practice, he may by notice in writing to such person—

- (a) specify the failure; and
- (b) require the person within such reasonable time as may be specified, or such further time as the officer of the Department or the official surveyor may allow, to comply with the provision in question,

and he may also state in the notice what steps are necessary to ensure such compliance.

(2) Where it appears to an officer of the Department or the official surveyor that any person using an Island boat has failed to comply with any provision of the BSCV Code of Practice (whether or not a correction notice has been issued) and the officer of the Department or the official surveyor considers it necessary to exercise his powers under this subsection, he may by notice in writing to such person—

- (a) prohibit any continuation of the usage of the Island boat (such notice referred to as a “stop notice”); or
- (b) impose conditions on the continuation of the activity of the Island boat,

until such time as the provision in question has been complied with.

(3) In addition to the methods of service specified in section 78, a notice issued under this section may be served—

- (a) by leaving it with any apparently responsible person at the place where the Island boat is docked;
- (b) if no such person can be found, by affixing it, or a copy of it, to some conspicuous part of the Island boat in question.

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(4) A person who fails to comply with a notice served under this section commits an offence and shall be liable on summary conviction—

- (a) to a fine of \$5,000 or to imprisonment for six months, or to both; and
- (b) to a further fine of \$250 for each day on which the offence continues.

[Section 42 in force on 23 January 2023 by BR 3 / 2023 para. 2]

PART 9 ISLAND BOATS

Application

43 (1) For the purposes of this Part, any boat visiting the territorial waters under a charter-party for the purpose of being used to embark and transport passengers within the territorial waters shall be deemed to be a boat plying for hire or reward, and this Part and the Marine Board (Island Boats) Regulations 1965 to the extent provided in those regulations shall apply mutatis mutandis to such a vessel.

(2) Subsection (1) 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 8, this Part and the Marine Board (Island Boats) Regulations 1965 shall not apply to such a superyacht.

[Section 43 in force on 23 January 2023 by BR 3 / 2023 para. 2]

No Island boat to ply for hire or reward without a licence

44 (1) No boat shall ply for hire or reward unless it has been licensed by the Minister as an Island boat.

(2) No licence shall be granted unless the boat complies with the requirements of section 57.

(3) Licences shall be in such form as the Minister may determine.

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

(5) 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 the boat 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.

[Section 44 in force on 23 January 2023 by BR 3 / 2023 para. 2]

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Seaworthiness of Island boats; inspection

45 (1) The Minister shall, at least once in every year, cause every Island boat to be boarded by such officer or officers of the Department as the Minister may direct, and such officer or officers shall make a thorough examination in compliance with the BSCV Code of Practice, and the officer appointed to be in charge of the examination shall report on the condition and sufficiency of the Island boats to the Minister.

(2) The Minister may by regulations made under this Act, provide for the inspection in compliance with the BSCV Code of Practice of any Island boat used for carrying passengers or cargo in the territorial waters and such inspection shall be independent of the vessel operator.

[Section 45 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Director may require Island boat to be brought for inspection

46 The Director may, by writing under his hand addressed to the owner, agent or master of any Island 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 the Island boat has been completely surveyed.

[Section 46 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Restriction on use of Island boat pending inspection

47 An owner, agent or master of any Island boat shall not, after the time appointed for inspection—

- (a) employ such Island boat; or
- (b) allow her to be employed in the carrying of passengers, mails or freight;
or
- (c) to be employed in towing or other service in Bermuda,

until after the Island boat 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 boat or (as the case may be) of the Island boat's hull, machinery and equipment and that the Island boat is safe and sufficient for the service specified in the certificate.

[Section 47 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Minister may grant certificate of survey of Island boat

48 (1) If on inspection the officer appointed by the Minister finds an Island boat and her hull, machinery, and equipment or such part or parts as he is specifically appointed to survey in good and safe condition, considering the service in which such boat is, or is intended to be, ordinarily employed, he may issue a certificate of survey.

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(2) If on an initial inspection the officer appointed by the Minister finds that the Island boat is not compliant with the BSCV Code of Practice he may issue a deficiency list stating the areas of non-compliance with the BSCV Code of Practice.

(3) On a subsequent visit and on confirmation that the deficiencies have been satisfactorily completed, the officer may issue a certificate of survey.

(4) On receipt of the certificate of survey, the Minister shall issue an Island boat certificate with such qualifications or particulars as he may deem necessary.

(5) An Island boat certificate shall at all times be kept posted by the owner, agent or master in such conspicuous place on the vessel where it may be viewed by passengers as the Minister may designate.

(6) Any person who, being the owner, agent or master of an Island boat, duly fails to keep posted any such Island boat certificate, commits an offence.

[Section 48 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Minister may require repairs to Island boat

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

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

[Section 49 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Prohibition of running Island boat in disrepair

50 Every owner and master of an Island boat who runs her or permits her to be run while her hull, engines, machinery and equipment 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.

