



BERMUDA

MERCHANT SHIPPING ACT 2002

2002 : 35

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WHEREAS it is expedient to consolidate the Merchant Shipping Acts 1894 to 1988 and other enactments relating to merchant shipping:

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:—

### PART 1 PRELIMINARY *GENERAL*

#### Citation and commencement

1 This Act may be cited as the Merchant Shipping Act 2002 and shall come into operation on such day as the Minister may appoint by notice published in the Gazette and the Minister may appoint different days for different provisions.

#### Interpretation

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

“Bermuda connection” has the meaning given in section 24(8);

“Bermuda ship” has the meaning given in section 16(3) except in the contexts there mentioned;

“Bermuda waters” means the sea or other waters within the seaward limits of the territorial sea of Bermuda;

“British citizen”, “British overseas territories citizen”, “British overseas citizen” and “Commonwealth citizen” have the same meaning as in the British Nationality Act 1981 of the United Kingdom;

“British ship” has the meaning given in section 16(1);

“Chief Marine Surveyor” means the person referred to in section 10 and includes a person authorised by him to perform his functions;

“commissioned military officer” means a commissioned officer in Her Majesty's land forces on full pay;

“commissioned naval officer” means a commissioned officer of Her Majesty's Navy on full pay;

“consular officer”, in relation to a foreign country, means the officer recognised by Her Majesty as a consular officer of that foreign country;

“contravention” includes failure to comply (and “failure” includes refusal);

“country” includes territory;

“Departmental inspector” and “Departmental officer” have the meanings given in section 217(8);

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“fishing vessel” means a vessel for the time being used, or intended to be used, for, or in connection with fishing for sea fish other than a vessel used for fishing otherwise than for profit or a vessel for the time being used (or intended to be used) wholly for the purpose of conveying persons wishing to fish for pleasure; and for the purposes of this definition “sea fish” includes shellfish;

“foreign”, in relation to a ship, means that it is not a Bermuda ship;

“functions” includes powers and duties;

“Government ship” has the meaning given in section 4;

“harbour” includes piers, jetties and other works in or at which ships can obtain shelter or ship and unship goods or passengers;

“harbour authority” includes all persons entrusted with the function of constructing, improving, managing, regulating, maintaining or lighting a harbour;

“master” includes every person (except a pilot) having command or charge of a ship;

“Minister” means the Minister responsible for Maritime Administration;

“national waters”, in relation to Bermuda, means Bermuda waters landward of the baselines for measuring the breadth of its territorial sea;

“port” includes place;

“proper officer”—

- (a) in relation to a port in the United Kingdom or a relevant British possession, means any officer exercising in that port functions similar to those of a superintendent;
- (b) in relation to any other port, means an officer exercising in that port functions similar to those of a superintendent, or a consular officer appointed by Her Majesty’s Government in the United Kingdom;

“qualifying foreign ship” has the meaning given in subsection (2);

“the register” and “registered” have the meaning given in section 36(1);

“the Registrar”, means the Registrar of Shipping or, as respects functions of his being discharged by another authority or person, that authority or person;

“registration regulations” means regulations under section 25;

“relevant British possession” means—

- (a) the Isle of Man;
- (b) any of the Channel Islands; and
- (c) any colony;

“right of innocent passage” shall be construed in accordance with the United Nations Convention on the Law of the Sea;

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- “safety regulations” means regulations under section 93(1);
- “seafarer” means any person who is employed or engaged or works in any capacity on board a ship;
- “ship” includes every description of vessel used in navigation;
- “superintendent” includes a person exercising the functions of a mercantile marine superintendent pursuant to section 12;
- “surveyor of ships” has the meaning given in section 217(8);
- “the tonnage regulations” means regulations under section 33; and
- “wages” includes emoluments.
- (2) In this Act “qualifying foreign ship” means any ship other than—
- (a) a British ship; or
  - (b) a ship which is not registered under Part IV and which (although not by virtue of section 16(1)(e) a British ship)—
    - (i) is wholly owned by persons falling within subsection (2) below; and
    - (ii) is not registered under the law of a country outside Bermuda.
- (3) The following persons fall within subsection (2), namely—
- (a) British citizens;
  - (b) British overseas territories citizens;
  - (c) British overseas citizens;
  - (d) persons who under the British Nationality Act 1981 are British subjects;
  - (e) British nationals (overseas) (within the meaning of that Act);
  - (f) British protected persons (within the meaning of that Act); or
  - (g) bodies corporate incorporated in Bermuda or in the United Kingdom or in any relevant British possession and having their principal place of business in Bermuda or in the United Kingdom or in any relevant British possession.

*[Section 2(1) “Minister” amended by BR 11/2009 reg. 2 effective 6 February 2009; subsection (1) “seaman” deleted and “seafarer” inserted by 2012 : 30 s. 2 effective 30 June 2014]*

### *Application of Act to certain descriptions of ships, etc.*

#### Application of Act to non-Bermuda ships

3 (1) The Minister may make regulations specifying any description of non-Bermuda ships and directing that such of the provisions of this Act and of instruments under this Act as may be specified in the regulations—

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- (a) shall extend to non-Bermuda ships of that description and to masters and seafarer employed in them; or
- (b) shall so extend in such circumstances as may be so specified, with such modifications (if any) as may be so specified.

(2) Regulations under this section may contain such transitional, supplementary and consequential provisions as appear to the Minister to be expedient.

(3) In this section “non-Bermuda ships” means ships which are not registered in Bermuda.

*[Section 3 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### Application of Act to Government ships

4 (1) Subject to any other provisions of it, this Act shall not apply to ships belonging to Her Majesty.

(2) The Minister may make regulations with respect to the manner in which government ships may be registered as British ships under Part IV; and this Act, subject to any exceptions and modifications which may be made by the regulations, either generally or as respects any special class of government ships, shall apply to government ships registered in accordance with the regulations as if they were registered in accordance with Part IV.

(3) In this section, “Government ships” means ships not forming part of Her Majesty’s Navy which belong to Her Majesty, or are held by any person on behalf of or for the benefit of the Crown (and for that reason cannot be registered under Part IV).

### Application of Act to ships chartered by demise to the Crown

5 (1) This section applies to a ship if for the time being—

- (a) the ship is—
  - (i) registered under Part IV; and
  - (ii) in the service of a government department by reason of a charter by demise to the Crown; and
- (b) there are in force under section 4(2) regulations providing for the registration of government ships in the service of the relevant department.

(2) Where this section applies to any ship, the following statutory provisions, namely—

- (a) the provisions of the regulations referred to in subsection (1)(b) (excluding those relating to registration under the regulations); and
- (b) the provisions of this Act (as they apply by virtue of section 4(2)) and those regulations;

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shall (subject to subsections (3) and (4)) have the same effect in relation to that ship as they have in relation to a government ship in the service of the relevant department (whether referred to as such or as such a ship registered in pursuance of those regulations).

(3) Subject to subsection (4), Part IV shall have effect in relation to a ship to which this section applies in like manner as if it were not, for the purposes of this Act, a ship belonging to Her Majesty.

(4) The Minister may by order provide that any statutory provision falling within subsection (2) or (3) and specified in the order—

- (a) shall not have effect in accordance with that subsection in relation to a ship to which this subsection applies; or
- (b) shall so have effect in relation to such ship, but subject to such modifications as are specified in the order.

(5) In the application of any provision of this Act (other than a provision of Part IV) in relation to a ship to which this section applies, any reference to the owner of the ship shall be construed as a reference to the relevant department.

(6) An order under this section may make such transitional, incidental or supplementary provisions as appear to the Minister to be necessary or expedient.

Application of Act to certain structures, etc.

6 (1) The Minister may by order provide that a thing designed or adapted for use at sea and described in the order is or is not to be treated as a ship for the purposes of any specified provision of this Act or of an instrument made thereunder.

(2) An order under this section may—

- (a) make different provision in relation to different occasions;
- (b) if it provides that a thing is to be treated as a ship for the purposes of a specified provision, provide that the provision shall have effect in relation to the thing with such modifications as are specified.

(3) In this section “specified” means specified in the order.

## PART II

### MARITIME ADMINISTRATION

#### *ADMINISTRATION*

General functions of the Minister

7 (1) The Minister shall continue to have the general superintendence of all matters relating to merchant shipping and seafarers and is authorised to carry into execution the provisions of this Act and of all statutory provisions relating to merchant shipping and seafarers for the time being in force, except where otherwise provided.

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(2) The Minister shall be responsible for implementing the provisions of international maritime conventions ratified by the United Kingdom on behalf of Bermuda.

*[Section 7 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### Functions of the Minister in relation to marine pollution

8 (1) The Minister shall have the functions of taking, or co-ordinating, measures to prevent, reduce and minimise the effects of, marine pollution.

(2) Without prejudice to the generality of subsection (1), the functions of the Minister under that subsection include—

- (a) the preparation, review and implementation of a national plan setting out arrangements for responding to incidents which cause or may cause marine pollution with a view to preventing such pollution or reducing or minimising its effects;
- (b) the acquisition, maintenance, use and disposal of ships, aircraft, equipment and other property;
- (c) the provision of services, including research, training and advice; and
- (d) the giving of assistance to any other State or international institution under any international agreement relating to the prevention, reduction or control of marine pollution.

(3) Assistance under subsection (2)(d) shall be given on such terms as will secure reimbursement of the cost of giving the assistance if and to the extent that reimbursement will be practicable in the circumstances.

(4) The Minister may make reasonable charges for the supply of goods or services.

(5) Where under subsection (1) the Minister agrees that another person shall take any measures to prevent, reduce or minimise the effects of marine pollution, he may agree to indemnify that other person in respect of liabilities incurred by the person in connection with the taking of the measures.

(6) In this section—

“marine pollution” means pollution caused by ships, offshore installations or submarine pipelines affecting or likely to affect Bermuda or Bermuda waters;

“offshore installation” means any installation which is maintained for underwater exploitation or exploration;

“pipeline” means a pipe or system of pipes (excluding a drain or sewer) for the conveyance of any thing, together with any apparatus and works associated with such a pipe or system including—

- (a) any apparatus for inducing or facilitating the flow of any thing through, or through a part of, the pipe or system;
- (b) any apparatus for treating or cooling any thing which is to flow through, or through part of, the pipe or system;

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- (c) valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system;
- (d) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in the preceding paragraphs;
- (e) apparatus for the transmission of information for the operation of the pipe or system;
- (f) apparatus for the cathodic operation of the pipe or system; and
- (g) a structure used or to be used solely for the support of a part of the pipe or system;

“submarine” means in under or over Bermuda waters;

but no restriction as to the seas to which functions under this section extend is implied as regards the functions mentioned in subsection (2)(d).

### General power to dispense

9 (1) The Minister may, if he thinks fit, and upon such conditions (if any) as he thinks fit to impose, exempt any ship from any specified requirement of, or prescribed under, this Act other than Chapter III of Part VII (‘Oil Pollution’), or dispense with the observance of any such requirement in the case of any ship, if he is satisfied, as respects that requirement, of the matters specified in subsection (2).

(2) Those matters are—

- (a) that the requirement has been substantially complied with in the case of that ship or that compliance with it is unnecessary in the circumstances; and
- (b) that the action taken or provision made as respects the subject matter of the requirement in the case of the ship is as effective as, or more effective than, actual compliance with the requirement.

### Chief Marine Surveyor

10 (1) There shall be an officer known as the Chief Marine Surveyor for Bermuda whose office shall be a public office.

(2) The Chief Marine Surveyor shall exercise such functions as are conferred on him by this Act and shall perform such other functions as the Minister may direct.

(3) The Chief Marine Surveyor may authorise an officer of the Department of Maritime Administration to exercise the functions and discharge the duties conferred on him by or under this Act.

### Registrar of Shipping

11 (1) There shall continue to be a Registrar whose office shall be a public office.

(2) The Registrar shall exercise such functions as are conferred on him by this Act and by regulations made thereunder.

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(3) The Registrar shall not be liable to damages or otherwise for any loss accruing to any person by reason of any act done or default made by him in his character of Registrar, unless the same has happened through his neglect or wilful act.

### Mercantile marine superintendents

12 The Chief Marine Surveyor shall exercise the functions conferred on mercantile marine superintendents by this Act, and he may designate any marine surveyor to discharge the functions conferred on mercantile marine superintendents by this Act.

### Transmission of documents to Registrar

13 (1) The following duties are imposed on all superintendents and all officers of customs as respects all documents which are delivered or transmitted to or retained by them in pursuance of this Act.

(2) They shall take charge of the documents and keep them for such time (if any) as may be necessary for the purpose of settling any business arising at the place where the documents come into their hands, or for any other proper purpose.

(3) They shall, if required, produce them for any of those purposes, and shall then transmit them to the Registrar.

(4) The Registrar shall return documents transmitted to him under subsection (3) for such period as the Minister may direct.

### Returns, etc. to the Minister

14 (1) All superintendents shall make and send to the Minister such returns or reports on any matter relating to Bermuda ships or seafarers as he may require.

(2) All consular officers abroad acting on the request of the Minister shall make and send to the Minister such returns or reports on any matter relating to Bermuda ships or seafarers as he may require.

(3) All superintendents shall, when required by the Minister, produce to him or to his officers all official log-books and other documents which are delivered to them under this Act.

(4) All surveyors of ships shall make such returns to the Minister as he may require with respect to—

- (a) the build, dimensions, draught, burden, speed and room for fuel of ships surveyed by them; and
- (b) the nature and particulars of machinery and equipment of such ships.

(5) The owner, master and engineer of any ship being surveyed shall, when required to do so, give to the surveyors all such information and assistance within his power as the surveyors require for the purpose of returns under subsection (4).

(6) If the owner, master and engineer of any ship on being required under subsection (5) to give any information or assistance, fails, without reasonable excuse, to

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give the information or assistance he shall be guilty of an offence and liable on summary conviction to a fine of \$2,000.

*[Section 14 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### Forms

15 (1) The Minister may prepare and approve forms for any book, instrument or paper required under this Act, and may alter such forms as he thinks fit.

(2) The Minister shall cause every such form to be marked with the distinguishing mark of the Department of Maritime Administration and, before finally issuing any form or making any alteration in a form, shall cause public notice thereof to be given in such manner as he thinks requisite in order to avoid inconvenience.

(3) The Minister shall cause such forms to be supplied at the Department of Maritime Administration, free of charge or at such reasonable prices as the Minister may fix, or he may licence any person to print and sell the forms.

(4) Every such book, instrument or paper shall be made in the form (if any) approved by the Minister or as near as circumstances permit; and unless so made shall not be admissible in evidence in any civil proceedings on the part of the owner or master of any ship.

(5) Every such book, instrument or paper if made in a form purporting to be the proper form and to be marked in accordance with subsection (2) shall be deemed to be in the form required by this Act, unless the contrary is proved.

(6) The foregoing provisions do not apply where special provision is made by this Act.

(7) If any person prints, sells or uses any document purporting to be a form approved by the Minister knowing that the document is not the form approved for the time being or that the document has not been prepared or issued by the Minister that person shall be guilty of an offence and liable on summary conviction to a fine of \$1,000.

## PART III

### BRITISH SHIPS

#### British ships and Bermuda ships

16 (1) A ship is a British ship if—

- (a) the ship is registered in Bermuda under Part IV of this Act;
- (b) the ship is a Government ship registered in Bermuda in pursuance of regulations under section 4;
- (c) the ship is registered in the United Kingdom under Part II of the Merchant Shipping Act 1995 of the United Kingdom;
- (d) the ship is registered under the law of a relevant British possession; or

- (e) the ship—
  - (i) is not registered under Part IV; but
  - (ii) is wholly owned by qualified owners; and
  - (iii) is not registered under the law of a country outside Bermuda.

(2) For the purposes of subsection (1)(e), “qualified owners” means persons of such description qualified to own British ships as is prescribed by regulations made by the Minister for the purposes of that subsection.

(3) A ship is a “Bermuda ship” for the purposes of this Act (except sections 93(4) and 143(8) if the ship is registered in Bermuda under Part IV.

#### British flag

- 17 (1) The flag which every British ship is entitled to fly is—
- (a) the red ensign (without any defacement or modification); or
  - (b) (in the case of a Bermuda ship) the red ensign bearing the coat of arms of Bermuda;

and subject to subsection (2) , no other colours.

- (2) Subsection (1) does not apply to Government ships.
- (3) The following are also proper national colours, that is to say—
  - (a) any colours allowed to be worn in pursuance of a warrant from Her Majesty or from the Secretary of State;
  - (b) in the case of British ships registered in a relevant British possession, any colours consisting of the red ensign defaced or modified whose adoption for ships registered in that possession is authorised or confirmed by Her Majesty or by the competent authority in that possession.

#### Offences relating to British character of ship

18 (1) If the master or owner of a ship which is not a British ship does anything, or permits anything to be done, for the purpose of causing the ship to appear to be a British ship then, except as provided by subsections (2) and (3), the ship shall be liable to forfeiture and the master, the owner and any charterer shall each be guilty of an offence.

(2) No liability arises under subsection (1) where the assumption of British nationality has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.

(3) Where the registration of any ship has terminated by virtue of any provision of registration regulations, any marks prescribed by registration regulations displayed on the ship within the period of 14 days beginning with the date of termination of that registration shall be disregarded for the purposes of subsection (1).

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(4) If the master or owner of a British ship does anything, or permits anything to be done, for the purpose of concealing the nationality of the ship, the ship shall be liable to forfeiture and the master, the owner and any charterer of the ship shall each be guilty of an offence.

(5) Without prejudice to the generality of subsections (1) and (4), those subsections apply in particular to acts or deliberate omissions as respects—

- (a) the flying of a national flag;
- (b) the carrying or production of certificates of registration or other documents relating to the nationality of the ship; and
- (c) the display of marks required by the law of any country .

(6) Any person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine of \$100,000;
- (b) on conviction on indictment, to a fine of \$200,000 or imprisonment for a term of two years, or both.

(7) This section applies to things done outside, as well as to things done within, Bermuda.

### Penalty for carrying improper colours

19 (1) If any of the following colours, namely—

- (a) any distinctive national colours except—
  - (i) the red ensign;
  - (ii) the red ensign bearing the coat of arms of Bermuda;
  - (iii) the Union flag (commonly known as the Union Jack) with a white border; or
  - (iv) any colours authorised or confirmed under section 17(3); or
- (b) any colours usually worn by Her Majesty's ships or resembling those of Her Majesty; or
- (c) the pendant usually carried by Her Majesty's ships or any pendant resembling that pendant;

are hoisted on board any British ship without warrant from Her Majesty or from the Minister, the master of the ship, or the owner of the ship (if on board), and every other person hoisting them shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable—

- (a) on summary conviction, to a fine of \$10,000;
- (b) on conviction on indictment, to a fine of \$50,000.

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(3) If any colours are hoisted on board a ship in contravention of subsection (1), any of the following, namely—

- (a) any commissioned naval or military officer;
- (b) any officer of customs; or
- (c) any British consular officer;

may board the ship and seize and take away the colours.

(4) Any colours seized under subsection (3) shall be forfeited to Her Majesty.

(5) In this section “colours” includes any pendant.

### Duty to show British flag

20 A British ship shall hoist the red ensign or other proper national colours—

- (a) on a signal being made to the ship by one of Her Majesty’s ships (including any ship under the command of a commissioned naval officer);
- (b) on entering or leaving any foreign port; and
- (c) in the case of ships of 50 or more tons gross tonnage, on entering or leaving any British port.

### Duty to declare national character of ship

21 (1) An officer of customs shall not grant a clearance or transire for any ship until the master of such ship has declared to that officer the name of the nation to which he claims that the ship belongs, and that officer shall thereupon enter that name on the clearance or transire.

(2) If a ship attempts to proceed to sea without such clearance or transire, the ship may be detained until the declaration is made.

### Proceedings on forfeiture of a ship

22 (1) Where any ship has either wholly or as to any share in it become liable to forfeiture under this Part—

- (a) any commissioned naval or military officer; or
- (b) any person appointed by the Minister for the purposes of this section;

may seize and detain the ship and bring the ship for adjudication before the court.

(2) Where a ship is subject to adjudication under this section the court may—

- (a) adjudge the ship and her equipment to be forfeited to Her Majesty in right of Her Government in Bermuda; and
- (b) make such order in the case as seems just.

(3) No officer or person bringing proceedings under this section shall be liable in damages in respect of the seizure or detention of the ship, notwithstanding that the ship

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has not been proceeded against or, if proceeded against, adjudicated not liable to forfeiture, if the court is satisfied that there were reasonable grounds for the seizure or detention.

(4) If the court is not so satisfied the court may award costs and damages to the party aggrieved and make such other order as the court thinks just.

(5) In this section “the court” means the Supreme Court.

### PART IV REGISTRATION *GENERAL*

#### Register of British ships

23 (1) There shall continue to be a register of British ships for all registrations of ships in Bermuda.

(2) The register shall be maintained by the Registrar.

(3) The register may be divided into parts so as to distinguish between classes or descriptions of ships, and shall include a part for the registration of ships chartered-in by demise charter by British charterers.

(4) The register shall be maintained in accordance with registration regulations and the private law provisions for registered ships.

(5) The register shall be available for public inspection during office hours.

#### Registration of ships: basic provisions

24 (1) A ship is entitled to be registered if it is not a fishing vessel and—

(a) it is owned, to the prescribed extent, by persons qualified to own British ships; and

(b) such other conditions are satisfied as are prescribed under subsection (2)(b); and

(c) an application for registration is duly made.

(2) It shall be for registration regulations—

(a) to determine the persons who are qualified to be owners of British ships, or British ships of any class or description, and to prescribe the extent of the ownership required for compliance with subsection (1)(a);

(b) to prescribe other requirements designed to secure that, taken in conjunction with the requisite ownership, only ships having a Bermuda connection are registered.

(3) The Registrar may, nevertheless, if registration regulations so provide, refuse to register or terminate the registration of a ship if, having regard to any relevant

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requirements of this Act, he considers it would be inappropriate for the ship to be or, as the case may be, to remain registered.

(4) Except as provided by section 31(5), where a ship becomes registered at a time when it is already registered under the law of a country other than Bermuda, the owner of the ship shall take all reasonable steps to secure the termination of the ship's registration under the law of that country.

(5) Subsection (4) does not apply to a ship which becomes registered on a transfer of registration to the register from the United Kingdom or a relevant British possession.

(6) Any person who contravenes subsection (4) shall be guilty of an offence and liable on summary conviction to a fine of \$2,000.

(7) In this section "the relevant requirements of this Act" means the requirements of this Act (including requirements falling to be complied with after registration) relating to—

- (a) the condition of ships or their equipment so far as relevant to their safety or any risk of pollution; and
- (b) the safety, health and welfare of persons employed or engaged in them.

(8) In this Part—

- (a) references to qualifications for ownership of British ships are references to the qualifications prescribed pursuant to subsection (1)(a), and "declaration of British ownership" is to be construed accordingly;
- (b) references to a Bermuda connection are references to compliance with the conditions of entitlement imposed by subsection (1)(b), and "declaration of Bermuda connection" is to be construed accordingly.

### Registration regulations

25 (1) The Minister shall by regulations (to be known as registration regulations) provide for and in connection with the registration of ships in Bermuda .

(2) Without prejudice to the generality of subsection (1), registration regulations may, in particular, provide with respect to any of the following matters—

- (a) the persons by whom and the manner in which applications in connection with registration are to be made;
- (b) the information and evidence (including declarations of Bermuda connection) to be provided in connection with such applications and such supplementary information or evidence as may be required by any specified authority;
- (c) the shares in the property in, and the numbers of owners (including joint owners) of, a ship permitted for the purposes of registration and the persons required or permitted to be registered in respect of a ship or to be so registered in specified circumstances;

- (d) the issue of certificates (including provisional certificates) of registration, their production and surrender;
  - (e) restricting and regulating the names of ships registered or to be registered;
  - (f) the marking of ships registered or to be registered, including marks for identifying the port to which a ship is to be treated as belonging;
  - (g) the period for which registration is to remain effective without renewal;
  - (h) the production to the Registrar of declarations of British ownership or Bermuda connection or other information relating thereto, as respects registered ships, at specified intervals or at his request;
  - (i) the survey and inspection of ships registered or to be registered and the recording of their tonnage as ascertained (or re-ascertained) under the tonnage regulations;
  - (j) the refusal, suspension and termination of registration in specified circumstances;
  - (k) matters arising out of the expiration, suspension or termination of registration (including the removal of marks and the cancellation of certificates);
  - (l) the charging of fees in connection with registration or registered ships;
  - (m) the transfer of the registration of ships to and from the register from and to registers or corresponding records in Bermuda, the United Kingdom or a relevant British possession;
  - (n) inspection of the register;
  - (o) the payment of fees for any services provided or rendered under this Act and for the inspection of any record or any document kept under this Act by a public officer;
  - (p) any other matter which is authorised or required by this Part to be prescribed in registration regulations.
- (3) Registration regulations may—
- (a) make different provision for different classes or descriptions of ships and for different circumstances;
  - (b) without prejudice to paragraph (a), provide for the granting of exemptions or dispensations by the Minister from specified requirements of the regulations, subject to such conditions (if any) as he thinks fit to impose; and
  - (c) make such transitional, incidental or supplementary provision as appears to the Minister to be necessary or expedient, including provision authorising investigations and conferring powers of inspection for verifying the British ownership and Bermuda connection of a ship.

(4) Registration regulations—

- (a) may provide for the registration of any class or description of ships to be such as to exclude the application of the private law provisions for registered ships and, if they do, may regulate the transfer, transmission or mortgaging of ships of the class or description so excluded;
- (b) may provide for any matter which is authorised or required by those provisions to be prescribed by registration regulations; and
- (c) shall provide precluding notice of any trust being entered in the register or being receivable by the Registrar except as respects specified classes or descriptions of ships or in specified circumstances.

(5) Registration regulations may create offences subject to the limitation that no offence shall be punishable with imprisonment or punishable on summary conviction with a fine exceeding \$10,000.

(6) Registration regulations may provide for—

- (a) the approval of forms by the Minister; and
- (b) the discharge of specified functions by specified authorities or persons.

(7) Registration regulations may provide for any of their provisions to extend to places outside Bermuda.

(8) Any document purporting to be a copy of any information contained in an entry in the register and to be certified as a true copy by the Registrar shall be evidence of the matters stated in the document.

(9) Registration regulations may provide that any reference in any other Act or in any instrument made under any other Act to the port of registry or the port to which a ship belongs shall be construed as a reference to the port identified by the marks required for the purpose by registration regulations.

Tonnage ascertained for registration to be tonnage of ship

26 When the tonnage of any ship has been ascertained and registered in accordance with the tonnage regulations that tonnage shall be treated as the tonnage of the ship except so far as registration regulations provide, in specified circumstances, for the ship to be re-measured and the register amended accordingly.

Tonnage of ships of foreign countries adopting tonnage regulations

27 (1) The Minister may by order make such provision in relation to the ships of a foreign country as is authorised by this section where it appears to him that the tonnage regulations have been adopted by the foreign country and are in force there.

(2) An order under this section may order that the ships of the foreign country shall, without being re-measured in Bermuda be treated as being of the tonnage denoted by their certificates of registration or other national papers, to the same extent, and for the same purposes as the tonnage denoted in the certificate of registry of a Bermuda ship is treated as being the tonnage of that ship.

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(3) Where an order under this section is in force in relation to the ships of any country any space shown in the ship's certificate of registry or other national papers as deducted from the tonnage shall, if a similar deduction in the case of a Bermuda ship depends on compliance with any conditions or on the compliance being evidenced in any manner, be treated as complying with those conditions and as being so evidenced, unless a surveyor of ships certifies to the Minister that the construction and equipment of the ship as respects that space do not come up to the standard which would be required if the ship were a Bermuda ship.

(4) Any such order may—

- (a) operate for a limited time; and
- (b) be subject to such conditions and qualifications (if any) as the Minister may consider expedient.

(5) If it appears to the Minister that the tonnage of any foreign ship, as measured by the rules of the country to which the ship belongs, materially differs from what it would be under the tonnage regulations, he may by order order that, notwithstanding any order in force under this section, any of the ships of that country may, for all or any of the purposes of this Act, be re-measured in accordance with the tonnage regulations.

### Status of certificate of registry

28 The certificate of registry of a British ship shall be used only for the lawful navigation of the ship, and shall not be subject to detention to secure any private right or claim.

### Offences relating to a ship's British ownership and Bermuda connection

29 (1) Any person who, in relation to any matter relevant to the British ownership or Bermuda connection of a ship—

- (a) makes to the Registrar a statement which he knows to be false or recklessly makes a statement which is false; or
- (b) furnishes to the Registrar information which is false, shall be guilty of an offence.

(2) If at any time there occurs, in relation to a registered ship any change affecting the British ownership of the ship or any change affecting the Bermuda connection of the ship, the owner of the ship shall—

- (a) within 48 hours of the occurrence of the change affecting such ownership; or
- (b) within 7 days of the occurrence of the change affecting such connection;

or such longer period as the Registrar may allow, notify the Registrar of that change; and if he fails to do so he shall be guilty of an offence.

(3) Any person who intentionally alters, suppresses, conceals or destroys a document which contains information relating to the British ownership or Bermuda

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connection of a ship and which he has been required to produce to the Registrar in pursuance of registration regulations shall be guilty of an offence.

(4) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine of \$10,000;
- (b) on conviction on indictment, to a fine of \$50,000, or to imprisonment for a term of two years or both.

(5) This section applies to things done outside, as well as to things done within, Bermuda.

Private law provisions for registered ships and liability as owner

30 (1) Schedule I (which provides relating to the title to, and the registration of mortgages over, ships) shall have effect.

(2) Schedule I does not apply in relation to ships which are excluded from its application by registration regulations under section 25(4)(a).

(3) Where any person is beneficially interested, otherwise than as mortgagee, in any ship or share in a ship registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be liable to any pecuniary penalties imposed by or under this Act or any other Act on the owners of registered ships.

(4) Where the registration of any ship terminates by virtue of any provision of registration regulations, the termination of that registration shall not affect any entry made in the register so far as relating to any undischarged registered mortgage of that ship or of any share in it.

(5) In subsection (4) “registered mortgage” has the same meaning as in Schedule I.

### *Ships on charter by demise*

Ships chartered-in by demise by British charterers

31 (1) This section applies to any ship which—

- (a) is registered under the law of a country other than Bermuda whose merchant shipping law is compatible with this Act (‘the country of primary registration’);
- (b) is more than 24 metres in length;
- (c) is chartered on demise charter terms to a charterer who is a person qualified to own British ships; and
- (d) is so chartered in circumstances where the conditions of entitlement to registration prescribed under section 24(2)(b), read with the requisite modifications, are satisfied as respects the charterer and the ship.

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(2) The “requisite modifications” of those conditions are the substitution for any requirement to be satisfied by or as respects the owner of a ship of a corresponding requirement to be satisfied by or as respects the charterer of the ship.

(3) A ship to which this section applies is entitled to be registered if an application for registration is duly made, but section 24(3) applies also in relation to registration by virtue of this section.

(4) The registration of a ship registered by virtue of this section shall remain in force (unless terminated earlier by virtue of registration regulations and subject to any suspension thereunder) until the end of a period of five years from the date of registration or until the end of the charter period (whichever is less) and shall then terminate by virtue of this subsection.

(5) Section 24(4) does not apply to a ship registered by virtue of this section but registration regulations shall include provision for securing that the authority responsible for the registration of ships in the country of primary registration is notified of the registration of the ship and of the termination of its registration whether by virtue of subsection (4) or registration regulations.

(6) Accordingly, throughout the period for which a ship is registered by virtue of this section—

- (a) the ship shall, as a British ship, be entitled to fly the British flag as specified in section 17(1);
- (b) this Act shall, subject to subsections (7) and (8), apply to the ship as a British ship or as a registered ship as it applies to other British ships and registered ships; and
- (c) any other enactment applicable to British ships or ships registered under this Act shall, subject to subsection (8), apply to the ship as a British ship or as a registered ship.

(7) The private law provisions for registered ships shall not apply to ships registered by virtue of this section and any matters or questions corresponding to those for which the private law provisions for registered ships provide shall be determined by reference to the law of the country of primary registration.

(8) The Minister may, subject to subsection (9), by order provide that any enactment falling within subsection (6)(b) or (c)—

- (a) shall not have effect in accordance with that subsection in relation to a ship registered by virtue of this section; or
- (b) shall so have effect subject to such modifications (if any) as may be specified in the order.

(9) No provision shall be made by an order under subsection (8) which would have the effect of relaxing the relevant requirements of this Act (as defined in section 24(7)) in their application to a ship to which this section applies.

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(10) An order under subsection (8) may make such transitional, incidental or supplementary provision as appears to the Minister to be necessary or expedient (including provision divesting or providing for the divestment of ownership in the ship).

### Ships chartered-out by demise

32 (1) This section applies to a Bermuda ship which is chartered on demise charter terms providing for the registration of the ship under the law of a country other than Bermuda ("the country of secondary registration").

(2) A ship to which this section applies may with the consent of the Registrar be chartered-out on demise charter terms.

(3) The Registrar shall not give his consent unless—

- (a) he is satisfied that the merchant shipping law of the country of secondary registration is compatible with this Act;
- (b) he is satisfied that every registered mortgagee of the ship has consented to the charter of the ship on demise charter terms and to its registration under the law of the country of secondary registration;
- (c) he is satisfied that the authority responsible for the registration of the ship in the country of secondary registration has consented to such registration; and
- (d) the owner of the ship has given him such undertakings as are required to be given under regulations made under subsection (6) in connection with the registration of the ship under the law of the country of secondary registration.

(4) Throughout the period for which the ship is registered in the country of secondary registration—

- (a) the owner of the ship shall be liable to pay the annual tonnage fee payable pursuant to section 252;
- (b) except where the country of secondary registration is the United Kingdom or a relevant British possession, the ship shall not be entitled to fly the British flag;
- (c) the ship shall not be entitled to claim Hamilton as her home port;
- (d) this Act, except for this section, shall not apply to the ship; and
- (e) any other enactment applicable to British ships or ships registered under this Act shall not apply to the ship.

(5) The private law provisions for registered ships shall continue to apply to a Bermuda ship chartered on demise charter terms and registered in a country of secondary registration, and any matters or questions for which the private law provisions for registered ships provide shall be determined by reference to the law of Bermuda.

(6) The Minister shall by regulations provide for and in connection with—

- (a) the form and manner of applications for the consent of the Registrar under subsection (3);
- (b) the information and evidence required to be provided to the Registrar in connection with—
  - (i) applications for consent; and
  - (ii) the registration of the ship in the country of secondary registration; and
- (c) any matter which is authorised or required by the provisions of this section to be prescribed by regulations.

(7) Regulations made under subsection (6) may create offences subject to the limitation that no offence shall be punishable with imprisonment or punishable on summary conviction with a fine exceeding \$10,000.

(8) In section 31 and in this section—

“demise charter terms”, in relation to a ship, means the hiring of the ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew; and

“the charter period” means the period during which the ship is chartered on demise charter terms.

### *Supplemental*

#### Tonnage regulations

33 (1) The tonnage of any ship to be registered under this Part shall be ascertained in accordance with regulations made by the Minister (“tonnage regulations”).

(2) Tonnage regulations—

- (a) may make different provisions for different descriptions of ships or for the same description of ships in different circumstances;
- (b) may make any regulation dependent on compliance with such conditions, to be evidenced in such manner, as may be specified in the regulations;
- (c) may prohibit or restrict the carriage of goods or stores in spaces not included in the registered tonnage and may provide for making the master and the owner each liable to a fine of \$1,000 where such a prohibition or restriction is contravened.