[Section 50 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Inspection of Government boats

51 (1) Nothing in sections 45 to 49 shall impose any duty on the Minister in respect of any Island boat owned or operated by the Government.

(2) In respect of every Island boat owned or operated by the Government, the duties imposed on an officer appointed under sections 45 to 47 and 53 shall be performed by an official surveyor appointed by the Minister (hereinafter in this section called "the Surveyor").

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(3) The Surveyor granting a certificate of survey under this section shall inform the Minister who shall order the Director to issue an Island boat certificate.

[Section 51 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Crews of Island boats plying for hire; certification

52 No person shall act as a crew member aboard a boat plying for hire or transporting any passenger for reward unless he has been certified by the Minister in accordance with the BSCV Code of Practice.

Crews of Island boats; examination of applicants for licence

53 (1) For the information of prospective applicants for an Island boat crew licence, the Minister shall from time to time cause to be published on the Department website a statement of the technical competency required and other matters upon which such candidates will be required to satisfy the Examining Board.

(2) Every applicant for an Island boat crew licence shall make written application to the Director and shall forward the prescribed fee for such licence which, if the applicant is examined, shall be paid into the Consolidated Fund.

(3) The Minister may, if he sees fit, direct the Examining Board to examine such applicant as to his fitness to receive a licence, and on being satisfied by the Examining Board's report, the Minister may grant an applicant a licence in such form as he may determine.

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

(5) If the Examining Board refuses to grant the licence, it shall notify the applicant in writing of the Board's decision and the reasons for the decision.

(6) Where the Examining Board has refused to grant an Island boat crew licence and notified the applicant in accordance with subsection (5), the applicant may appeal the refusal to the Supreme Court.

[Section 53 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Crews of Island boats; suspension or cancellation of licence

54 (1) 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.

(2) A person who is aggrieved by the determination by the Minister of the cancellation or suspension of a licence may appeal to the Ports Authority on that account.

[Section 54 in force on 23 January 2023 by BR 3 / 2023 para. 2]

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Crews of Island boats; Minister may make regulations

55 The Minister may by regulations made under this Act prescribe the classes of Island boats and the manner in which they are required to carry a crew who are licensed in accordance with the BSCV Code of Practice.

[Section 55 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Minister may make regulations concerning Island boats

56 (1) The Minister shall make regulations that make provision for regulating and controlling the running of Island boats in such manner as not to endanger the safety of, or cause annoyance or inconvenience to, the public.

(2) The Minister may make regulations that make provision—

- (a) to be used for carrying passengers or cargo; or
- (b) to be used for any other purpose,

with respect to the registration, classification and licensing of any Island boat within the territorial waters, and for specifying the conditions subject to which such registration, classification or licensing may from time to time be renewed, amended or cancelled.

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

[Section 56 in force on 23 January 2023 by BR 3 / 2023 para. 2]

PART 10

COMPULSORY INSURANCE OF ISLAND BOATS

Compulsory insurance of Island boats

57 A master or owner of an Island boat shall have in force a contract of insurance—

- (a) that provides for the maximum liability of maritime claims;
- (b) that insures its passengers,

against such liabilities and satisfying such other requirements, as may be so specified by regulations made under section 58.

[Section 57 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Minister may make compulsory insurance of Island boats regulations

58 (1) Subject to subsections (2) and (3), the Minister may make regulations for implementing the requirements for compulsory insurance for Island boats pursuant to section 57.

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(2) Regulations made under this section shall not apply in relation to a boat while it is exercising—

- (a) the right of innocent passage; or
- (b) the right of transit passage.

(3) Regulations made under this section may require that, where a person is obliged to have in force in respect of an Island boat, a contract of insurance, such documentary evidence as may be specified by or under the Regulations, of the existence of the contract of insurance, must be carried in the Island boat and produced on demand, by such persons as may be specified in the regulations, to such persons as may be so specified.

(4) Regulations made under this section may provide—

- (a) that a contravention of the regulations shall be an offence punishable on summary conviction by a fine of an amount not exceeding \$50,000, and on conviction on indictment by an unlimited fine; and
- (b) that any such contravention shall be an offence punishable only on summary conviction, by a fine of an amount not exceeding \$50,000.

(5) Regulations made under this section may—

- (a) make different provisions for different cases;
- (b) make provision in terms of any document which the Minister or any person considers relevant from time to time;
- (c) make provisions for appealing a decision of the Minister with respect to this section; and
- (d) include such incidental, supplemental and transitional provisions as appear to the Minister to be expedient for the purposes of the regulations.

[Section 58 in force on 23 January 2023 by BR 3 / 2023 para. 2]

PART 11

HOVERCRAFT

Hovercraft; importation, use and operation prohibited

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

(2) Any person who contravenes subsection (1) commits an offence, and on summary conviction, shall be liable to 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.