(3) Tonnage regulations may provide—

- (a) for assigning to a ship, either instead of or as an alternative to the tonnage ascertained in accordance with the other provisions of the regulations, a lower tonnage applicable where the ship is not loaded to the full depth to which it can safely be loaded;

- (b) for indicating on the ship, by such mark as may be specified in the regulations, that such a lower tonnage has been assigned to it; and
- (c) where the lower tonnage has been assigned to it as an alternative, for indicating on the ship the depth to which the ship may be loaded for the lower tonnage to be applicable.

(4) Tonnage regulations may provide for the measurement and survey of ships to be undertaken, in such circumstances as may be specified in the regulations by persons appointed by such organisations or other persons as may be authorised for the purpose by the Minister.

(5) Tonnage regulations may provide for the issue, by the Minister or by persons appointed by such organisations or other persons as may be authorised for the purpose by the Minister, of certificates of the registered tonnage of any ship or of the tonnage which is to be taken for any purpose specified in the regulations as the tonnage of a ship not registered in Bermuda, and for the cancellation and delivery up of such certificates in such circumstances as may be prescribed by the regulations.

(6) Regulations requiring the delivery up of any certificate may make a failure to comply with the requirement an offence punishable on summary conviction with a fine of \$1,000.

#### Proceedings on forfeiture of ship

34 Section 22 applies in relation to ships or shares in ships which become liable to forfeiture under this Part as it applies in relation to ships or shares in ships which become liable to forfeiture under Part III.

#### Disclosure of information relating to registration by other government departments

35 (1) No obligation as to secrecy or other restriction on the disclosure of information (whether imposed by statute or otherwise) shall preclude any of the persons mentioned in subsection (2) from disclosing—

- (a) to the Minister;
- (b) to the Registrar; or
- (c) to an authorised officer of the Department of Maritime Administration;

information for the purpose of assisting the Minister in the performance of his functions under this Part.

(2) The persons referred to in subsection (1) are—

- (a) the Minister charged with responsibility for fisheries;
- (b) the Minister charged with responsibility for the environment;
- (c) the Collector of Customs; and
- (d) an authorised officer of the Ministry responsible for fisheries, the Ministry responsible for the environment or the Department of Customs.

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(3) Information obtained by any person in pursuance of subsection (1) shall not be disclosed by him to any other person except where the disclosure is made—

- (a) to a person to whom the information could have been disclosed by any of the persons mentioned in subsection (2) in accordance with subsection (1); or
- (b) for the purposes of any legal proceedings arising out of this Part.

### Interpretation

36 (1) In this Part—

“Bermuda connection” and “declaration of Bermuda connection” have the meanings given in section 24(8);

“the private law provisions for registered ships” means the provisions of Schedule 1 and registration regulations made for the purposes of that Schedule or the provisions of regulations made under section 25(4)(a);

“qualification for ownership of British ships” and “declaration of British ownership” has the meaning given in section 24(8); and

“the register” means the register of British ships maintained for Bermuda under section 23 and “registered” (except with reference to the law of another country) is to be construed accordingly.

(2) Where, for the purposes of any enactment the question arises whether a ship is owned by persons qualified to own British ships, the question shall be determined by reference to registration regulations made under section 24(1)(a).

## PART V

### MASTERS AND SEAFARERS

*[Part V amended by effective 30 June 2014]*

#### *Application of Part*

#### Application of this Part

37 (1) With the exceptions specified in subsection (2), this Part applies only to ships which are sea-going ships and masters and seafarers employed in sea-going ships.

(2) Those exceptions are sections 56, 59 to 64, 66, 67, 70.

*[Section 37 amended by 2012 : 30 s. 3 and 4 effective 30 June 2014]*

#### Inspection and certification of ships

37A (1) The Minister may make regulations providing for the issue of certificates to ships, the inspection of ships, and the authorisation of recognised organisations, in accordance with regulation 5.1.1, 5.1.2, 5.1.3, and 5.1.4 of the International Labour

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Organization's Maritime Labour Convention 2006 and may provide in those regulations for compliance with all of the requirements of those regulations.

(2) Regulations made by the Minister in accordance with subsection (1) may specify the classes of ship to which the regulations apply, may define the categories of seafarer to which they apply and may exempt certain classes of ship from the application of the regulations.

(3) Regulations made by the Minister in accordance with subsection (1) may grant to persons making inspections for the issue of certificates, the powers of an inspector included in sections 218 to 227 of this Act.

*[Section 37A inserted by 2012 : 30 s. 5 effective 30 June 2014]*

### *Engagement and discharge of crews*

#### Employment of seafarers

38 (1) An agreement in writing known as a "seafarer employment agreement" shall be made between every seafarer employed in a Bermuda ship and the shipowner or his authorised representative and the agreement shall be signed by both the seafarer and the shipowner or his authorised representative.

(2) The Minister may make regulations providing for the recruitment of seafarers, and the terms and conditions of seafarer employment agreements, including—

- (a) leave entitlement;
- (b) repatriation entitlement; and
- (c) compensation entitlement, resulting from the loss or foundering of ships as specified in regulations 1.4, 2.1, 2.4, 2.5, and 2.6 of the Maritime Labour Convention 2006.

(3) Regulations made by the Minister in accordance with subsection (2) shall take into account the fundamental rights in Articles III and IV of the Maritime Labour Convention 2006 and may specify the classes of ship to which the regulations apply, may define the categories of seafarer to which they apply and may exempt certain classes of ship from the application of the regulations.

(4) Regulations made by the Minister in accordance with subsection (2) may specify penalties to be applied for contravention of the regulations and for a ship, if in Bermuda, to be detained.

*[Section 38 repealed and inserted by 2012 : 30 s. 6 and 7 effective 30 June 2014]*

#### Seafarers' wages

39 (1) Every seafarer shall be paid regularly in full and in accordance with the terms of a seafarer employment agreement and shall be provided with a monthly account of payments due and amounts paid.

(2) The Minister may make regulations providing for the payment of wages, arrangements for seafarers to transmit all or part of their wages to nominated beneficiaries,

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and related matters to give effect to Regulations 2.2, 2.4, and 2.6 of the Maritime Labour Convention 2006 taking into account the fundamental rights in Articles III and IV of the Convention.

(3) Regulations made by the Minister in accordance with subsection (2) may specify interest to be payable on unpaid wages, may specify the classes of ship to which the regulations apply, may define the categories of seafarer to which they apply and may exempt certain classes of ship from the application of the regulations.

(4) Regulations made by the Minister in accordance with subsection (2) may specify penalties to be applied for contravention of the regulations and for a ship, if in Bermuda, to be detained.

*[Section 39 repealed and inserted by 2012 : 30 s. 6 and 7 effective 30 June 2014]*

### Discharge of seamen

40 *[Repealed by 2012 : 30 s. 6]*

*[Section 40 repealed by 2012 : 30 s. 6 effective 30 June 2014]*

### Seamen left behind abroad otherwise than on discharge

41 *[Repealed by 2012 : 30 s. 6]*

*[Section 41 repealed by 2012 : 30 s. 6 effective 30 June 2014]*

### Discharge of seamen when ship ceases to be registered in Bermuda

42 *[Repealed by 2012 : 30 s. 6]*

*[Section 42 repealed by 2012 : 30 s. 6 effective 30 June 2014]*

### *Wages etc.*

### Payment of seamen's wages

43 *[Repealed by 2012 : 30 s. 8]*

*[Section 43 repealed by 2012 : 30 s. 8 effective 30 June 2014]*

### Account of seaman's wages

44 *[Repealed by 2012 : 30 s. 8]*

*[Section 44 repealed by 2012 : 30 s. 8 effective 30 June 2014]*

### Regulations relating to wages and accounts

45 *[Repealed by 2012 : 30 s. 8]*

*[Section 45 repealed by 2012 : 30 s. 8 effective 30 June 2014]*

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Power of superintendent or proper officer to decide disputes about wages

46 *[Repealed by 2012 : 30 s. 8]*

*[Section 46 repealed by 2012 : 30 s. 8 effective 30 June 2014]*

Restriction on assignment of and charge upon wages

47 (1) As respects the wages due or accruing to a seafarer employed in a Bermuda ship—

- (a) the wages shall not be subject to attachment;
- (b) an assignment thereof before they have accrued shall not bind the seafarer and the payment of the wages to the seafarer shall be valid notwithstanding any previous assignment or charge; and
- (c) a power of attorney or authority for the receipt of the wages shall not be irrevocable.

(2) Nothing in this section shall affect the provisions of this Part with respect to allotment notes.

(3) Nothing in this section applies to any disposition relating to the application of wages—

- (a) in the payment of contributions to a fund declared by regulations made by the Minister to be a fund to which this section applies; or
- (b) in the payment of contributions in respect of the membership of a body declared by regulations made by the Minister to be a body to which this section applies;

or to anything done or to be done for giving affect to such a disposition.

*[Section 47 amended by 2012 : 30 s. 3 effective 30 June 2014]*

Power of court to award interest on wages due otherwise than under crew agreement

48 In any proceedings by the master of a ship or a person employed in a ship otherwise than under a crew agreement for the recovery of any sum due to him as wages the court, unless it appears to it that the delay in paying the sum was due to—

- (a) a mistake;
- (b) a reasonable dispute as to liability;
- (c) the act or default of the person claiming the amount; or
- (d) any other cause, not being the wrongful act or default of the persons liable to make the payment or their servants or agents;

may, notwithstanding any other provision of law, order them to pay, in addition to the sum due, interest on it at the rate of 20 per cent. per annum or such lower rate as the court may specify, for the period beginning seven days after the sum became due and ending when the sum is paid.

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### Allotment notes

49 (1) Subject to the following provisions of this section, a seafarer may, by means of an allotment note issued in accordance with regulations made by the Minister, allot to any person or persons part of the wages to which he will become entitled in the course of his employment in a Bermuda ship or ships.

(2) A seafarer's right to make an allotment under this section shall be subject to such limitations as may, by virtue of the following provisions of this section, be imposed by regulations made by the Minister.

(3) Regulations made by the Minister for the purposes of this section may prescribe the form of allotment notes and—

- (a) may limit the circumstances in which allotments may be made;
- (b) may limit (whether by reference to an amount or by reference to a proportion) the part of the wages that may be allotted and the number of persons to whom it may be allotted and may prescribe the method by which that part is to be calculated;
- (c) may limit the persons to whom allotments may be made by a seafarer to persons of such descriptions or persons standing to him in such relationships as may be prescribed by the regulations;
- (d) may prescribe the times and the intervals at which payments under allotment notes are to be made.

(4) Regulations under this section may make different provision in relation to different descriptions of seafarers and different circumstances.

*[Section 49 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### Right of person named in allotment to sue in own name

50 (1) A person to whom any part of a seafarer's wages has been allotted by an allotment note issued in accordance with regulations made under section 49 shall have the right to recover that part in his own name and for that purpose shall have the same remedies as the seafarer has for the recovery of his wages.

(2) In any proceedings brought by a person named in such an allotment note as the person to whom any part of a seafarer's wages has been allotted it shall be presumed, unless the contrary is shown, that the seafarer is entitled to the wages specified in the note and that the allotment has not been varied or cancelled.

*[Section 50 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### Right, or loss of right, to wages in certain circumstances

51 (1) Where a Bermuda ship is wrecked or lost a seafarer whose employment in the ship is thereby terminated before the date contemplated in the agreement under which he is so employed shall, subject to the following provisions of this section, be entitled to wages at the rate payable under the agreement at the date of the wreck or loss for every day on which he is unemployed in the two months following that date.

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(2) Where a Bermuda ship is sold while outside Bermuda or ceases to be a Bermuda ship and a seafarer's employment in the ship is thereby terminated before the date contemplated in the agreement under which he is so employed, then, unless it is otherwise provided in the agreement, he shall, subject to the following provisions of this section, be entitled to wages at the rate payable under the agreement at the date on which his employment is terminated for every day on which he is unemployed in the two months following that date.

(3) A seafarer shall not be entitled to wages by virtue of subsection (1) or (2) for a day on which he was unemployed, if it is shown—

- (a) that the unemployment was not due to the wreck or loss of the ship or, as the case may be, the termination of his employment on the sale of the ship or its ceasing to be a Bermuda ship; or
- (b) that the seafarer was able to obtain suitable employment for that day but unreasonably refused or failed to take it.

(4) This section shall apply to a master as it does to a seafarer.

*[Section 51 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### Protection of certain rights and remedies

52 (1) A seafarer's lien, his remedies for the recovery of his wages, his right to wages in case of the wreck or loss of his ship, and any right he may have or obtain in the nature of salvage shall not be capable of being renounced by any agreement.

(2) Subsection (1) does not affect such of the terms of any agreement made with the seafarers belonging to a ship which, in accordance with the agreement, is to be employed on salvage service, as provide for the remuneration to be paid to them for salvage services rendered by that ship.

*[Section 52 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### Trade disputes involving seafarers

53 Notwithstanding anything in any agreement, a seafarer employed in a ship registered in Bermuda may terminate his employment in that ship by leaving the ship in contemplation or furtherance of a labour dispute within the meaning of the Labour Relations Act 1975 after giving to the master not less than 48 hours' notice of his intention to do so, and shall not be compelled, unless the notice is withdrawn, to go to sea in the 48 hours following the giving of such a notice; but such notice shall be of no effect unless at the time it is given the ship is securely moored to a safe berth in port.

*[Section 53 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### Remedies of master for remuneration, disbursements and liabilities

54 The master of a ship shall have the same lien for his remuneration, and all disbursements or liabilities properly made or incurred by him on account of the ship, as a seafarer has for his wages.

*[Section 54 amended by 2012 : 30 s. 3 effective 30 June 2014]*

*Safety, health and welfare*

Obligation of shipowners as to seaworthiness

55 (1) In every contract of employment between the owner of a Bermuda ship and any seafarer employed in the ship there shall be implied an obligation on the owner of the ship that—

- (a) the owner of the ship;
- (b) the master of the ship; and
- (c) every agent charged with—
  - (i) the loading of the ship;
  - (ii) the preparing of the ship for sea; or
  - (iii) the sending of the ship to sea;

shall use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences and to keep the ship in a seaworthy condition for the voyage during the voyage.

(2) The obligation imposed by subsection (1) applies notwithstanding any agreement to the contrary.

(3) No liability on the owner of a ship arises under subsection (1) in respect of the ship being sent to sea in an unseaworthy state where, owing to special circumstances, the sending of the ship to sea in such a state was reasonable and justifiable.

*[Section 55 subsection (1) amended by 2012 : 30 s. 3 and 9 effective 30 June 2014]*

Crew accommodation

56 (1) The Minister may make regulations with respect to the crew accommodation to be provided in Bermuda ships.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may, in particular—

- (a) prescribe the minimum space per man which must be provided by way of sleeping accommodation for seafarers and the maximum number of persons by whom a specified part of such sleeping accommodation may be used;
- (b) regulate the position in the ship in which the crew accommodation or any part thereof may be located and the standards to be observed in the construction, equipment and furnishing of any such accommodation;
- (c) require the submission to a surveyor of ships of plans and specifications of any works proposed to be carried out for the purpose of the provision or alteration of any such accommodation and authorise the surveyor to inspect any such works; and

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(d) provide for the maintenance and repair of any such accommodation and prohibit or restrict the use of any such accommodation for purposes other than those for which it is designed.

(3) Regulations under this section may make different provision with respect to different descriptions of ship or with respect to ships which were registered in Bermuda at different dates or the construction of which was begun at different dates and with respect to crew accommodation provided for seafarers of different descriptions.

(4) Regulations under this section may exempt ships of any description from any requirements of the regulations and the Minister may grant other exemptions from any such requirement with respect to any ship.

(5) Regulations under this section may require the master of a ship or any officer authorised by him for the purpose to carry out such inspections of the crew accommodation as may be prescribed by the regulations.

(6) If the provisions of any regulations under this section are contravened in the case of a ship the owner or master shall be guilty of an offence and liable, on summary conviction, to a fine of \$10,000 and the ship, if in Bermuda, may be detained.

(7) In this section "crew accommodation" includes sleeping rooms, mess rooms, sanitary accommodation, hospital accommodation, recreation accommodation, store rooms and catering accommodation provided for the use of seafarers but does not include any accommodation which is also used by or provided for the use of passengers.

*[Section 56 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### Food and catering

56A (1) Every shipowner shall ensure that seafarers are supplied free of charge with food and drinking water of appropriate quality, nutritional value and quantity that adequately covers the requirements of the ship and takes into account, where appropriate, differing cultural and religious backgrounds.

(2) The Minister may make regulations providing for supply of food and drinking water for seafarers and for the required qualifications and training of ships' cooks and the training of catering staff, and related matters to give effect to Regulation 3.2 of the Maritime Labour Convention 2006 taking into account the fundamental rights in Articles III and IV of the Convention.

(3) Regulations made by the Minister in accordance with subsection (2) may specify the classes of ship to which the regulations apply, may define the categories of seafarer to which they apply and may exempt certain classes of ship from the application of the regulations.

*[Section 56A inserted by 2012 : 30 s. 10 effective 30 June 2014]*

### Complaints by seafarers

57 (1) Every seafarer shall have access to a system on board for handling any complaint by a seafarer alleging a breach of the requirements of the Maritime Labour Convention 2006.

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(2) Any victimisation of a seafarer by any person for making a complaint shall be prohibited.

(3) The Minister may make regulations providing for the adoption of procedures for handling complaints, the penalties attached to victimisation and related matters to give effect to Regulations 5.1.5 and 5.2.2 of the Maritime Labour Convention 2006 taking into account the fundamental rights in Articles III and IV of the Maritime Labour Convention 2006.