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[Section 59 in force on 23 January 2023 by BR 3 / 2023 para. 2]

PART 12 BERMUDA FERRY SERVICE

Interpretation of Part 12

60 In sections 61 to 66 —

“Bermuda” includes the territorial waters;

“ferry contractor” has the meaning assigned to it by section 62;

“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;

“power boat” means any boat or vessel propelled by mechanical power.

[Section 60 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Minister to operate a ferry service

61 (1) The Minister shall operate, or 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.

[Section 61 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Ferry contractors

62 (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 in compliance with the BSCV Code of Practice and other requirements that may be specified by the Minister.

(2) Any person with whom the Minister has entered into an agreement under subsection (1) is in this Act referred to as a “ferry contractor”.

[Section 62 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Exclusive rights

63 (1) 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.

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(2) If any person acts in contravention of this section he is guilty of an offence and is liable on summary conviction to a fine of \$1,000 for every day during which the offence occurs or continues.

[Section 63 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Minister may engage generally in business of transport by water

64 (1) 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 within territorial waters.

(2) Without prejudice to the generality of section 62, the Minister may engage in the business of transporting by water passengers or goods to and from ocean-going ships for the purpose of providing towing and docking services.

(3) The Minister shall make regulations requiring the conformity to a Code of Practice as a condition of licensing for the following matters—

- (a) the transport by water of passengers or goods within Bermuda;
- (b) the licensing of workboats used in the transport of passengers and goods.

[Section 64 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Fares, dues and charges

65 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 this Part.

[Section 65 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Timetables and tables of fares, etc.

66 The Minister shall cause to be published on the Department website, timetables of ferry services and particulars of any alteration in any such timetables, and shall cause such timetables 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.

[Section 66 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Minister may make regulations

67 (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 Government boats;

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- (b) for regulating the conduct of persons carried as passengers in Government boats;
- (c) for regulating the conduct of persons who are embarking or waiting to embark on, or who are disembarking from, Government boats;
- (d) for the reporting of accidents involving passengers, crew or other vessels;
- (e) 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;
- (f) 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 Government boats includes a reference to power boats used by a ferry contractor while being used by him in the operation, as agreed between the ferry contractor and the Government, to operate a ferry service.

[Section 67 in force on 23 January 2023 by BR 3 / 2023 para. 2]

PART 13

MISCELLANEOUS

Salvage operations

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

[Section 68 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Minister may control movement of waterborne traffic through bridges

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

- (a) to control the movement of waterborne traffic through or under any bridge;
- (b) to create regulations to enforce marine traffic flow through or under bridges through the use of traffic lights or other signals, including offences for the failure of mariners to obey such lights or signals;

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- (c) to specify, by notice published in the Gazette and on the Department's website, the signal to be displayed when an opening bridge will not be open to water-borne traffic.

[Section 69 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Minister may make regulations controlling diving

70 (1) The Minister may make regulations for the control and regulation of diving to promote the safety of persons who engage in diving and for any incidental matters incidental 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;
- (b) the control and regulation of persons offering their services for hire or reward including diving instructors or diving guides, including their duties, responsibilities and powers;
- (c) the control and regulation of persons offering their services for marine diving contract work;
- (d) the periodical inspection and safety of diving equipment used or let out for hire or reward and the fees payable;
- (e) the prohibition of diving in areas designated by the Minister as unsuitable or dangerous for diving;
- (f) the restriction of diving in areas designated by the Minister save in accordance with such conditions as the Minister may specify;
- (g) 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 purposes of this section, “diving” means the submersion in the territorial waters of a person equipped with apparatus for underwater breathing.

[Section 70 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Minister and Ports Authority may each make regulations

71 (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), the Minister may make regulations—

- (a) providing for the examination for, and the granting, suspension and cancellation of, certificates of competency;

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- (b) providing for the holding of inquiries into the conduct of the persons holding a certificate of competency in subparagraph (a);
- (c) specifying the manner in which light tolls payable by any ship under this Act shall be calculated;
- (d) specifying the scale on which pilotage dues payable by any ship under this Act shall be calculated;
- (e) in respect of the control and siting of all buoys and moorings in the territorial waters;
- (f) in respect of the licensing of ports to operate, taking into account—
 - (i) conformance with the requirements of the III Code;
 - (ii) use of a marine safety management system;
 - (iii) the adoption of a Code of Practice.

(3) In the event of any conflict between any regulation made under this Act and any Ordinance made under the Municipalities Act 1923, the regulation made under this Act shall prevail.

[Section 71 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Official Surveyors

72 (1) The Minister may appoint persons to be official surveyors, who shall have the powers and duties vested in, or imposed by, the Minister and be responsible for completing the duties required by subsection (4).

(2) There shall be not less than three and not more than five persons appointed at any one time as official surveyors by the Minister, from persons appearing to him to be qualified as having had experience of or having shown capacity to complete the duties required under subsection (4).

(3) An official surveyor shall be appointed for a term of three years, and shall be eligible for re-appointment from time to time.