(4) The provisions of any complaints procedure adopted on board a ship shall be without prejudice to the individual seafarer's right to seek redress through other legal means.

(5) Regulations made by the Minister in accordance with subsection (3) may specify the classes of ship to which the regulations apply, may define the categories of seafarer to which they apply and may exempt certain classes of ship from the application of the regulations.

*[Section 57 repealed and replaced by 2012 : 30 s. 11 effective 30 June 2014]*

### Medical care on board and shipowners' liability

58 (1) Seafarers shall be covered by adequate measures for the protection of their health and shall have access to prompt and adequate medical care while working on board a ship at no cost to the seafarer.

(2) The Minister may make regulations providing for the provision of medical care on board a ship and for seafarers' access to medical treatment ashore in order to give effect to Regulation 4.1 of the Maritime Labour Convention 2006 taking into account the fundamental rights in Articles III and IV of the Maritime Labour Convention 2006.

(3) Every seafarer shall have a right to material assistance and support from the shipowner with respect to the financial consequences of sickness, injury or death occurring while the seafarer is employed under a seafarer employment agreement or arising from their employment under such an agreement.

(4) The right in subsection (3) shall not affect any other legal remedies that a seafarer may have or seek.

(5) The Minister may make regulations defining the responsibilities of shipowners for the provision of health and medical care for seafarers in accordance with and to give effect to Regulation 4.2 of the Maritime Labour Convention 2006 taking into account the fundamental rights in Articles III and IV of the Convention and such regulations may also incorporate the limitations on shipowners' liability that are permitted by Standard A4.2 of the Maritime Labour Convention 2006.

(6) Regulations made by the Minister in accordance with subsections (2) and (5) may specify the classes of ship to which the regulations apply, may define the categories of seafarer to which they apply and may exempt certain classes of ship from the application of the regulations.

*[Section 58 repealed and replaced by 2012 : 30 s. 12 effective 30 June 2014]*

*Manning, qualifications, training and uniform*

Manning

- 59 (1) Subject to subsection (2), the Minister may make regulations—
- (a) requiring ships to which this section applies to carry such number of qualified officers of any description, qualified doctors and qualified cooks and such number of any description as may be specified in the regulations;
  - (b) specifying standards of competence to be attained and other conditions to be satisfied (subject to any exceptions allowed by or under the regulations) by officers and other seafarers of any description in order to be qualified for the purposes of this section; and
  - (c) specifying standards of medical fitness and the certification of medical fitness for seafarers to give effect to the requirements of Regulation 1.2 of the Maritime Labour Convention 2006.
- (2) The Minister shall not exercise his power to make regulations requiring ships to carry seafarers other than doctors and cooks except to the extent that it appears to him necessary or expedient in the interests of safety.
- (3) Regulations under this section may make different provision for different descriptions of ship or for ships of the same description in different circumstances.
- (4) Without prejudice to the generality of subsection (1)(b), the conditions prescribed or specified under that subsection may include conditions as to nationality; and regulations made for the purposes of that subsection may provide, or enable the Minister to provide, for—
- (a) the manner in which the attainment of any standard or the satisfaction of any other condition is to be evidenced;
  - (b) the conduct of any examinations, the conditions for admission to them and the appointment and remuneration of examiners; and
  - (c) the issue, form and recording of certificates and other documents;
- and different provisions may be so made or enabled to be made for different circumstances.
- (5) If a person makes a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or another person a certificate or other document which may be issued under this section he shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

*[Section 59 subsections (1) and (2) amended by 2012 : 30 s. 3 and 13 effective 30 June 2014]*

Power to exempt from manning requirements

- 60 (1) The Minister may exempt any ship or description of ship from any requirements of regulations made under section 59.
- (2) An exemption given under this section may be confined to a particular period or to one or more particular voyages.

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### Prohibition of going to sea undermanned

61 (1) Subject to section 60, if a ship to which this section applies goes to sea or attempts to go to sea without carrying such officers and other seafarers as it is required to carry under section 59, the owner or master shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$10,000;
- (b) on conviction on indictment, to a fine of \$50,000;

and the ship, if in Bermuda, may be detained.

(2) This section shall, in its application to ships which are not sea-going ships, have effect as if for the words “goes to sea or attempts to go to sea” there were substituted the words “goes on a voyage or excursion or attempts to do so” and the words “if in Bermuda” were omitted.

*[Section 61 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### Production of certificates and other documents of qualification

62 (1) Any person serving or engaged to serve in any ship to which this section applies and holding any certificate or other document which is evidence that he is qualified for the purposes of section 59 shall on demand produce it to any superintendent, surveyor of ships or proper officer and (if he is not himself the master) to the master of the ship.

(2) If, without reasonable excuse, a person fails to comply with subsection (1) he shall be guilty of an offence and liable on summary conviction to a fine of \$2,000.

### Crew's knowledge of English

63 (1) Where in the opinion of a superintendent or proper officer the crew of a ship to which this section applies consists of or includes persons who may not understand orders given to them in the course of their duty because of their insufficient knowledge of English and the absence of adequate arrangements for transmitting the orders in a language of which they have sufficient knowledge, then—

- (a) if the superintendent or proper officer has informed the master of that opinion, the ship shall not go to sea; and
- (b) if the ship is in Bermuda, it may be detained.

(2) If a ship goes to sea or attempts to go to sea in contravention of this section the owner or master shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

### Unqualified persons going to sea as qualified officers or seafarers

64 (1) If a person goes to sea as a qualified officer or seafarer of any description without being such a qualified officer or seafarer he shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$10,000,
- (b) on conviction on indictment, to a fine of \$50,000.

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(2) In this section “qualified” means qualified for the purposes of section 59.

*[Section 64 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### Medical treatment on board ship

65 *[Repealed by 2012 : 30 s. 14]*

*[Section 65 repealed by 2012 : 30 s. 14 effective 30 June 2014]*

### Special certificates of competence

66 (1) The Minister may issue and record documents certifying the attainment of any standard of competence relating to ships or their operation, notwithstanding that the standard is not among those prescribed or specified under section 59 (1)(b); and may, in relation thereto, make regulations for purposes corresponding to those mentioned in section 59(4).

(2) If a person makes a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or another person a document which may be issued under this section he shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

### Young persons

67 (1) No person under the minimum age shall be employed or engaged or work on a ship.

(2) The Minister may make regulations setting the minimum age for seafarers and the protections to be afforded to young persons employed at sea for their health and safety in order to give effect to the requirements of Regulation 1.1 of the Maritime Labour Convention 2006 taking into account the fundamental rights in Articles III and IV of the Maritime Labour Convention 2006.

*[Section 67 repealed and replaced by 2012 : 30 s. 15 effective 30 June 2014]*

### Financial assistance for training

68 (1) The Minister may, with the consent of the Minister responsible for finance, give any person or body of persons of any description determined by him for the purposes of this section financial assistance in respect of expenses incurred or to be incurred by any such person or body in connection with the training (whether in Bermuda or elsewhere) of officers and ratings for service in merchant ships, including expenses incurred or to be incurred by any such person in connection with his undergoing any such training.

(2) Assistance under this section may be given by way of a grant or a loan or otherwise; and in giving any such assistance the Minister may impose such conditions as he thinks fit, including conditions requiring a grant to be repaid in specified circumstances.

(3) This section is without prejudice to any other power of the Minister to give financial assistance in connection with any such training as is mentioned in subsection (1).

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### Uniform

69 [Repealed by 2012 : 30 s. 16]

[Section 69 repealed by 2012 : 30 s. 16 effective 30 June 2014]

### *Offences by seafarers, etc.*

#### Conduct endangering ships, structures or individuals

70 (1) This section applies—

- (a) to seafarer employed in, a Bermuda ship; and
- (b) to seafarer employed in, a ship which—
  - (i) is registered under the law of any country outside Bermuda; and
  - (ii) is in a port in Bermuda or within Bermuda waters while proceeding to or from any such port.

(2) If a person to whom this section applies, while on board his ship or in its immediate vicinity—

- (a) does any act which causes or is likely to cause—
  - (i) the loss or destruction of or serious damage to his ship or its machinery, navigational equipment or safety equipment;
  - (ii) the loss or destruction of or serious damage to any other ship or any structure; or
  - (iii) the death of or serious injury to any person; or
- (b) omits to do anything required—
  - (i) to preserve his ship or its machinery, navigational equipment or safety equipment from being lost, destroyed or seriously damaged;
  - (ii) to preserve any person on board his ship from death or serious injury; or
  - (iii) to prevent his ship from causing the loss or destruction of or serious damage to any other ship or any structure, or the death of or serious injury to any person not on board his ship;

and either of the conditions specified in subsection (3) is satisfied with respect to that act or omission, he shall (subject to subsections (6) and (7) be guilty of an offence.

(3) Those conditions are—

- (a) that the act or omission was deliberate or amounted to a breach or neglect of duty;
- (b) that the seafarer in question was under the influence of drink or a drug at the time of the act or omission.

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(4) If a person to whom this section applies—

- (a) discharges any of his duties, or performs any other function in relation to the operation of his ship or its machinery or equipment, in such a manner as to cause, or to be likely to cause, any such loss, destruction, death or injury as is mentioned in subsection (2)(a); or
- (b) fails to discharge any of his duties, or to perform any such function, properly to such an extent as to cause, or to be likely to cause, any of those things;

he shall (subject to subsections (6) and (7) ) be guilty of an offence.

(5) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine of \$10,000;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term of two years, or both.

(6) In proceedings for an offence under this section it shall be a defence to prove—

- (a) in the case of an offence under subsection (2) where the act or omission alleged against the accused constituted a breach or neglect of duty, that the accused took all reasonable steps to discharge that duty;
- (b) in the case of an offence under subsection (2), that at the time of the act or omission alleged against the accused he was under the influence of a drug taken by him for medical purposes and either that he took it on medical advice and complied with any directions given as part of that advice or that he had no reason to believe that the drug might have the influence it had;
- (c) in the case of an offence under subsection (4), that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence; or
- (d) in the case of an offence under either of those subsections—
  - (i) that he could have avoided committing the offence only by disobeying a lawful command; or
  - (ii) that in all the circumstances the loss, destruction, damage, death or injury in question, or (as the case may be) the likelihood of its being caused, either could not reasonably have been foreseen by the accused or could not reasonably have been avoided by him.

(7) In the application of this section to any person falling within subsection (1)(b), subsections (2) and (4) shall have effect as if subsection (2)(a)(i) and (b)(i) were omitted; and no proceedings for any offence under this section shall be instituted against any such person except by or with the consent of the Minister or the Director of Public Prosecutions.

(8) In this section—

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“breach or neglect of duty”, except in relation to a master, includes any disobedience to a lawful command;

“duty”—

- (a) in relation to a seafarer, means any duty falling to be discharged by him in his capacity as such; and
- (b) in relation to a master, includes his duty with respect to the good management of his ship and his duty with respect to the safety of operation of his ship, its machinery and equipment; and

“structure” means any fixed or movable structure (of whatever description) other than a ship.

*[Section 70 amended by 2012 : 30 s. 3 and 17 effective 30 June 2014]*

Concerted disobedience and neglect of duty

71 (1) If a seafarer employed in a Bermuda ship combines with other seafarers employed in that ship—

- (a) to disobey lawful commands which are required to be obeyed at a time while the ship is at sea;
- (b) to neglect any duty which is required to be discharged at such a time; or
- (c) to impede, at such a time, the progress of a voyage or the navigation of the ship;

he shall be guilty of an offence and liable—

- (i) on summary conviction, to a fine of \$10,000;
- (ii) on conviction on indictment, to a fine of \$50,000 or imprisonment for a term of two years or both.

(2) For the purposes of this section a ship shall be treated as being at sea at any time when it is not securely moored in a safe berth.

*[Section 71 subsection (1) amended by 2012 : 30 s. 3 effective 30 June 2014]*

### *Disciplinary offences*

Disciplinary offences by seafarers

72 (1) The Minister may make regulations for the purpose of maintaining discipline on board Bermuda ships.

(2) Regulations made under subsection (1) may make different provisions for different circumstances and may contain such incidental and supplemental provisions as the Minister considers appropriate.

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(3) Regulations made under subsection (1) shall in every case have due regard to the fundamental principles and rights contained in Articles III and IV of the Maritime Labour Convention 2006.

(4) Nothing in any regulations or done in pursuance of the regulations shall be construed as affecting any power to institute, prosecute, entertain, or determine proceedings (including criminal proceedings) under any enactment or at common law.

*[Section 72 repealed and replaced by 2012 : 30 s. 18 effective 30 June 2014]*

### *Disqualification of seafarers and inquiries*

Inquiry into fitness or conduct of officer

73 *[Repealed by 2012 : 30 s. 19]*

*[Section 73 repealed by 2012 : 30 s. 19 effective 30 June 2014]*

Disqualification of holder of certificate other than officer's

74 *[Repealed by 2012 : 30 s. 19]*

*[Section 74 repealed by 2012 : 30 s. 19 effective 30 June 2014]*

Inquiry into fitness or conduct of seaman other than officer

75 *[Repealed by 2012 : 30 s. 19]*

*[Section 75 repealed by 2012 : 30 s. 19 effective 30 June 2014]*

Re-hearing of and appeal from inquiries

76 *[Repealed by 2012 : 30 s. 19]*

*[Section 76 repealed by 2012 : 30 s. 19 effective 30 June 2014]*

Rules as to inquiries and appeals

77 *[Repealed by 2012 : 30 s. 19]*

*[Section 77 repealed by 2012 : 30 s. 19 effective 30 June 2014]*

Failure to deliver cancelled or suspended certificate

78 *[Repealed by 2012 : 30 s. 19]*

*[Section 78 repealed by 2012 : 30 s. 19 effective 30 June 2014]*

Power to restore certificate

79 *[Repealed by 2012 : 30 s. 19]*

*[Section 79 repealed by 2012 : 30 s. 19 effective 30 June 2014]*

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Power to summon witness to inquiry into fitness or conduct of officer or other seaman  
80 [Repealed by 2012 : 30 s. 19]

[Section 80 repealed by 2012 : 30 s. 19 effective 30 June 2014]

### *Civil liability of seafarers for offences*

Civil liability for absence without leave

81 [Repealed by 2012 : 30 s. 19]

[Section 81 repealed by 2012 : 30 s. 19 effective 30 June 2014]

Civil liability for smuggling

82 If a seafarer employed in a Bermuda ship is found in civil proceedings before a court in Bermuda to have committed an act of smuggling, whether within or outside Bermuda, he shall be liable to make good any loss or expense that the act has caused to any other person.

[Section 82 amended by 2012 : 30 s. 3 effective 30 June 2014]

Civil liability for fines imposed under immigration laws

83 (1) The following provisions of this section shall apply where, at a time when a Bermuda ship is in the national or territorial waters of any country outside Bermuda, a seafarer employed in the ship is absent without leave and present in that country in contravention of that country's laws.

(2) [Repealed]

(3) If, by reason of the contravention, a penalty is incurred under those laws by any other person the amount thereof, or, if that amount exceeds \$1,000, a maximum of \$1,000 may be recovered by him from the seafarer.

[Section 83 amended by 2012 : 30 s. 3 and 20 effective 30 June 2014]

### *Relief and repatriation and relief costs*

Repatriation of seafarers

84 (1) Every seafarer is entitled to be repatriated at no cost to himself in circumstances set out in regulations made by the Minister in accordance with subsection (2).

(2) The Minister may make regulations regulating seafarers' rights to be repatriated and the financial security to be provided by the shipowners in order to give effect to Standard A2.5 of the Maritime Labour Convention 2006.

(3) A shipowner shall not require from any seafarer any contribution towards the cost of repatriation that he is entitled to by virtue of subsection (1).

[Section 84 repealed and replaced by 2012 : 30 s. 21 effective 30 June 2014]

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### Limit of employer's liability under section 84

85 Where a person left behind in or taken to any country as mentioned in section 84(l) remains there after the end of a period of three months the persons who last employed him as a seafarer shall not be liable under that section to provide for his return or for any matter arising after the end of that period, unless they have before the end of that period been under an obligation imposed on them by regulations under that section to provide with respect to him.

*[Section 85 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### Recovery of expenses incurred for relief and return, etc.

86 (1) Where any expenses are incurred in respect of any matter for which the employers of a seafarer are required to provide under section 84, then—

- (a) if the expenses are incurred by the Minister, or are incurred by the government of any country outside Bermuda and repaid to them on behalf of the Crown, the Minister may recover them from the employers;
- (b) if the expenses are incurred by the seafarer he may recover them from the employers unless they prove either that under the terms of his employment they were to be borne by him or that he would not have been left behind but for his own wrongful act or neglect.

(2) *[Repealed]*

*[Section 86 amended by 2012 : 30 s. 3 and 22 effective 30 June 2014]*

## *Documentation*

### Official log books

87 *[Repealed by 2012 : 30 s. 23]*

*[Section 87 repealed by 2012 : 30 s. 23 effective 30 June 2014]*

### Lists of crew

88 (1) Except as provided by regulations made under this section, the master of every Bermuda ship shall make and maintain a list of the crew containing such particulars as may be required by the regulations.

(2) The Minister may make regulations—

- (a) specifying the particulars to be entered in a list of the crew;
- (b) limiting the time for which a list of the crew may remain in force;
- (c) providing for the maintenance by such persons and either in such place as may be specified in the regulations or, if it is so specified, in the ship, of a copy or copies of each list of a crew, and for the notification to such persons of any changes therein;

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- (d) for the production of a list of the crew to such persons, in such circumstances and within such time as may be specified in the regulations; and
- (e) for the delivery to a superintendent or proper officer or the Registrar, in such circumstances as may be specified in the regulations, of a list of the crew or a copy thereof maintained under the regulations and for the notification to him of any changes in such a list.

(3) *[Repealed]*

(4) Regulations under this section may exempt from the requirements thereof such descriptions of ship as may be specified in the regulations and may make different provisions for different circumstances.

(5) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine of \$1,000 or not exceeding a lesser amount.

*[Section 88 subsection (3) repealed by 2012 : 30 s. 24 effective 30 June 2014]*

### Bermuda seafarer's cards

89 (1) The Minister may make regulations providing—

- (a) for the issue to Bermuda seafarers of cards (in this section referred to as “Bermuda seafarer's cards”) in such form and containing such particulars with respect to the holders thereof and such other particulars (if any) as may be prescribed by the regulations, and for requiring Bermuda seafarers to apply for such cards;
- (b) for requiring the holders of Bermuda seafarer's cards to produce them to such persons and in such circumstances as may be prescribed by the regulations;
- (c) for the surrender of Bermuda seafarer's cards in such circumstances as may be prescribed by the regulations;
- (d) for any incidental or supplementary matters for which the Minister thinks it expedient for the purposes of the regulations to provide;

and any provision of the regulations having effect by virtue of paragraph (a) may be so framed as to apply to all Bermuda seafarers or any description of them and as to have effect subject to any exemptions for which provision may be made by the regulations.

(2) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine of \$1,000 or not exceeding a lesser amount.

(3) In this section “Bermuda seafarers” means persons who are not aliens within the meaning of the Bermuda Immigration and Protection Act 1956 and are employed, or ordinarily employed, as masters or seafarers.

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(4) If a person makes a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or another person a Bermuda seafarer's card he shall be guilty of an offence and liable on summary conviction to a fine of \$3,000.

*[Section 89 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### Discharge books

90 (1) The Minister may make regulations providing—

- (a) for the issue to persons who are or have been employed in Bermuda ships of discharge books in such form and containing such particulars with respect to the holders thereof and such other particulars (if any) as may be prescribed by the regulations and for requiring such persons to apply for such discharge books;
- (b) for requiring the holders of discharge books to produce them to such persons and in such circumstances as may be prescribed by the regulations;
- (c) for the surrender of discharge books in such circumstances as may be prescribed by the regulations;
- (d) for any incidental or supplementary matters for which the Minister thinks it expedient for the purposes of the regulations to provide;

and any provision of the regulations having effect by virtue of paragraph (a) may be so framed as to apply to all such persons as are mentioned in that paragraph or any description of such persons and as to have effect subject to any exemptions for which provision may be made by the regulations.

(2) Regulations under this section may—

- (a) provide for a person to cease to be entitled to a discharge book in consequence of a recommendation made by a disciplinary body by virtue of regulations made under section 72(3) or (4); and
- (b) provide for the re-issue of discharge books which have been surrendered in consequence of such a recommendation.

(3) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine of \$1,000 or not exceeding a lesser amount.

(4) A person who, in Bermuda or elsewhere—

- (a) obtains employment as a seafarer on board a Bermuda ship and does so when he is disentitled to a discharge book by virtue of regulations made under subsection (2)(a); or
- (b) employs as such a seafarer a person who he knows or has reason to suspect is disentitled as aforesaid;

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shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 or, on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term of two years or both.

*[Section 90 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### Handing over of documents by master

91 (1) If a person ceases to be the master of a Bermuda ship during a voyage of the ship he shall deliver to his successor the documents relating to the ship or its crew which are in his custody.

(2) If, without reasonable excuse, the master of such a ship fails to comply with subsection (1), he shall be guilty of an offence and liable on summary conviction to a fine of \$2,000.

### *Interpretation*

#### Interpretation

92 (1) In this Part—

“crew agreement” *[deleted]*

“relief and maintenance” includes the provision of surgical or medical treatment and such dental and optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency; and

“ship’s boat” includes a life-raft.

(2) References in this Part to going to sea include references to going to sea from any country outside Bermuda.

(3) For the purposes of this Part a seafarer is discharged from a ship when his employment in that ship is terminated.

(4) For the purposes of this Part a seafarer discharged from a ship in any country and left there shall be deemed to be left behind in that country notwithstanding that the ship also remains there.

(5) Any power conferred by this Part to provide for or grant an exemption includes power to provide for or grant the exemption subject to conditions.

*[Section 92 amended by 2012 : 30 s. 3 and 25 effective 30 June 2014]*

PART VI

SAFETY

*SAFETY AND HEALTH ON SHIPS*

Safety and health on ships

93 (1) The Minister may by regulations (in this Act referred to as “safety regulations”) make such provision as he considers appropriate for all or any of the following purposes—

- (a) for securing the safety of Bermuda ships and persons on them, and for protecting the health of persons on Bermuda ships;
- (b) for securing the safety of other ships and persons on them while they are within Bermuda waters and for protecting the health of persons on ships other than Bermuda ships while they are within Bermuda water.

(2) Except as provided by subsection (3), safety regulations shall not apply in relation to—

- (a) a qualifying foreign ship while it is exercising the right of innocent passage; or
- (b) persons on such a ship while it is exercising any such right.

(3) Safety regulations shall apply in relation to a qualifying foreign ship, and persons on such a ship, even though the ship is exercising a right mentioned in subsection (2)(a), to the extent that the safety regulations give effect to any provisions of an international agreement ratified by the United Kingdom on behalf of Bermuda so far as it relates to the safety of ships or persons on them or to the protection of the health of persons on ships.

(4) In subsection (1) “Bermuda ship” means a ship which—

- (a) is registered in Bermuda ; or
- (b) is not registered under the law of any country but is wholly owned by persons each of whom is—
  - (i) a British citizen, a British overseas territories citizen or a British overseas citizen; or
  - (ii) a body corporate which is incorporated in Bermuda and has its principal place of business in Bermuda.

(5) Regulations in pursuance of subsection (1)(a) or (b) may provide with respect to any of the following matters, that is to say—

- (a) the design, construction, maintenance, repair, alteration, inspection, surveying and marking of ships and their machinery and equipment;
- (b) the packaging, marking, loading, placing, moving, inspection, testing and measuring of cargo and anything on a ship which is not cargo, machinery or equipment;

- (c) the carrying out of any operation involving a ship;
- (d) the use of the machinery and equipment of a ship and of anything on a ship which is not cargo, machinery or equipment;
- (e) the manning of ships, including the employment on ships of persons qualified to attend to the health and safety of persons on the ships;
- (f) the arrangements for ensuring communication between persons in different parts of a ship and between persons in the ship and other persons;
- (g) the access to, presence in and egress from a ship, and different parts of it, of persons of any description;
- (h) the ventilation, temperature and lighting of different parts of a ship;
- (i) the steps to be taken to prevent or control noise, vibration and radiation in and from a ship and the emission in or from a ship of smoke, gas and dust;
- (j) the steps to be taken to prevent, detect and deal with outbreaks of fire on a ship;
- (k) the steps to be taken to prevent any collision involving a ship and in consequence of any collision involving a ship;
- (l) the steps to be taken, in a case where a ship is in distress or stranded or wrecked, for the purpose of saving the ship and its machinery, equipment and cargo and the lives of persons on or from the ship, including the steps to be taken by other persons for giving assistance in such a case;
- (m) the removal, by jettisoning or otherwise, of its equipment and of other things from a ship for the purpose of avoiding, removing or reducing danger to persons or property;
- (n) the steps to be taken, in a case where danger of any kind occurs or is suspected on a ship, for removing or reducing the danger and for warning persons who are not on the ship of the danger or suspected danger;
- (o) the making of records and the keeping of documents relating to ships and the keeping and use on a ship of information to facilitate the navigation of the ship;
- (p) the keeping of registers and the issue of certificates in cases for which registration or a certificate is required by virtue of the regulations; and
- (q) the furnishing of information;

but the mention of specific matters in this subsection shall not be construed as restricting the generality of the power conferred by paragraph (a) or (b) of subsection (1) .

(6) The power to make regulations conferred by subsection (1) shall extend also to the making of regulations for the prevention of collisions between seaplanes on the surface

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of water and between ships and seaplanes and subsections (5)(k) and (7) to (9) and section 94(l) shall have effect accordingly.

- (7) Safety regulations—
- (a) may provide in terms of approvals given by the Minister or another person and in terms of any document which the Minister or another person considers relevant from time to time;
  - (b) may provide for the cancellation of an approval given in pursuance of the regulations and for the alteration of the terms of such an approval; and
  - (c) must provide for any approval in pursuance of the regulations to be given in writing and to specify the date on which it takes effect and the conditions (if any) on which it is given.
- (8) Without prejudice to section 94(l)(b), safety regulations may provide—
- (a) for the granting by the Minister or another person, on such terms (if any) as the Minister or other person may specify, of exemptions from specified provisions of the regulations for classes of cases or individual cases; and
  - (b) for the alteration or cancellation of exemptions granted in pursuance of the regulations.
- (9) Safety regulations may provide—
- (a) that in such cases as are prescribed by the regulations a ship shall be liable to be detained and that section 242 shall have effect, with such modifications (if any) as are prescribed by the regulations, in relation to the ship;
  - (b) that a contravention of the regulations shall be an offence punishable on summary conviction by a fine of \$10,000 and on conviction on indictment by a fine of \$50,000 or imprisonment for a term of two years or both;
  - (c) that any such contravention shall be an offence punishable only on summary conviction by a maximum fine of an amount not exceeding \$10,000, or such less amount as is prescribed by the regulations;
  - (d) that, in such cases as are prescribed by the regulations, such persons as are so prescribed shall each be guilty of an offence created by virtue of paragraph (b) or (c) ;
  - (e) that, notwithstanding anything in paragraph (b) or (c), a person convicted summarily of an offence under the regulations of a kind which is stated by the regulations to correspond to an offence which is triable either summarily or on indictment under an enactment specified in the regulations which authorises or authorised a fine on summary conviction of a maximum amount exceeding \$10,000 shall be liable to a fine not exceeding that maximum amount.

Provisions supplementary to section 93: general

94 (1) Safety regulations may—

- (a) make different provision for different circumstances and, in particular, provide for an individual case;
- (b) be made so as to apply only in such circumstances as are prescribed by the regulations;
- (c) be made so as to extend outside Bermuda;
- (d) contain such incidental, supplemental and transitional provisions as the Minister considers appropriate;
- (e) provide for compensation to be paid, where a signal is used or displayed otherwise than in accordance with the regulations, for any expense or loss caused in consequence of the signal's being taken for a signal of distress;

and any compensation falling to be paid by virtue of regulations under paragraph (e) may, without prejudice to any other remedy, be recovered in the same manner as salvage.

(2) Nothing in section 93(5) to (8) or subsection (1) shall be construed as prejudicing the generality of section 93(l).

(3) Where the Minister proposes to make safety regulations or he or another person proposes to give an approval in pursuance of safety regulations it shall be the duty of the Minister or other person, before he gives effect to the proposal, to consult such persons in Bermuda (if any) as he considers will be affected by the proposal.

Provisions: supplementary to section 93: dangerous goods

95 (1) Where any dangerous goods have been sent or carried, or attempted to be sent or carried, on board any ship, whether or not a Bermuda ship—

- (a) without being marked as required by safety regulations;
- (b) without such notice having been given as is required by safety regulations;
- (c) under a false description; or
- (d) with a false description of their sender or carrier;

the Supreme Court may declare the goods, and any package or receptacle in which they are contained, to be forfeited.

(2) On a declaration of forfeiture being made, the goods shall be forfeited and they shall be disposed of as the court directs.

(3) The powers conferred on the court by subsections (1) and (2) are exercisable notwithstanding that the owner of the goods—

- (a) has not committed any offence under safety regulations relating to dangerous goods;
- (b) is not before the court; and

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(c) has no notice of the proceedings;  
and notwithstanding that there is no evidence to show to whom the goods belong.

(4) Nevertheless, the court may, in its discretion, require such notice as it may direct to be given to the owner or shipper of the goods before they are forfeited.

(5) In this section “dangerous goods” means goods designated as dangerous goods by safety regulations.

### Safety of submersible and supporting apparatus

96 (1) This section applies to any submersible or supporting apparatus—

- (a) operated within Bermuda waters; or
- (b) launched or operated from, or comprising, a Bermuda ship.

(2) The Minister may make regulations—

- (a) for the safety of submersible and supporting apparatus;
- (b) for the prevention of accidents in or near submersible or supporting apparatus;
- (c) for the safety, health and welfare of persons on or in submersible and supporting apparatus;
- (d) for prohibiting or otherwise restricting the operation of any submersible apparatus except in accordance with the conditions of a licence granted under the regulations; and
- (e) for the registration of submersible apparatus.

(3) Schedule 2 shall have effect for supplementing the provisions of this section.

(4) In this section—

“apparatus” includes any vessel, vehicle or hovercraft, any structure, any diving plant or equipment and any other form of equipment;

“specified” means specified in regulations made by the Minister for the purposes of this section;

“submersible apparatus” means any apparatus used, or designed for use, in supporting human life on or under the bed of any waters or elsewhere under the surface of any waters; and

“supporting apparatus” means any apparatus used, or designed for use, in connection with the operation of any submersible apparatus.

### *Special provisions*

#### Load lines

97 Schedule 3 (which provides as to load lines) shall have effect.

Charts and other information

98 (1) The Minister may make rules specifying such charts, directions or information as appear to him necessary or expedient for the safe operation of ships.

(2) Rules under this section may require Bermuda ships, or such descriptions of Bermuda ships as may be specified in the rules, to carry (either at all times or on such voyages as may be specified in the rules) copies of the charts, directions or information so specified.

(3) If a ship goes to sea or attempts to go to sea without carrying copies of the charts, directions or information which it is required to carry by rules under this section the master or owner shall be guilty of an offence and liable on summary conviction to a fine of \$5,000.

Report of dangers to navigation

99. (1) *[Repealed by 2004:16]*

(2) *[Repealed by 2004: 16]*

(3) *[Repealed by 2004:16]*

(4) *[Repealed by 2004:16]*

(5) Every person in charge of a ship station for radio communication shall, on receiving the signal prescribed under safety regulations relating to dangers to navigation, which indicates that a message is about to be sent under those regulations, refrain from sending messages for a time sufficient to allow other stations to receive the message, and, if so required by the Minister, shall transmit the message in such manner as may be required by the Minister.

(6) Compliance with subsection (5) shall be deemed to be a condition of every ship station licence.

(7) In this section—

“controlled station for radio communication” means such a station controlled by the Minister; and “controlled” includes controlled by means of a licence granted by him;

“ship station licence” means a licence granted under regulation 4 of the Class Nine Radio (Maritime Mobile Service) Regulations 1988;

“ship station” has the meaning given in regulation 2 of the Class Nine Radio (Maritime Mobile Service) Regulations 1988.

(8) Section 6 of the Statutory Instruments Act 1977 shall not apply to rules made under this section.

*[Section 99 subsections (1)-(4) repealed, (5) and (7) amended, by 2004:16 s.3 effective 18 June 2004]*

*Assistance at sea*

Duty of ship to assist the other in case of collision

100 (1) In every case of collision between two ships, it shall be the duty of the master of each ship, if and so far as he can do so without danger to his own ship, crew and passengers (if any)—

- (a) to render to the other ship, its master, crew and passengers (if any) such assistance as may be practicable, and may be necessary to save them from any danger caused by the collision, and to stay by the other ship until he has ascertained that it has no need of further assistance; and
- (b) to give to the master of the other ship the name of his own ship and also the names of the ports from which it comes and to which it is bound.

(2) The duties imposed on the master of a ship by subsection (1) apply to the masters of Bermuda ships and to the masters of foreign ships when in Bermuda waters.

(3) The failure of the master of a ship to comply with the provisions of this section shall not raise any presumption of law that the collision was caused by his wrongful act, neglect, or default.

(4) If the master fails without reasonable excuse to comply with this section, he shall—

- (a) in the case of a failure to comply with subsection (1)(a), be guilty of an offence and liable—
  - (i) on summary conviction, to a fine of \$100,000 or imprisonment for a term of six months or both;
  - (ii) on conviction on indictment, to a fine of \$200,000 or imprisonment for a term of two years or both; and
- (b) in the case of a failure to comply with subsection (1)(b), be guilty of an offence and liable—
  - (i) on summary conviction, to a fine of \$10,000;
  - (ii) on conviction on indictment, to a fine of \$50,000;

and in either case if he is a certified officer, an inquiry into his conduct may be held, and his certificate cancelled or suspended.

Duty to assist ships, etc. in distress

101 (1) The master of a ship, on receiving at sea a signal of distress or information from any source that a ship or aircraft is in distress, shall proceed with all speed to the assistance of the persons in distress (informing them if possible that he is doing so) unless he is unable, or in the special circumstances of the case considers it unreasonable or unnecessary, to do so, or unless he is released from this duty under subsection (4) or (5).

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(2) Where the master of any ship in distress has requisitioned any ship that has answered his call, it shall be the duty of the master of the requisitioned ship to comply with the requisition by continuing to proceed with all speed to the assistance of the persons in distress.

(3) The duties imposed on the master of a ship by subsections (1) and (2) apply to the masters of Bermuda ships and to the masters of foreign ships when in Bermuda waters.

(4) A master shall be released from the duty imposed by subsection (1) as soon as he is informed of the requisition of one or more ships other than his own and that the requisition is being complied with by the ship or ships requisitioned.

(5) A master shall be released from the duty imposed by subsection (1), and, if his ship has been requisitioned, from the duty imposed by subsection (2), if he is informed by the persons in distress, or by the master of any ship that has reached the persons in distress, that assistance is no longer required.

(6) If a master fails to comply with the preceding provisions of this section he shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$10,000 or to imprisonment for a term of six months, or both;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term of two years, or both.

(7) Compliance by the master of a ship with the provisions of this section shall not affect his right, or the right of any other person, to salvage.

### *Unsafe ships*

Meaning of “dangerously unsafe ship”

102 (1) For the purposes of sections 103, 104, 105 and 106 a ship in port is “dangerously unsafe” if, having regard to the nature of the service for which it is intended, the ship is, by reason of the matters mentioned in subsection (3), unfit to go to sea without serious danger to human life.