(4) An official surveyor shall be responsible for—

- (a) assessing any cargo damaged on board a ship, boat or Island boat, and inquire, examine and ascertain the cause of the damage;
- (b) examining any ship, boat or Island boat which has suffered a wreck or damage or which is deemed unfit to proceed on her voyage;
- (c) estimating the value and measurement of any ship, boat or Island boat when it is in dispute, or otherwise needed;
- (d) providing a regular survey of any goods or other property of a ship, boat or Island boat that is to be advertised for sale or sold, either by public auction or private contract;

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- (e) examining any ship, boat or Island boat to determine whether it is in a fit state to proceed to sea or receive cargo;
- (f) examining any Bermuda government vessel for the issue of an Island boat certificate;
- (g) examining persons employed by the Department or otherwise for the issue of licences under the provisions of this Act;
- (h) providing the examination of an Island boat for its compliance with the BSCV Code of Practice, and compliance with the BSCV Code of Practice; and
- (i) assisting the Minister with providing assessments, examinations or surveys of any the matters mentioned in section 7.

[Section 72 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Prevention of air pollution from boats and ships in territorial waters

73 (1) A boat or ship travelling within the ports of Bermuda shall take all reasonable precautions to prevent the unnecessary emission of air pollution as prescribed by regulations for the time being in force under the Merchant Shipping Act 2002.

(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, 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 air pollution from ships or boats.

(3) Subject to subsection (5), the master, owner or the agent, of any ship or boat which emits air pollution while in the territorial waters, or while at anchor, or while moored or docked, within the ports of Bermuda commits an offence punishable on summary conviction in accordance with the regulations.

(4) In any proceedings in respect of an offence under the regulations—

- (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 is a corporate body, subject to section 87, such proceedings may be brought against any director thereof resident in Bermuda.

(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 unnecessary air pollution and that the emission was, in the circumstances, unavoidable.

(6) The Minister may make regulations for the regulation of air pollution from boats and ships within the territorial waters of Bermuda.

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[Section 73 in force on 23 January 2023 by BR 3 / 2023 para. 2]

PART 14 ADMINISTRATION

Parliamentary scrutiny of regulations

74 (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) The negative resolution procedure shall apply to regulations made under this Act, other than those to which subsection (1) applies.

[Section 74 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Notices

75 (1) All notices, orders, consents, demands, Department fees, port fees and other documents authorized or required by or under this Act or by regulations made under this Act which are given, made or issued by the Minister or the Ports Authority, shall be in writing and may be posted on the Department website.

(2) The Minister shall annually post on the Department website lists of the following licensed or certificated—

- (a) Island boats;
- (b) work boats;
- (c) ports.

(3) 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.

[Section 75 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Records

76 All notices, orders, consents, demands and other documents are to be kept by the Department for a minimum of ten years.

[Section 76 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Authentication of documents

77 (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

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Minister or the Ports Authority in writing to sign documents of the particular kind or, as the case 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.

[Section 77 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Service of notices

78 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;
- (b) in the case of the Minister or any officer of the Department, by leaving it at the Minister or officer's office or sending it by registered letter addressed to the Minister or officer at his office; or
- (c) in the case of any other person, by leaving it, or by sending it by registered letter addressed to that person, at his usual or last known residence; or
- (d) by sending it by email addressed to that person (or, in the case of a body corporate, to an officer or employee of the body) at an email address provided by that person, in writing, to any officer of the Department; or
- (e) 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 by registered letter addressed to the secretary or clerk at that office.

[Section 78 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Recovery of light tolls and pilotage dues

79 (1) All light tolls and pilotage dues payable under this Act shall be paid to and received by the Accountant-General or the Collector of Customs, and shall form part of the general revenue of Bermuda.

(2) All light tolls and pilotage dues payable under this Act shall, without limit of amount, be recoverable before a court of summary jurisdiction as a debt or liquidated demand, and in any such case, the amount of the light tolls or pilotage dues and of the cost of the suit (if any) may be levied on the ship, her boats, equipment or cargo.

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

(4) All sums recoverable by the Minister for salvage operations under section 68 shall be paid and received by the Accountant-General and shall form part of the general revenue of Bermuda.

(5) 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 Minister may direct.

[Section 79 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Penalty for late payment of light tolls, etc.

80 (1) Where a person has not paid the dues or tolls in subsection (2) and has been issued a demand which has not been paid within a period of 45 days, commencing on the date a demand is issued, the person shall, in addition to the amount specified in the demand, be liable to pay a penalty in the amount of 10% of the amount for which the demand was made.

(2) A penalty shall be paid for the following dues and tolls—

- (a) light tolls payable pursuant to section 27;
- (b) pilotage dues payable as prescribed by regulations;
- (c) increased pilotage dues payable as prescribed by regulations;
- (d) wharfage payable pursuant to any provision of law;
- (e) port dues payable pursuant to section 39; or
- (f) any other dues payable under this Act.

(3) Where a licence fee payable pursuant to regulation 5(2) of the Marine Board (Moorings) Regulations 2000 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 as may be specified under the Government Fees Act 1965.