(2) For the purposes of those sections a ship at sea is “dangerously unsafe” if, having regard to the nature of the service for which it is being used or is intended, the ship is, by reason of the matters mentioned in subsection (3), either—

- (a) unfit to remain at sea without serious danger to human life; or
- (b) unfit to go on a voyage without serious danger to human life.

(3) Those matters are—

- (a) the condition, or the unsuitability for its purpose, of—
  - (i) the ship or its machinery or equipment; or
  - (ii) any part of the ship or its machinery or equipment;
- (b) undermanning;

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- (c) overloading or unsafe or improper loading;
- (d) any other matter relevant to the safety of the ship;

and are referred to in those sections, in relation to any ship, as “the matters relevant to its safety”.

(4) Any reference in those sections to “going to sea” shall, in a case where the service for which the ship is intended consists of going on voyages or excursions that do not involve going to sea, be construed as a reference to going on such a voyage or excursion.

### Power to detain dangerously unsafe ship

103 (1) 1) Where a ship which is—

- (a) in a port in Bermuda; or
- (b) at sea in Bermuda waters;

appears to a relevant inspector to be a dangerously unsafe ship, the ship may be detained.

(2) Subject to subsection (3) the power of detention conferred by subsection (1) is exercisable in relation to foreign ships as well as Bermuda ships.

(3) The power of detention conferred by subsection (1)(b) is not exercisable in relation to a qualifying foreign ship while the ship is exercising the right of innocent passage.

(4) The officer detaining the ship shall serve on the master of the ship a detention notice which shall—

- (a) state that the relevant inspector is of the opinion that the ship is a dangerously unsafe ship;
- (b) specify the matters which, in the relevant inspector’s opinion, make the ship a dangerously unsafe ship; and
- (c) require the ship to comply with the terms of the notice until it is released by a competent authority.

(5) In the case of a ship which is not a Bermuda ship the officer detaining the ship shall cause a copy of the detention notice to be sent as soon as practicable to the nearest consular officer for the country to which the ship belongs.

(6) In this section—

“competent authority” means any officer mentioned in section 242(1); and

“relevant inspector” means any person mentioned in paragraph (a), (b) or (c) of section 219(l).

### References of detention notices to arbitration

104 (1) Any question as to whether any of the matters specified in relation to a ship in a detention notice in pursuance of section 103(4)(b) in connection with any opinion formed by the relevant inspector constituted a valid basis for that opinion shall, if the master or owner of the ship so requires by a notice given to the relevant inspector within 21 days from

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the service of the detention notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by him.

(2) Where a notice is given by the master or owner of the ship in accordance with subsection (1), the giving of the notice shall not suspend the operation of the detention notice unless, on the application of the person requiring the reference, the arbitrator so directs.

(3) The arbitrator shall have regard, in coming to his decision, to any other matters not specified in the detention notice which appear to him to be relevant to whether the ship was or was not a dangerously unsafe ship.

(4) Where on a reference under this section the arbitrator decides as respects any matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the inspector's opinion he shall either cancel the detention notice or affirm it with such modifications as he may in the circumstances think fit; and in any other case the arbitrator shall affirm the notice in its original form.

(5) The arbitrator shall include in his decision a finding whether there was or was not a valid basis for the detention of the ship as a dangerously unsafe ship.

(6) A person shall not be qualified for appointment as an arbitrator under this section unless he is—

- (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate;
- (b) a naval architect;
- (c) a person falling within subsection (7); or
- (d) a person with special experience of shipping matters, or of activities carried on in ports.

(7) For the purposes of subsection (6)(c) a person falls within this subsection if he is a barrister or solicitor of 10 years standing entitled to practice in Bermuda or in any commonwealth jurisdiction.

(8) In connection with his functions under this section an arbitrator shall have the powers conferred on an inspector by section 220.

(9) In this section "relevant inspector" has the same meaning as in section 103(6).

### Compensation in connection with invalid detention of ship

105 (1) If on a reference under section 104 relating to a detention notice in relation to a ship—

- (a) the arbitrator decides that any matter did not constitute a valid basis for the relevant inspector's opinion; and
- (b) it appears to him that there were no reasonable grounds for the inspector to form that opinion;

the arbitrator may award the owner of the ship such compensation in respect of any loss suffered by him in consequence of the detention of the ship as the arbitrator thinks fit.

- (2) Any compensation awarded under this section shall be payable by the Minister.
- (3) In this section “relevant inspector” has the same meaning as in section 103(6).

Owner and master liable in respect of dangerously unsafe ship

106 (1) If a ship which—

- (a) is in a port in Bermuda; or
- (b) is a Bermuda ship and is in any other port;

is dangerously unsafe, then, subject to subsections (4) and (5), the master and the owner of the ship shall each be guilty of an offence.

(2) Where, at the time when a ship is dangerously unsafe, any responsibilities of the owner with respect to the matters relevant to its safety have been assumed (whether wholly or in part) by any person or persons other than the owner, and have been so assumed by that person or (as the case may be) by each of those persons either—

- (a) directly, under the terms of a charter-party or management agreement made with the owner; or
- (b) indirectly, under the terms of a series of charter-parties or management agreements;

the reference to the owner in subsection (1) shall be construed as a reference to that other person or (as the case may be) to each of those other persons.

(3) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine of \$100,000;
- (b) on conviction on indictment, to a fine of \$200,000 or to imprisonment for a term of two years, or both.

(4) It shall be a defence in proceedings for an offence under this section to prove that at the time of the alleged offence—

- (a) arrangements had been made which were appropriate to ensure that before the ship went to sea it was made fit to do so without serious danger to human life by reason of the matters relevant to its safety which are specified in the charge.
- (b) it was reasonable for such arrangements not to have been made.

(5) It shall also be a defence in proceedings for an offence under this section to prove—

- (a) that, under the terms of one or more charter-parties or management agreements entered into by the accused, the relevant responsibilities, namely—

- (i) where the accused is the owner, his responsibilities with respect to the matters relevant to the ship's safety; or
- (ii) where the accused is liable to proceedings under this section by virtue of subsection (2), so much of those responsibilities as had been assumed by him as mentioned in that subsection;

had at the time of the alleged offence been wholly assumed by some other person or persons party thereto; and

- (b) that in all the circumstances of the case the accused had taken such steps as it was reasonable for him to take, and exercised such diligence as it was reasonable for him to exercise, to secure the proper discharge of the relevant responsibilities during the period during which they had been assumed by some other person or persons as mentioned in paragraph (a);

and, in determining whether the accused had done so, regard shall be had in particular to the matters mentioned in subsection (6).

(6) Those matters are—

- (a) whether prior to the time of the alleged offence the accused was, or in all the circumstances ought reasonably to have been, aware of any deficiency in the discharge of the relevant responsibilities; and
- (b) the extent to which the accused was or was notable, under the terms of any such charter-party or management agreement as is mentioned in subsection (5)(a)—

- (i) to terminate it; or

- (ii) to intervene in the management of the ship;

- in the event of any such deficiency, and whether it was reasonable for the accused to place himself in that position.

(7) No proceedings for an offence under this section shall be instituted except by or with the consent of the Minister or the Director of Public Prosecutions.

(8) In this section—

“management agreement”, in relation to a ship, means any agreement (other than a charter-party or a contract of employment) under which the ship is managed, either wholly or in part, by a person other than the owner (whether on behalf of the owner or on behalf of some other person); and

“relevant responsibilities” shall be construed in accordance with subsection (5).

(9) References in this section to responsibilities being assumed by a person under the terms of a charter-party or management agreement are references to their being so assumed by him whether or not he has entered into a further charter-party or management agreement providing for them to be assumed by some other person.

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Use of unsafe lighters, etc.

107 (1) If any person uses or causes or permits to be used in navigation any lighter, barge or like vessel when, because of—

- (a) the defective condition of its hull or equipment;
- (b) overloading or improper loading; or
- (c) undermanning;

it is so unsafe that human life is thereby endangered, he shall be guilty of an offence and liable—

- (i) on summary conviction, to a fine of \$10,000;
- (ii) on conviction on indictment, to a fine of \$50,000.

(2) Proceedings for an offence under this section shall not be instituted except by or with the consent of the Minister or the Director of Public Prosecutions.

(3) This section does not affect the liability of the owners of any lighter, barge or like vessel in respect of loss of life or personal injury caused to any person carried in the vessel.

Owner liable for unsafe operation of ship

108 (1) It shall be the duty of the owner of a ship to which this section applies to take all reasonable steps to secure that the ship is operated in a safe manner.

(2) This section applies to—

- (a) any Bermuda ship; and
- (b) any ship which—
  - (i) is registered under the law of any country outside Bermuda; and
  - (ii) is within Bermuda waters while proceeding to or from a port in Bermuda;

unless the ship would not be so proceeding but for weather conditions or any other unavoidable circumstances.

(3) If the owner of a ship to which this section applies fails to discharge the duty imposed on him by subsection (1), he shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$100,000;
- (b) on conviction on indictment, to a fine of \$200,000 or to imprisonment for a term of two years, or both.

(4) Where any such ship—

- (a) is chartered by demise; or

- (b) is managed, either wholly or in part, by a person other than the owner under the terms of a management agreement within the meaning of section 106(8);

any reference to the owner of the ship in subsection (1) or (3) shall be construed as including a reference—

- (i) to the charterer under the charter by demise; or
- (ii) to any such manager as is referred to in paragraph (b); or
- (iii) (if the ship is both chartered and managed as mentioned) to both the charterer and any such manager;

and accordingly the reference in subsection (1) to the taking of all reasonable steps shall, in relation to the owner, the charterer or any such manager, be construed as a reference to the taking of all such steps as it is reasonable for him to take in the circumstances of the case.

(5) No proceedings for an offence under this section shall be instituted except by or with the consent of the Minister or the Director of Public Prosecutions.

*Temporary exclusion zones*

Power to establish temporary exclusion zones

109 (1) Subsection (2) applies where a ship, structure or other thing—

- (a) is in Bermuda waters; and
- (b) is wrecked, damaged or in distress;

and in this section “the relevant casualty” means that ship, structure or other thing.

(2) If it appears to the Minister—

- (a) that significant harm will or may occur as a direct or indirect result of the relevant casualty being wrecked, damaged or in distress; and
- (b) that if access to an area around the relevant casualty were restricted in accordance with section 110, significant harm, or the risk of such harm, would be prevented or reduced,

he may by direction identify an area to which access is so restricted (“a temporary exclusion zone”).

(3) In this section “significant harm” means—

- (a) significant pollution in Bermuda or in Bermuda waters; or
- (b) significant damage to persons or property.

(4) A temporary exclusion zone may not include any area which is not within Bermuda waters.

(5) If it appears to the Minister at any time after a temporary exclusion zone is established that the zone is larger than is needed for the purpose of preventing or reducing significant harm, or the risk of such harm, he shall by direction vary the direction establishing the zone accordingly.

(6) Subject to subsections (4) and (5), a temporary exclusion zone may be identified by reference to the position of the relevant casualty from time to time.

(7) If it appears to the Minister at any time after a temporary exclusion zone is established that the zone is not needed for the purpose of preventing or reducing significant harm, or the risk of such harm, he shall by direction revoke the direction establishing the zone.

(8) Where the Minister gives a direction under this section, he shall—

- (a) as soon as practicable, publish it in such manner as he considers appropriate for bringing it to the attention of persons likely to be affected by it; and
- (b) within the period of 24 hours from the giving of the direction, send a copy of it to the International Maritime Organization.

Temporary exclusion zones: offences is given under s.109

110 (1) If a direction establishing a temporary exclusion zone is given under section 109 then, subject to subsection (2), no ship shall enter or remain in the zone.

(2) A ship may enter or remain in a temporary exclusion zone if it does so—

- (a) in accordance with the direction establishing the zone;
- (b) with the consent of the Minister; or
- (c) in accordance with regulations made by the Minister for the purposes of this section.

(3) If a ship enters or remains in a temporary exclusion zone or a part of such a zone in contravention of subsection (1) then, subject to subsection (4), its owner and its master shall each be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$75,000;
- (b) on conviction on indictment, to a fine of \$150,000 or to imprisonment for a term of two years or to both.

(4) It shall be a defence for a person charged with an offence under this section to prove that the existence or area of the temporary exclusion zone was not, and would not on reasonable enquiry have become, known to the master.

*Power to require ships to be moved*

Power to require ships to be moved

111 (1) The powers conferred by this section shall be exercisable where a ship in Bermuda waters—

- (a) is not a qualifying foreign ship; or
- (b) is such a ship but appears to the Minister to be exercising the right of innocent passage.

(2) Subject to subsection (3), the Minister may, for any one or more of the purposes specified in subsection (4), give directions to any of the persons specified in subsection (5) requiring—

- (a) that the ship is to be moved, or is to be removed from a specified area or locality or from Bermuda waters; or
- (b) that the ship is not to be moved to a specified place or area within Bermuda waters, or over a specified route within Bermuda waters.

(3) The power of the Minister under subsection (2)(a) to require a ship to be removed from Bermuda waters is not exercisable in relation to a Bermuda ship.

(4) The purposes referred to in subsection (2) are—

- (a) the purpose of securing the safety of the ship or of other ships, of persons on the ship or other ships, or of any other persons or property, or of preventing or reducing any risk to such safety; and
- (b) the purpose of preventing or reducing pollution in Bermuda or in Bermuda waters, or of preventing or reducing any risk of such pollution.

(5) The persons referred to in subsection (2) are—

- (a) the owner of the ship or any person in possession of the ship; or
- (b) the master of the ship.

(6) If in the opinion of the Minister the powers conferred by subsection (2) are, or have proved to be, inadequate for any of the purposes specified in subsection (4), the Minister may for that purpose take any such action as he has power to require to be taken by a direction under this section.

(7) The powers of the Minister under subsection (6) shall also be exercisable by such persons as may be authorised for the purpose by the Minister.

(8) Every person concerned with compliance with directions given, or with action taken, under this section shall use his best endeavours to avoid any risk to human life.

(9) It is hereby declared that any action taken as respects a ship which is under arrest or as respects the cargo of such a ship, being action duly taken in pursuance of a direction given under this section, or being any action taken under subsection (6) or (7)—

- (a) does not constitute contempt of court; and

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- (b) does not in any circumstances make the Admiralty Marshal liable in any civil proceedings.
- (10) In this section—
- (a) unless a contrary intention appears, “specified” in relation to a direction under this section, means specified by the direction; and
  - (b) the reference in subsection (9) to the Admiralty Marshal means the Admiralty Marshal of the Supreme Court.

### Offences in relation to section 111

112 (1) If the person to whom a direction is duly given under section 111 contravenes, or fails to comply with, any requirement of the direction, he shall be guilty of an offence.

- (2) If a person intentionally obstructs any person who is—
- (a) acting on behalf of the Minister in connection with the giving or service of a direction under section 111;
  - (b) acting in compliance with a direction under that section; or
  - (c) acting under section 111(6) or (7);

he shall be guilty of an offence.

(3) In proceedings for an offence under subsection (1), it shall be a defence for the accused to prove that he has used all due diligence to ensure compliance with the direction, or that he had reasonable cause for believing that compliance with the direction would have involved a serious risk to human life.

- (4) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine of \$100,000;
  - (b) on conviction on indictment, to a fine of \$300,000.

### Service of directions under section 111

113 (1) If the Minister is satisfied that a company or other body is not one to which section 62A of the Companies Act 1981 (service of documents) applies so as to authorise the service of a direction on that body under that section, he may give a direction under section 111 of this Act to that body, as the owner of, or the person in possession of, a ship, by serving the direction on the master of the ship.

(2) For the purpose of giving or serving a direction under section 111 to or on any person on a ship, a person acting on behalf of the Minister shall have the right to go on board the ship.

*Control of, and returns as to, persons on ships*

Offences in connection with passenger ships

114 (1) A person commits an offence if, in relation to a ship to which this section applies, he does any of the following things, that is to say—

- (a) if, being drunk or disorderly, he has been on that account refused admission to the ship by the owner or any person in his employment, and, after having the amount of his fare (if he has paid it) returned or tendered to him, nevertheless persists in attempting to enter the ship;
- (b) if, being drunk or disorderly on board the ship, he is requested by the owner or any person in his employment to leave the ship at any place in Bermuda at which he can conveniently do so, and, after having the amount of his fare (if he has paid it) returned or tendered to him, does not comply with the request;
- (c) if, on board the ship, after warning by the master or other officer thereof, he molests or continues to molest any passenger;
- (d) if, after having been refused admission to the ship by the owner or any person in his employment on account of the ship being full, and having had the amount of his fare (if he has paid it) returned or tendered to him, he nevertheless persists in attempting to enter the ship;
- (e) if, having gone on board the ship at any place, and being requested, on account of the ship being full, by the owner or any person in his employment to leave the ship before it has left that place, and having had the amount of his fare (if he has paid it) returned or tendered to him, he does not comply with that request;
- (f) if, on arriving in the ship at a point to which he has paid his fare, he knowingly and intentionally refuses or neglects to leave the ship; and
- (g) if, on board the ship he fails, when requested by the master or other officer thereof, either to pay his fare or show such ticket or other receipt, if any, showing the payment of his fare, as is usually given to persons travelling by and paying their fare for the ship;

but his liability in respect of any such offence shall not prejudice the recovery of any fare payable by him.

(2) A person commits an offence if, on board any ship to which this section applies he intentionally does or causes to be done anything in such a manner as to—

- (a) obstruct or damage any part of the machinery or equipment of the ship; or
- (b) obstruct, impede or molest the crew, or any of them, in the navigation or management of the ship, or otherwise in the execution of their duty on or about the ship.

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(3) The master or other officer of any ship to which this section applies, and all persons called by him to his assistance, may, without any warrant, detain any person who commits any offence against subsection (1) or (2) and whose name and address are unknown to the master or officer, and deliver that person to a police officer.