[Section 80 in force on 23 January 2023 by BR 3 / 2023 para. 2]

PART 15

OFFENCES AND PROCEDURE

Obstructing execution of Act

81 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 under this Act.

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[Section 81 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Offences

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

[Section 82 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Summary prosecution of offences

83 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.

[Section 83 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Punishment in general

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

- (a) a person is liable on summary conviction to a fine of \$10,000 in respect of each offence;
- (b) a person is liable on summary conviction of a second or subsequent offence to imprisonment for three months or a fine of \$20,000 or both;
- (c) in the case of a continuing offence on summary conviction, to a further fine of \$1,000 for every day during which the offence continues.

[Section 84 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Daily penalties

85 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—

- (a) 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
- (b) 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.

[Section 85 in force on 23 January 2023 by BR 3 / 2023 para. 2]

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Officers of Department may prosecute

86 A prosecution for an offence may be conducted before a court of summary jurisdiction by any officer of the Department duly authorized by the Minister or the Ports Authority on their behalf.

[Section 86 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Liability of directors for offences by bodies corporate

87 Where under this Act an offence—

- (a) is committed by a body corporate; and
- (b) is proved to have been committed with the consent or connivance of, or is attributable to any neglect on the part of—
 - (i) any director or other similar officer of the body corporate; or
 - (ii) any person purporting to act in any such capacity,

he as well as the body corporate commits the offence and may be proceeded against and punished accordingly.

[Section 87 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Enforcement officer may board ship or boat to investigate

88 Where an enforcement 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 on board any ship or boat within the territorial waters, such officer may stop and board any such ship or boat or board any such ship or boat lying at anchor or alongside any dock for the purpose of making investigations into the suspected offence.

[Section 88 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Arrest without warrant

89 An enforcement officer may arrest without warrant any person who, where on board 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 enforcement officer.

[Section 89 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Dangerous operation of boat; powers of enforcement officer

90 (1) Where any boat within the territorial waters—

- (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;
- (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 boat; or

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- (c) by reason of its construction or the lack of adequate safety equipment constitutes a danger to persons on board,

an enforcement officer may stop the 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.

(2) Any person who—

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

commits an offence, and shall be liable on summary conviction to a fine of \$1,500 or to imprisonment for 3 months or both such imprisonment and fine.

[Section 90 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Operating, etc. a boat or Island boat when impaired by alcohol or a drug

91 Any person who operates or is at the helm of, or attempts to operate or to be at the helm of a boat or Island boat within the territorial waters, when his ability to operate a boat or Island boat is impaired by alcohol or a drug, commits an offence.

[Section 91 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Operating, etc. a boat or Island boat in contravention of alcohol limits

92 (1) Any person who operates or is at the helm of, or attempts to operate or to be at the helm of a boat or Island boat within the territorial waters, having consumed alcohol in such quantity that the proportion of it in his blood exceeds the prescribed limit, commits an offence.

(2) The prescribed limit for any person under subsection (1) who operates or is at the helm of a boat, other than an Island boat, is 80 milligrammes of alcohol in 100 millilitres of blood.

(3) The prescribed limit for any person under subsection (1) who operates or is at the helm of an Island boat is 50 milligrammes of alcohol in 100 millilitres of blood.

[Section 92 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Arrest without warrant, and breath samples

93 (1) Where an enforcement 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 91 or 92, he may arrest the person without a warrant, and by demand made to that person forthwith or as soon as practicable—

- (a) require that person to provide then or as soon thereafter as is practicable such samples of the person's breath as, in the opinion of a qualified

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technician referred to in section 95, are necessary to enable a proper analysis to be made in order to determine the proportion, if any, of alcohol in the person's blood; and

- (b) to require the person to accompany the enforcement officer to a police station for the purpose of enabling such samples to be taken.

(2) Where an enforcement officer on reasonable and probable grounds believes that, by reason of any physical or mental condition, of a person referred to in subsection (1)—

- (a) that person may be incapable of providing a sample of his breath;
- (b) it would be impracticable to obtain a sample of that person's breath,

the enforcement officer shall require the person to provide such samples of the person's blood, urine or other bodily substance, under the conditions referred to in section 95(1), as in the opinion of a qualified medical practitioner or qualified technician taking the samples are necessary to enable a proper analysis to be made in order to determine the proportion, if any, of alcohol in the person's blood and to accompany the enforcement officer for the purpose of enabling such samples to be taken.

(3) Any person who, without reasonable excuse, fails or refuses to comply with a demand made to him by an enforcement officer under subsection (1) commits an offence.

[Section 93 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Punishment for offences

94 A person who commits an offence under section 91 or 92 shall be liable on summary conviction to—

- (a) a fine of \$10,000 dollars or imprisonment for 12 months or both, for a first offence; or
- (b) a fine of \$20,000 or imprisonment for two years or to both for a second or subsequent offence.