(4) A person guilty of an offence against subsection (1) or (2) shall be guilty of an offence and liable, on summary conviction, to a fine of \$1,000.

(5) If any person commits an offence against subsection (1) or (2) and on the application of the master of the ship, or any other person in the employment of the owner thereof, refuses to give his name and address, or gives a false name or address, that person shall be guilty of an offence and liable, on summary conviction, to a fine of \$1,000.

(6) This section applies to a ship for which there is in force a Passenger Ship Safety Certificate or Passenger Certificate as the case may be, issued under or recognised by safety regulations.

### Power to exclude drunken passengers from certain passenger ships

115 (1) The master of any ship to which this section applies may refuse to receive on board any person who by reason of drunkenness or otherwise is in such a state, or misconducts himself in such a manner, as to cause annoyance or injury to passengers on board, and if any such person is on board, may put him on shore at any convenient place.

(2) A person so refused admittance or put on shore shall not be entitled to the return of any fare he has paid.

(3) This section applies to a ship (whether or not a Bermuda ship) carrying more than 12 passengers and employed in carrying passengers between places in Bermuda.

### Stowaways

116 (1) If a person, without the consent of the master or of any other person authorised to give it, goes to sea or attempts to go to sea in a Bermuda ship, he shall be guilty of an offence and liable on summary conviction to a fine of \$2,000.

(2) Nothing in section 239 shall be taken to limit the jurisdiction of any court in Bermuda to deal with an offence under this section which has been committed in a country outside Bermuda by a person who is not a British citizen.

### Unauthorised presence on board ship

117 Where a Bermuda ship or a ship registered in any other country is in a port in Bermuda and a person who is neither in Her Majesty's service nor authorised by law to do so—

(a) goes on board the ship without the consent of the master or of any other persons authorised to give it; or

(b) remains on board the ship after being requested to leave by the master, a police officer, an officer authorised by the Minister or an officer of customs;

he shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

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### Master's powers of arrest

118 The master of any Bermuda ship may cause any person on board the ship to be put under restraint if and for so long as it appears to him necessary or expedient in the interest of safety or for the preservation of good order or discipline on board the ship.

### Unauthorised persons: offences relating to safety

119 (1) Where a person goes to sea in a ship without the consent of the master or of any other person authorised to give it or is conveyed in a ship in pursuance of section 84(5) (b), sections 70 and 71 shall apply as if he were a seafarer employed in the ship.

(2) Subsection (1) shall, in its application to section 70 so far as that section applies to ships which are not sea-going ships have effect—

- (a) with the omission of the words “goes to sea in a ship”; and
- (b) with the insertion, after the words “to give it”, of the words “is on board a ship while it is on a voyage or excursion”.

*[Section 119 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### Return to be furnished by masters of ships as to passengers

120 (1) The master of every ship, whether or not a Bermuda ship, which carries any passenger to a place in Bermuda from any place out of Bermuda, or from any place in Bermuda to any place out of Bermuda, shall furnish to such person and in such manner as the Minister directs a return giving the total number of any passengers so carried, distinguishing, if so directed by the Minister, the total number of any class of passengers so carried, and giving, if the Minister so directs, such particulars with respect to passengers as may be for the time being required by the Minister.

(2) Any passenger shall furnish the master of the ship with any information required by him for the purpose of the return.

(3) If—

- (a) the master of a ship fails to make a return as required by this section, or makes a false return;
- (b) any passenger refuses to give any information required by the master of the ship for the purpose of the return required by this section, or, for that purpose, gives to the master information which he knows to be false or recklessly gives to him information which is false;

the master or (as the case may be) passenger shall be guilty of an offence and liable on summary conviction to a fine of \$1,000 in the case of a failure or refusal and \$2,000 in the case of a false return or false information.

### Returns of births, marriages and deaths in ships. etc.

121 (1) The Minister may make regulations under the following provisions of this section in relation to births, marriages and deaths in the circumstances specified in those provisions.

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(2) Regulations under this section may require the master of any Bermuda ship to make a return to a superintendent, the Registrar General or proper officer of—

- (a) the birth or death of any person occurring in the ship;
- (b) the marriage of any person celebrated in the ship; and
- (c) the death of any person employed in the ship, wherever occurring outside Bermuda;

and to notify any such death to such person (if any) as the deceased may have named to him as his next of kin.

(3) Regulations under this section may require the Registrar to record such information as may be specified in the regulations about such a death as is referred to in subsection (2) in a case where—

- (a) it appears to him that the master of the ship cannot perform his duty under that subsection because he has himself died or is incapacitated or missing; and
- (b) any of the circumstances specified in subsection (4) exist.

(4) Those circumstances are that—

- (a) the death in question has been the subject of—
  - (i) an inquest held by a coroner; or
  - (ii) an inquiry held in pursuance of section 232;and the findings of the inquest or inquiry include a finding that the death occurred;
- (b) the deceased's body has been the subject of a post-mortem examination.

(7) Regulations under this section may require the Registrar to send a certified copy of any return or record made thereunder to the Registrar General.

(8) The Registrar General to whom any such certified copies are sent—

- (a) shall record the information contained therein in the marine register; and
- (b) may record in the marine register such additional information as appears to him desirable for the purpose of ensuring the completeness and correctness of the register;

and the enactments relating to the registration of births, marriages and deaths in Bermuda shall have effect as if the marine register were a register of births (other than stillbirths), marriages or deaths or certified copies of entries in such a register had been transmitted to the Registrar General in accordance with those enactments.

(9) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding \$1,000 or not exceeding a lesser amount.

(10) Regulations under this section may contain provisions authorising the registration of the following births and deaths occurring outside Bermuda in circumstances where no return is required to be made under the preceding provisions of this section—

- (a) any birth or death of a British citizen, a British overseas territories citizen or a British overseas citizen which occurs in a ship not registered in Bermuda;
- (b) any death of any such citizen who has been employed in a ship not registered in Bermuda which occurs elsewhere than in the ship; and
- (c) any death of a person who has been employed in a Bermuda ship which occurs elsewhere than in the ship.

(11) References in this section to deaths occurring in a ship include references to deaths occurring in a ship's boat.

#### PART VIA

##### SPECIAL MEASURES TO ENHANCE MARITIME SECURITY

Powers to give effect to Chapter XI-2 of the Annex to the SOLAS Convention

121A (1) The Minister may make such regulations as he considers appropriate for the purpose of giving effect to Chapter XI-2 of the Annex to the SOLAS Convention for the purpose of enhancing maritime security in -

- (a) Bermuda ships and persons on board them; and
- (b) other ships and persons on board them while they are within Bermuda waters.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may make provision with respect to the following matters-

- (a) compliance with the provisions of the ISPS Code;
- (b) compliance with the requirements for the security level;
- (c) the measures to be taken in response to security levels;
- (d) the measures to be taken for non-compliance or inability to comply with the requirements of the ISPS Code or security levels;
- (e) the furnishing of information with respect to persons with responsibility for matters related to the operations of a ship;
- (f) the provision of ship security alert systems;
- (g) the duties and powers of a master in relation to the maintenance of the safety and security of a ship;
- (h) the powers of authorised officers in relation to control and compliance measures in respect of ships in port and ships intending to enter port;

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- (i) the furnishing of information in relation to security matters by ships in port and ships intending to enter port;
  - (j) the keeping of records of such information.
- (3) Regulations made under this section may—
- (a) make different provisions for different circumstances;
  - (b) include provision with respect to the application of the regulations to the Crown;
  - (c) include provision for detaining any ship in respect of which a contravention of a provision made by or under the regulations is suspected to have occurred, and in relation to such a ship, for applying section 242 with such modifications, if any, as are prescribed by the regulations;
  - (d) include provision for the payment of compensation for ships that have been unduly detained or delayed in the exercise of powers under the regulations;
  - (e) provide for the delegation of functions exercisable by virtue of such regulations;
  - (f) include such incidental, supplemental and transitional provisions as appear to the Minister to be expedient for the purposes of the regulations;
  - (g) provide that a contravention of the regulations shall be an offence punishable on summary conviction by a fine of \$10,000 and on conviction on indictment by a fine of \$50,000 or imprisonment for a term of two years or both;
  - (h) that, in such cases as are prescribed by the regulations, such persons as are so prescribed shall each be guilty of an offence created by virtue of paragraph (g).
- (4) Regulations made under this section are subject to negative resolution procedure.
- (5) In this section—
- “Bermuda ship” has the meaning given in section 93(4);
  - “SOLAS Convention” means the International Convention for the Safety of Life at Sea, 1974 as amended;
  - “ISPS Code” means the International Ship and Port Facility Security Code referred to in Chapter XI-2 of the SOLAS Convention;
  - “security level” has the meaning given in Chapter XI-2 of the Annex to the SOLAS Convention.

*[Part VIA, section 121A was inserted by 2004:16 s.4 effective 18 June 2004]*

PART VII  
PREVENTION OF POLLUTION

CHAPTER I  
*Pollution Generally*

Prevention of pollution from ships etc.

122 (1) The Minister may by statutory instrument make such provision as he considers appropriate for the purpose of giving effect to any provision of any of the following international agreements which have been ratified by the United Kingdom on behalf of Bermuda—

- (a) the International Convention for the Prevention of Pollution from Ships (including its protocols, annexes and appendices) which constitutes attachment I to the final act of the International Conference on Marine Pollution signed in London on 2nd November 1973;
- (b) the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil which constitutes attachment 2 to the final act aforesaid;
- (c) the Protocol relating to the said Convention which constitutes attachment 2 to the final act of the International Conference on Tanker Safety and Pollution Prevention signed in London on 17th February 1978;
- (d) any international agreement not mentioned in paragraphs (a) to (c) which relates to the prevention, reduction or control of pollution of the sea or other waters by matter from ships;

and in paragraph (d) the reference to an agreement includes an agreement which provides for the modification of another agreement, including the modification of an agreement mentioned in paragraphs (a) to (c).

(2) The powers conferred by subsection (1) to provide for the purpose of giving effect to an agreement include power to provide for the provision to come into force although the agreement has not come into force.

(3) Without prejudice to the generality of subsection (1) a statutory instrument under that subsection may in particular include provision—

- (a) for applying for the purpose mentioned in that subsection any enactment or instrument relating to the pollution of the sea or other waters and also any of sections 95, 229, 230 and 231;
- (b) with respect to the carrying out of surveys and inspections for the purpose aforesaid and the issue, duration and recognition of certificates for that purpose;
- (c) for repealing the provisions of any enactment or instrument so far as it appears to the Minister that those provisions are not required having

regard to any provision made or proposed to be made by virtue of this section;

- (d) with respect to the application of the statutory instrument to the Crown and the extra-territorial operation of any provision made by or under the statutory instrument;
- (e) that a contravention of a provision made by or under the statutory instrument shall be an offence punishable on summary conviction by a fine of \$10,000 and on conviction on indictment by a fine of \$50,000 or imprisonment for a term of two years or both;
- (f) that any such contravention shall be an offence punishable only on summary conviction by a fine of \$10,000 or such less amount as is prescribed by the statutory instrument;
- (g) in connection with offences created by or under the statutory instrument, corresponding to that made in connection with offences under section 130 by section 142(3), 143 and 145 (whether by applying, or making provision for the application of, any of those sections, subject to such modifications as may be specified by or under the statutory instrument, or otherwise);
- (h) for detaining any ship in respect of which such a contravention is suspected to have occurred and, in relation to such a ship, for applying section 242 with such modifications, if any, as are prescribed by the statutory instrument;

and nothing in any of the preceding provisions of this subsection shall be construed as prejudicing the generality of any other of those provisions and in particular neither paragraph (g) nor (h) shall prejudice paragraph (a).

(4) A statutory instrument under subsection (1) may—

- (a) make different provision for different circumstances;
- (b) provide in terms of any document which the Minister or any person considers relevant from time to time;
- (c) provide for exemptions from any provisions of the statutory instrument;
- (d) include such incidental, supplemental and transitional provisions as appear to the Minister to be expedient for the purposes of the statutory instrument;
- (e) provide that any enactment or other instrument applied by the statutory instrument shall have effect as so applied subject to such modifications as may be specified in the statutory instrument.

(5) A statutory instrument in pursuance of subsection (1)(b) may apply to areas of land or sea or other Bermuda waters notwithstanding that the agreement in question does not relate to those areas.

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(6) A statutory instrument proposed to be made by virtue of subsection (1) shall not be made unless the instrument is to contain a statement that it is made only for any of the purposes specified in subsection (7).

(7) The purposes referred to in subsection (6) are—

- (a) giving effect to an agreement mentioned in subsection (1)(a) to (c);
- (b) providing as authorised by subsection (2) in relation to such an agreement;

[and a statutory instrument which contains a statement that it is made only for any of those purposes shall be subject to negative resolution procedure].

Further provision for the prevention of pollution from ships

123 (1) The Minister may by statutory instrument make such provision as he considers appropriate for the purpose of giving effect to any provision of the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) for the protection and preservation of the marine environment from pollution by matter from ships.

(2) Without prejudice to the generality of subsection (1), a statutory instrument under that subsection may in particular include provision corresponding to any provision that is authorised for the purposes of section 122 by subsections (3) and (4) of that section.

Regulation of transfers between ships in territorial waters

124 (1) The Minister may by regulations make, in relation to the transfer of cargo, stores, bunker fuel or ballast between ships while within Bermuda waters, such provision as he considers appropriate for preventing pollution, danger to health or to navigation, or hazards to the environment or to natural resources.

(2) Regulations under this section may, in particular, do any of the following things—

- (a) prohibit transfers of any specified description or prohibit transfers if, or unless, carried out in specified areas, circumstances or ways;
- (b) provide about—
  - (i) the design of, and standards to be met by, ships and equipment;
  - (ii) the manning of ships, including the qualifications and experience to be possessed by persons of any specified description employed on board; and
  - (iii) the qualifications and experience to be possessed by persons (whether masters or not) controlling the carrying out of transfers or operations ancillary thereto;
- (c) provide for proposed transfers to be notified to and approved by persons appointed by the Minister or another person, and for the supervision of transfers, and the inspection of ships and equipment, by persons so appointed;

- (d) provide—
    - (i) for the procedure to be followed in relation to the approval of transfers to be such as may be prescribed by any document specified in the regulations; and
    - (ii) for references in the regulations to any document so specified to operate as references to that document as revised or re-issued from time to time;
  - (e) provide for the making and keeping of records about ships and equipment, the issuing of certificates, and the furnishing of information;
  - (f) provide for the granting by the Minister or another person of exemptions from specified provisions of the regulations, on such terms (if any) as the Minister or that other person may specify, and for altering or cancelling exemptions;
  - (g) limit any provision of the regulations to specified cases or kinds of case.
- (3) Regulations under this section may provide—
- (a) that a contravention of the regulations shall be an offence punishable on summary conviction by a fine of \$50,000 and on conviction on indictment by a fine of \$100,000 or imprisonment for a term of two years or both;
  - (b) that any such contravention shall be an offence punishable only on summary conviction by a fine of \$50,000 or such lower amount as is prescribed by the regulations;
  - (c) that, in such cases as are prescribed by the regulations, such persons as are so prescribed shall each be guilty of an offence created by virtue of paragraph (a) or (b).
- (4) Regulations under this section may—
- (a) make different provision for different classes or descriptions of ships and for different circumstances; and
  - (b) make such transitional, incidental or supplementary provision as appears to the Minister to be necessary or expedient.

## CHAPTER II

### WASTE RECEPTION FACILITIES AT HARBOURS

#### General

- 125 (1) The Minister may by regulations make such provision as he considers appropriate in relation to—
- (a) the provision at harbours in Bermuda of facilities for the reception of waste from ships (in this Chapter referred to as “waste reception facilities”); and
  - (b) the use of waste reception facilities provided at such harbours.

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(2) In making the regulations, the Minister shall take into account the need to give effect to provisions—

- (a) which are contained in any international agreement mentioned in section 122(1) which has been ratified by the United Kingdom on behalf of Bermuda; and
- (b) which relate to waste reception facilities.

(3) Sections 126 to 129 make further provision with respect to the regulations that may be made under this section.

### Waste management plans

126 (1) The regulations may provide requiring a harbour authority for a harbour in Bermuda—

- (a) in such circumstances as may be prescribed, to prepare a plan with respect to the provision and use of waste reception facilities at the harbour; and
- (b) to submit the plan to the Minister for approval.

(2) The regulations may provide requiring a person—

- (a) if directed to do so by the Minister to prepare a plan with respect to the provision and use of waste reception facilities at any terminals operated by him within a harbour which is in Bermuda and is specified in the direction; and
- (b) to submit the plan to the Minister for approval.

(3) For the purposes of this Chapter—

- (a) “terminal” means any terminal, jetty, pier, floating structure or other works within a harbour at which ships can obtain shelter or ship and unship goods or passengers; and
- (b) a person operates a terminal if activities at the terminal are under his control.

(4) In the following provisions of this section, “waste management plan” means a plan of a description mentioned in subsection (1) or (2).

(5) The regulations may provide with respect to the form and content of waste management plans and may in particular require such plans to include—

- (a) proposals as to the information to be provided about waste reception facilities to those who are expected to use them;
- (b) proposals designed to ensure that adequate provision will be made for the disposal of waste deposited in waste reception facilities; and
- (c) proposals about how costs incurred in establishing and running waste reception facilities will be recovered.

(6) The regulations may require a person preparing a waste management plan to have regard to such matters as the Minister may prescribe or in a particular case direct.