[Section 94 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Proceedings under section 91 or 92

95 (1) In any proceedings under section 91 or 92—

- (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 paragraph (b) may be admitted in evidence notwithstanding that before the person 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 93, if—

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- (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 15 minutes between the times when samples were taken;
- (ii) each sample was received from the accused directly 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 93, 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 93, evidence that the accused, without reasonable excuse, failed or refused to comply with a demand made to him by an enforcement officer under section 93(1) is admissible and the court may draw an inference therefrom adverse to the accused.

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(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 10 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 35C to 35H of the Road Traffic Act 1947;

“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 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 by order of the Minister charged with responsibility for transport;

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

[Section 95 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Public officer required to act as master or engineer outside territorial waters

96 (1) Where, in the opinion of the Director, it is in the public interest for a public officer working under the direction of the Minister to act as master or engineer, outside normal working hours, in the service of the Minister outside the territorial waters, the Director may require such public officer to perform such duties.

(2) Where services are performed by a public officer 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 eight hours pay at his basic rate of salary for each day or part of a day spent at sea.

[Section 96 in force on 23 January 2023 by BR 3 / 2023 para. 2]

PART 16 SUPPLEMENTAL

Repeals

97 (1) Subject to Schedule 3, the Marine Board Act 1962 is hereby repealed.

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(2) The Dockyard Port Act 1905 is hereby repealed.

(3) The Bermuda Merchant Shipping Act 1930 is hereby repealed.

[Section 97(1) in force 1 April 2021 by BR 42 / 2021 only to the extent that it repeals sections 4, 6, 7 and 8 of the Marine Board Act 1962; Section 97(1) in force on 23 January 2023 by BR 3 / 2023 para. 2 to the extent that it repeals the Marine Board Act 1962 in its entirety]

Consequential amendments and transitional provisions

98 (1) The consequential amendments specified in Schedule 2 shall have effect.

(2) The Minister may, by regulations subject to the negative resolution procedure, make further consequential and related amendments to any provision of any other Act or statutory instrument if it appears to the Minister that the provision is inconsistent with, or requires amendment consequentially upon, or has become unnecessary in consequence of, the provisions of this Act.

(3) The savings and transitional provisions in Schedule 3 shall have effect.

[Section 98 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Commencement

99 This Act shall come into operation on a date appointed by the Minister by notice published in the Gazette.

SCHEDULE 1

(Section 4)

PROCEEDINGS OF PORTS AUTHORITY

1 Subject to paragraph 2, a member of the Ports Authority shall be appointed on such conditions and for such terms as may be determined by the Minister.

2 The members of the Ports Authority shall be appointed as follows—

- (a) at least one for a term of two years;
- (b) at least one for a term of three years;
- (c) at least one for a term of four years,

and may be reappointed.

3 A member of the Ports Authority may resign his office at any time by notice in writing given to the Minister.

4 The Minister may declare the office of a member of the Ports Authority vacant if he is satisfied that the member—

- (a) has without reasonable excuse been absent from—
 - (i) three consecutive meetings of the Ports Authority; or
 - (ii) two-thirds of the meetings of the Ports Authority convened in any year;
- (b) has been convicted (whether before or after his appointment) of a criminal offence of dishonesty;
- (c) is an undischarged bankrupt or his estate has been sequestrated and he has not been discharged;
- (d) is otherwise unable, unfit or unwilling to carry out his functions as Chairman, Deputy Chairman or member, as the case may be.

5 A person appointed to fill the place of a member of the Ports Authority before the end of the member's term of office shall hold office so long only as the vacating member would have held office.

6 No member of the Ports Authority shall take part in an inquiry, consultation or decision relating to any specified business in which he or his spouse is a member or shareholder or has any private interest, direct or indirect, whereby his private interest may conflict with his duties as a member.

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7 The Ports Authority may act notwithstanding any vacancy in its membership, and no act of the Ports Authority shall be deemed to be invalid only by reason of a defect in the appointment of a member thereof.

8 The Ports Authority shall meet as often as may be necessary for it to dispatch its business under this Act.

9 A minute shall be made of every decision of the Ports Authority in such form as the Minister may direct.

10 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.

11 The quorum of the Ports Authority shall be at least three members.

12 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.

13 Any direction of the Ports Authority given under this Act shall be deemed to be duly authenticated if it is given under the hand of the Chairman or, in his absence, the Director.

14 In any matter before the Ports Authority, the Chairman or person acting as Chairman shall have a deliberative as well as a casting vote.

15 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.

16 A notice may be given to the Ports Authority by service to the Director.

17 Subject to this Schedule, the Ports Authority may determine its procedure.

18 For the purposes of this Schedule, a reference to a member or the membership of the Ports Authority shall, unless the context otherwise requires, be construed as including the Chairman and Deputy Chairman.

[Schedule 1 in force on 1 April 2021 by BR 42 / 2021 para. 2]

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SCHEDULE 2

(Section 98(1))

CONSEQUENTIAL AMENDMENTS

Amends Bribery Act 2016

1 The Bribery Act 2016 is amended in Schedule 1 by repealing paragraph 4.

[Paragraph 1 of Schedule 2 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Amends Cargo Regulations 1969

2 The Cargo Regulations 1969 are amended in section 5A—

- (a) in subsection (2), by deleting “section 73(1) of the Marine Board Act 1962” and substituting “section 39 of the Marine and Ports Services Act 2021”;
- (b) in subsection (5), by deleting “section 7(1) of the Marine Board Act 1962” and substituting “section 9 of the Marine and Ports Services Act 2021”.

[Paragraph 2 of Schedule 2 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Amends Civil Establishment Act 1998

3 The Civil Establishment Act 1998 is amended in the Schedule, by deleting “Section 9(2) of the Marine Board Act 1962” and substituting “Section 11(2) of the Marine and Ports Services Act 2021”.

[Paragraph 3 of Schedule 2 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Amends Government Fees Regulations 1976

4 Head 42 of the Government Fees Regulations 1976 is amended—

- (a) in the headnote by deleting “Marine Board Act 1962” and substituting “Marine and Ports Services Act 2021”;
- (b) in paragraphs 1, 2 and 3 by deleting “section 102” and substituting “section 72”
- (c) in paragraph 8, by deleting “section 48(4)” and substituting “section 32”.

[Paragraph 4 of Schedule 2 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Amends Government Authorities (Fees) Act 1971

5 The Government Authorities (Fees) Act 1971 is amended in Part B of the First Schedule by deleting “Ports Authority - established by section 4 of the Marine Board Act 1962” and substituting “Ports Authority - established by section 4 of the Marine and Ports Services Act 2021”.

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[Paragraph 5 of Schedule 2 in force on 1 April 2021 by BR 42 / 2021 para. 2]

Amends Marine Offences Procedure Act 2006

6 The Marine Offences Procedure Act 2006 is amended—

- (a) in section 2, the definition of “officer”—
 - (i) by inserting after “means a police officer” the words “a coast guard unit person,”;
 - (ii) by deleting “under section 114 of the Marine Board Act 1962” and substituting “under section 87 of the Marine and Ports Services Act 2021”;
- (b) in section 3(2), by deleting “section 111 of the Marine Board Act 1962” and substituting “section 84 of the Marine and Ports Services Act 2021”;
- (c) in the Schedule—
 - (i) by deleting the headnote “Marine Board Act 1962” and substituting “Marine and Ports Services Act 2021”;
 - (ii) under the headnote entitled “Marine Board Act 1962” —
 - (A) by deleting “Section 21(b)” and substituting “Section 25(b)”;
 - (B) by deleting “Section 77(1)” and substituting “Section 46(1)”;
 - (C) by deleting “Section 89(1)” and substituting “Section 55”;
 - (D) by deleting “Section 114C” and substituting “Section 91”;
 - (iii) by deleting the headnote “Fisheries Regulations 1972” and substituting “Fisheries Regulations 2010”;
 - (iv) under the headnote entitled “Fisheries Regulations 1972”—
 - (A) by deleting “Regulation 12(1)” and substitute “Regulation 15(1)”;
 - (B) by deleting “Regulation 12(2A)” and substituting “Regulation 16(2)”;
 - (C) by deleting “Regulation 12(7)” and substituting “Regulation 16(5)”;
 - (D) by deleting “Regulation 12(8)” and substituting “Regulation 16(6)”;
 - (E) by deleting “Regulation 12(8A)” and substituting “Regulation 16(7)”;
 - (F) by deleting “Regulation 16(3)(a)” and substituting “Regulation 22(5)(a)”;
 - (G) by deleting “Regulation 16(3)(c)” and substituting “Regulation 22(5)(c)”;

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- (H) by deleting “Regulation 16(8)” and substituting “Regulation 22(9)”;
- (I) by deleting “Regulation 16(9)” and substituting “Regulation 22(10)”.

[Paragraph 6 of Schedule 2 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Amends Maritime Security Act 1997

7 The Maritime Security Act 1997 is amended in section 2—

- (a) in the definition of “Department”;
- (b) in the definition of “Director”;

by deleting “under section 9 of the Marine Board Act 1962” and substituting “under section 11 of the Marine and Ports Services Act 2021”;

[Paragraph 7 of Schedule 2 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Amends Merchant Shipping Act 2002

8 The Merchant Shipping Act 2002 is amended in section 129 in the definition of “port dues” by deleting “Marine Board Act 1962” and substituting “Marine and Ports Services Act 2021”.

[Paragraph 8 of Schedule 2 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Amends Revenue Act 1898

9 The Revenue Act 1898 is amended in section 7(4)—

- (a) in paragraph (b) by deleting “sections 25 and 26 of the Marine Board Act 1962” and substituting “sections 29 and 30 of the Marine and Ports Services Act 2021”;
- (b) by deleting paragraph (c).

[Paragraph 9 of Schedule 2 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Amends Submarine Communications Cables Act 2020

10 The Submarine Communications Cables Act 2020 is amended in Schedule 3 by repealing paragraph 1 (Amends Marine Board Act 1962).

[Paragraph 10 of Schedule 2 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Miscellaneous amendments

11 The following Acts are amended—

- (a) in section 2 of the Dangerous Vessels Act 1990—

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- (i) the definition of “the Authority”;
- (ii) the definition of “the Director”;
- (iii) the definition of “ports”;
- (b) in regulation 2(1) of the Class Three Radio (Amateur Service) Regulations 1987, in the definition of “boat”;
- (c) in regulation 2(1) of the Class Four Radio (Two-Way Radiotelephone Services) Regulations 1987, in the definition of “vessel”;
- (d) in Part I of the First Schedule of the Jurors Act 1971;
- (e) in section 97 of the Motor Car Act 1951;
- (f) in section 13 of the Protected Species Act 2003;
- (g) in regulation 5 of the Water Resources (Prevention of Pollution by Sewage from Boats) Regulations 2018,

by deleting “Marine Board Act 1962” and substituting the “Marine and Ports Services Act 2021”.

[Paragraph 11 of Schedule 2 in force on 23 January 2023 by BR 3 / 2023 para. 2]

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SCHEDULE 3

(Section 98(3))

SAVINGS AND TRANSITIONAL PROVISIONS

Savings for Marine Board Act 1962

1 For the avoidance of doubt, and in the accordance with section 17 of the Interpretation Act 1951, any statutory instrument made, given or issued under or in pursuance of the Marine Board Act 1962, and in force immediately prior to the repeal of the Marine Board Act 1962 by this Act, shall remain in force, to the extent that the statutory instrument is not inconsistent with the provisions of this Act, until such time as the statutory instrument is revoked, expires or otherwise ceases to have effect.

[Paragraph 1 of Schedule 2 in force on 23 January 2023 by BR 3 / 2023 para. 2]

Ports Authority

2 (1) In this section—

“Authority” means the Ports Authority established under the Marine Board Act 1962;

“Ports Authority” means the body continued in being under section 4 of this Act.

(2) All rights, assets and property vested in or in any manner held on behalf of or for the purposes of the Authority immediately before the commencement of this Act shall be vested in the Ports Authority.

(3) All liabilities and obligations subsisting against the Authority immediately before the commencement of this Act shall thereafter continue to subsist against the Ports Authority.

(4) Every contract in respect of any matter, other than an employment contract, being a contract between the Authority and any other party immediately before the commencement of this Act shall thereafter continue to subsist between the Ports Authority and such other party.

(5) All rights, powers and duties, whether arising under any written law or otherwise, which immediately before the coming into operation of this Act were vested in the Authority shall, by virtue of this subsection, be transferred to, vested in, imposed on, or be enforceable by or against the Ports Authority.

(6) On and after the commencement of this Act, all actions, suits or legal proceedings by or against the Authority shall be carried out on or prosecuted by or against the Ports Authority and no such suit, action or legal proceedings shall abate or be affected by the coming into operation of this Act.

[Paragraph 2 of Schedule 3 in force on 1 April 2021 by BR 42 / 2021 para. 2]

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Pilotage

3 (1) The registration of any pilot already registered under the Marine Board Act 1962 now repealed shall continue in force notwithstanding such repeal, but shall for all purposes hereafter be deemed to have been registered under regulations made under section 29 of this Act and this Act shall apply to such pilot accordingly.

(2) The pilots under subsection (1) shall as soon as practicable, submit their branch to the Minister, who may direct the Director to issue to the pilot a true copy of the branch issued under this Act.

[Paragraph 3 of Schedule 3 in force on 1 April 2021 by BR 42 / 2021 para. 2]

Boat licences

4 (1) Notwithstanding the repeal of the Marine Board Act 1962, any boat which on the day of the coming into operation of this Act was licensed under the Marine Board Act 1962 shall be deemed to be licensed under this Act.

(2) An Island boat that is deemed to be licensed under subsection (1) will be valid under this Act notwithstanding that there is no policy of insurance when this Act comes into force.

[Paragraph 4 of Schedule 3 in force on 1 April 2021 by BR 42 / 2021 para. 2]

Engine drivers and engineer licences

5 The registration of any—

- (a) boat master;
- (b) engineer;
- (c) engine driver
- (d) other crew member aboard a boat;

under the Marine Board Act 1962, now repealed, shall continue in force notwithstanding such repeal, but shall for all purposes be deemed to have been registered under regulations made under section 14 of this Act and this Act shall apply to such boat master, engineer, engine driver or other crew member accordingly.

[Paragraph 5 of Schedule 3 in force on 1 April 2021 by BR 42 / 2021 para. 2]

[Assent Date: 15 February 2021]

[Operative Date: 01 April 2021]