(7) The regulations may provide as to the procedures to be followed in connection with waste management plans and may in particular—

- (a) require a person preparing a waste management plan to consult such persons as the Minister may prescribe or in a particular case direct;
- (b) enable the Minister to approve waste management plans with or without modification or to reject such plans;
- (c) enable the Minister, if he is satisfied that a person who is required to prepare a waste management plan is not taking any steps necessary in connection with the preparation of the plan, to prepare such a plan;
- (d) require harbour authorities and persons operating terminals to implement waste management plans once approved, or to take such steps as the Minister may in a particular case direct for the purpose of securing that approved plans are implemented;
- (e) enable waste management plans, in such circumstances as may be prescribed, to be withdrawn, altered or replaced.

#### Charges for and use of waste reception facilities

127 (1) The regulations may provide enabling a harbour authority, on levying port dues, to impose charges for the purpose of recovering the whole or a part of the costs of the provision by or on behalf of the authority of waste reception facilities at the harbour.

(2) The regulations may provide requiring the master of a ship—

- (a) if reasonably required to do so by a Departmental officer; or
- (b) in such other circumstances as may be prescribed;

to deposit any waste carried by the ship, or any prescribed description of such waste, in waste reception facilities provided at a harbour in Bermuda.

(3) The regulations may provide—

- (a) for the reference to arbitration of questions as to whether requirements made under regulations made in pursuance of subsection (2)(a) were reasonable; and
- (b) for compensation to be payable by the Minister where a requirement is found to have been unreasonable.

(4) The regulations may make—

- (a) provision prohibiting the imposition by persons providing waste reception facilities at harbours in Bermuda of charges for the depositing of waste, or any prescribed description of waste, in the facilities; or

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- (b) provision authorising the imposition by such persons of such charges subject to such restrictions as may be prescribed.
- (4)(b)—
  - (5) The regulations may provide for charges to be imposed by virtue of subsection (4)(b)—
    - (a) even though the charges are for the depositing of waste in compliance with a requirement imposed by virtue of subsection (2); and
    - (b) even though charges are also imposed by virtue of subsection (1).
  - (6) The regulations may require information about the charges to be published in a way that is designed to bring the charges to the notice of persons likely to be affected.
  - (7) The regulations may provide as to the recovery of any charges imposed by virtue of this section.

### Supplementary

- 128 (1) The regulations may provide that where a person contravenes a requirement under the regulations he is guilty of an offence and is liable—
- (a) on summary conviction, to a fine of \$10,000; and
  - (b) on conviction on indictment to a fine of \$50,000 or to imprisonment for a term of two years or to both.
- (2) The regulations may—
- (a) provide for exemptions from any provision of the regulations;
  - (b) provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time;
  - (c) make different provision for different cases;
  - (d) include such incidental, supplemental and transitional provision as appears to the Minister to be expedient.
- (3) Regulations under section 125 which contain any provision of a description mentioned in section 127 (whether or not they also contain other provision) shall be subject to affirmative resolution procedure.
- (4) A statutory instrument containing regulations under section 125 to which subsection (3) does not apply (including regulations which revoke provision of a description mentioned in section 127 but do not contain any other provision made by virtue of section 127, shall be subject to negative resolution procedure.

### Interpretation of Chapter II

129 In this Chapter—

“prescribe” means prescribe by regulations;

“waste reception facilities” has the meaning given by section 125(1).”

“port dues” has the meaning given in the Marine Board Act 1962.

CHAPTER III  
OIL POLLUTION

*General provisions for preventing pollution*

Discharge of oil from ships into certain Bermuda waters

130 (1) If any oil or mixture containing oil is discharged as mentioned in the following paragraphs into Bermuda national waters which are navigable by sea-going ships, then, subject to the following provisions of this Chapter, the following shall be guilty of an offence, that is to say—

- (a) if the discharge is from a ship, the owner or master of the ship, unless he proves that the discharge took place and was caused as mentioned in paragraph (b);
  - (b) if the discharge is from a ship but takes place in the course of a transfer of oil to or from another ship or a place on land and is caused by the act or omission of any person in charge of any apparatus in that other ship or that place, the owner or master of that other ship or, as the case may be, the occupier of that place.
- (2) Subsection (1) does not apply to any discharge which—
- (a) is made into the sea; and
  - (b) is of a kind or is made in circumstances for the time being prescribed by regulations made by the Minister.
- (3) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine of \$500,000;
  - (b) on conviction on indictment, to a fine of \$1,000,000.
- (4) In this section “sea” includes any estuary or arm of the sea.
- (5) In this section “place on land” includes anything resting on the bed or shore of the sea, or of any other waters included in Bermuda waters, and also includes anything afloat (other than a ship) if it is anchored or attached to the bed or shore of the sea or any such waters.
- (6) In this section “occupier”, in relation to any such thing as is mentioned in subsection (5), if it has no occupier, means the owner thereof.

Defences of owner or master charged with offence under section 130

131 (1) Where a person is charged with an offence under section 130 as the owner or master of a ship, it shall be a defence to prove that the oil or mixture was discharged for the purpose of—

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- (a) securing the safety of any ship;
- (b) preventing damage to any ship or cargo; or
- (c) saving life;

unless the court is satisfied that the discharge of the oil or mixture was not necessary for that purpose or was not a reasonable step to take in the circumstances.

(2) Where a person is charged with an offence under section 130 as the owner or master of a ship, it shall also be a defence to prove

- (a) that the oil or mixture escaped in consequence of damage to the ship, and that as soon as practicable after the damage occurred all reasonable steps were taken for preventing, or (if it could not be prevented) for stopping or reducing, the escape of the oil or mixture; or
- (b) that the oil or mixture escaped by reason of leakage, that neither the leakage nor any delay in discovering it was due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.

### Defences of occupier charged with offence under section 130

132 Where a person is charged, in respect of the escape of any oil or mixture containing oil, with an offence under section 130 as the occupier of a place on land, it shall be a defence to prove that neither the escape nor any delay in discovering it was due to any want of reasonable care and that as soon as practicable after it was discovered all reasonable steps were taken for stopping or reducing it.

### Restrictions on transfer of oil at night

133 (1) No oil shall be transferred between sunset and sunrise to or from a ship in any harbour in Bermuda unless the requisite notice has been given in accordance with this section or the transfer is for the purposes of a fire brigade.

(2) A general notice may be given to the harbour master of a harbour that transfers of oil between sunset and sunrise will be frequently carried out at a place in the harbour within such period, not ending later than twelve months after the date on which the notice is given, as is specified in the notice; and if such a notice is given it shall be the requisite notice for the purposes of this section as regards transfers of oil at that place within the period specified in the notice.

(3) Subject to subsection (2), the requisite notice for the purposes of this section shall be a notice given to the harbour master not less than three hours nor more than 96 hours before the transfer of oil begins.

(4) If any oil is transferred to or from a ship in contravention of this section, the master of the ship, and, if the oil is transferred from or to a place on land, the occupier of that place, shall be guilty of an offence and liable on summary conviction to a fine of \$2,000.

Duty to report discharge of oil into waters of harbours

134 (1) If any oil or mixture containing oil—

- (a) is discharged from a ship into the waters of a harbour in Bermuda; or
- (b) is found to be escaping or to have escaped from a ship into any such waters;

the owner or master of the ship shall forthwith report the occurrence to the harbour master.

(2) A report made under subsection (1) shall state whether the occurrence falls within subsection (1)(a) or (b).

(3) If a person fails to make a report as required by this section he shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

*Shipping casualties*

Shipping casualties

135 (1) The powers conferred by this section shall be exercisable where—

- (a) an accident has occurred to or in a ship; and
- (b) in the opinion of the Minister oil from the ship will or may cause significant pollution in Bermuda or in Bermuda waters; and
- (c) in the opinion of the Minister the use of the powers conferred by this section is urgently needed;

but those powers are subject to the limitations contained in subsections (6) and (7).

(2) For the purpose of preventing or reducing oil pollution, or the risk of oil pollution, the Minister may give directions as respects the ship or its cargo—

- (a) to the owner of the ship, or to any person in possession of the ship;
- (b) to the master of the ship;
- (c) to any pilot of the ship;
- (d) to any salvor in possession of the ship, or to any person who is the servant or agent of any salvor in possession of the ship, and who is in charge of the salvage operation; or
- (e) where the ship is in waters which are regulated or managed by a harbour authority—
  - (i) to the harbour master; or
  - (ii) to the harbour authority.

(3) Directions under subsection (2) may require the person to whom they are given to take, or refrain from taking, any action of any kind whatsoever, and without prejudice to the generality of the preceding provisions of this subsection the directions may require—

- (a) that the ship is to be, or is not to be, moved, or is to be moved to a specified place, or is to be removed from a specified area or locality; or
- (b) that the ship is not to be moved to a specified place or area, or over a specified route; or
- (c) that any oil or other cargo is to be, or is not to be, unloaded or discharged; or
- (d) that specified salvage measures are to be, or are not to be, taken.

(4) If in the opinion of the Minister the powers conferred by subsection (2) are, or have proved to be, inadequate for the purpose, the Minister may, for the purpose of preventing or reducing oil pollution, or the risk of oil pollution, take, as respects the ship or its cargo, any action of any kind whatsoever, and without prejudice to the generality of the preceding provisions of this subsection the Minister may—

- (a) take any such action as he has power to require to be taken by a direction under this section;
- (b) undertake operations for the sinking or destruction of the ship, or any part of it, of a kind which is not within the means of any person to whom he can give directions;
- (c) undertake operations which involve the taking over of control of the ship.

(5) The powers of the Minister under subsection (4) shall also be exercisable by such persons as may be authorised for the purpose by the Minister.

(6) Every person concerned with compliance with directions given, or with action taken, under this section shall use his best endeavours to avoid any risk to human life.

(7) The provisions of this section and of section 140 are without prejudice to any rights or powers of Her Majesty's Government in Bermuda exercisable apart from those sections whether under international law or otherwise.

(8) It is hereby declared that any action taken as respects a ship which is under arrest or as respects the cargo of such a ship, being action duly taken in pursuance of a direction given under this section, or being any action taken under subsection (4) or (5)—

- (a) does not constitute contempt of court; and
- (b) does not in any circumstances make the Admiralty Marshal liable in any civil proceedings.

(9) In this section, unless the context otherwise requires—

“accident” means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo;

“owner”, in relation to the ship to or in which an accident has occurred, includes its owner at the time of the accident;

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“pilot” means any person not belonging to a ship who has the conduct of the ship;  
and

“specified” in relation to a direction under this section, means specified by the  
direction.

### Right to recover in respect of unreasonable loss or damage

136 (1) If any action duly taken by a person in pursuance of a direction given to him  
under section 135, or any action taken under section 135(4) or (5)—

- (a) was not reasonably necessary to prevent or reduce oil pollution, or risk of  
oil pollution; or
- (b) was such that the good it did or was likely to do was disproportionately less  
than the expense incurred, or damage suffered, as a result of the action;

a person incurring expense or suffering damage as a result of, or by himself taking, the  
action shall be entitled to recover compensation from the Minister.

(2) In considering whether subsection (1) applies, account shall be taken of—

- (a) the extent and risk of oil pollution if the action had not been taken;
- (b) the likelihood of the action being effective; and
- (c) the extent of the damage which has been caused by the action.

(3) Any reference in this section to the taking of any action includes reference to a  
compliance with a direction not to take some specified action.

(4) The Admiralty jurisdiction of the Supreme Court shall include jurisdiction to  
hear and determine any claim arising under this section.

### Application of sections 135 and 136 to pollution by substances other than oil

137 (1) In sections 135 and 136 any reference to oil pollution includes a reference to  
pollution by any other substance which—

- (a) is prescribed by the Minister by order for the purposes of this section; or
- (b) although not so prescribed, is liable to create hazards to human health, to  
harm living resources and marine life, to damage amenities or to interfere  
with other legitimate uses of the sea.

(2) Accordingly, any reference in those sections to oil includes a reference to any  
substance falling within subsection (1)(a) or (b).

### Offences in relation to section 135

138 (1) If the person to whom a direction is duly given under section 135 contravenes,  
or fails to comply with, any requirement of the direction he shall be guilty of an offence.

(2) If a person intentionally obstructs any person who is—

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- (a) acting on behalf of the Minister in connection with the giving or service of a direction under section 135;
- (b) acting in compliance with a direction under that section; or
- (c) acting under section 135(4) or (5);

he shall be guilty of an offence.

(3) In proceedings for an offence under subsection (1), it shall be a defence for the accused to prove that he has used all due diligence to ensure compliance with the directions or that he had reasonable cause for believing that compliance with the direction would have involved a serious risk to human life.

- (4) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine of \$100,000.
  - (b) on conviction on indictment, to a fine of \$200,000.

### Service of directions under section 135

139 (1) If the Minister is satisfied that a company or other body is not one to whom section 62A or 147(2) of the Companies Act 1981 (service of notices) applies so as to authorise the service of a direction on that body under either of those sections, he may give a direction under section 135 of this Act—

- (a) to that body, as the owner of, or the person in possession of, a ship, by serving the direction on the master of the ship; or
- (b) to that body, as a salvor, by serving the direction on the person in charge of the salvage operations.

(2) For the purpose of giving or serving a direction under section 135 to or on any person on a ship, a person acting on behalf of the Minister shall have the right to go on board the ship.

### Application of sections 135 to 139 to certain foreign and other ships

140 (1) The Minister may by order provide that sections 135 to 139, together with any other provisions of this Chapter, shall apply to a ship—

- (a) which is not a Bermuda ship; and
- (b) which is for the time being outside Bermuda waters ;

in such cases and circumstances as may be specified in the order, and subject to such exceptions, adaptations and modifications, if any, as may be so specified.

(2) An order under subsection (1) may contain such transitional and other consequential provisions as appear to the Minister to be expedient.

(3) Except as provided by an order under subsection (1), no direction under section 135 shall apply to a ship which is not a Bermuda ship and which is for the time being

outside Bermuda waters, and no action shall be taken under section 135(4) or (5) as respects any such ship.

(4) No direction under section 135 shall apply to any ship of Her Majesty's navy or to any government ship and no action shall be taken under section 135(4) or (5) as respects any such ship.

*Enforcement*

Oil records

141 (1) The Minister may make regulations requiring oil record books to be carried in Bermuda ships and requiring the master of any such ship to record in the oil record book carried by it—

- (a) the carrying out, on board or in connection with the ship, of such of the following operations as may be prescribed relating to—
  - (i) the loading of oil cargo;
  - (ii) the transfer of oil cargo during a voyage;
  - (iii) the discharge of oil cargo;
  - (iv) the ballasting of oil tanks (whether cargo or bunker fuel tanks) and the discharge of ballast from, and cleaning of, such tanks;
  - (v) the separation of oil from water, or from other substances, in any mixture containing oil;
  - (vi) the disposal of any oil or water, or any other substance, arising from operations relating to any of the matters specified in (i) to (v); or
  - (vii) the disposal of any other oil residues;
- (b) any occasion on which oil or a mixture containing oil is discharged from the ship for the purpose of securing the safety of any ship, or of preventing damage to any ship or cargo, or of saving life;
- (c) any occasion on which oil or a mixture containing oil is found to be escaping, or to have escaped, from the ship in consequence of damage to the ship, or by reason of leakage.

(2) The Minister may make regulations requiring the keeping of records relating to the transfer of oil to and from ships while they are within Bermuda waters; and the requirements of any regulations made under this subsection shall be in addition to the requirements of any regulations made under subsection (1).

(3) Any records required to be kept by regulations made under subsection (2) shall, unless the ship is a barge, be kept by the master of the ship, and shall, if the ship is a barge, be kept, in so far as they relate to the transfer of oil to the barge, by the person supplying the oil and, in so far as they relate to the transfer of oil from the barge, by the person to whom the oil is delivered.

(4) Regulations under this section requiring the carrying of oil record books or the keeping of records may—

- (a) prescribe the form of the oil record books or records and the nature of the entries to be made in them;
- (b) require the person providing or keeping the books or records to retain them for a prescribed period;
- (c) require that person, at the end of the prescribed period, to transmit the books or records to a place or person determined by or under the regulations;
- (d) provide for the custody or disposal of the books or records after their transmission to such a place or person.

(5) Regulations under this section may—

- (a) be made with respect to all or with respect to any one or more of the classes of ship or other matters to which this section relates;
- (b) make different provision for different classes of ship or otherwise for different classes of case or different circumstances.

(6) If any ship fails to carry such an oil record book as it is required to carry under this section the owner or master shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

(7) If any person fails to comply with any requirements imposed on him by or under this section, he shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

(8) If any person makes an entry in any oil record book carried or record kept under this section which is to his knowledge false or misleading in any material particular, he shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$10,000, or imprisonment for a term of six months, or both;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term of two years, or both.

(9) In any proceedings under this Chapter—

- (a) any oil record book carried or record kept in pursuance of regulations made under this section shall be admissible as evidence, of the facts stated in it;
- (b) any copy of an entry in such an oil record book or record which is certified by the master of the ship in which the book is carried or by the person by whom the record is required to be kept to be a true copy of the entry shall be admissible as evidence, of the facts stated in the entry;
- (c) any document purporting to be an oil record book carried or record kept in pursuance of regulations made under this section, or purporting to be

such a certified copy as is mentioned in paragraph (b), shall, unless the contrary is proved, be presumed to be such a book, record or copy, as the case may be.

- (10) In this section “barge” includes a lighter and any similar vessel.

Prosecutions and enforcement of fines

- 142 (1) Proceedings for an offence under this Chapter may be brought only—
- (a) by or with the consent of the Director of Public Prosecutions; or
  - (b) if the offence is one to which subsection (2) applies, by the harbour authority; or
  - (c) unless the offence is one mentioned in subsection (2)(b) or (c), by the Minister or a person authorised by any general or special direction of the Minister.
- (2) This subsection applies to the following offences—
- (a) any offence under section 130 which is alleged to have been committed by the discharge of oil, or a mixture containing oil, into the waters of a harbour in Bermuda;
  - (b) any offence in relation to a harbour in Bermuda under section 133 or 134; and
  - (c) any offence under section 141 relating to the keeping of records of the transfer of oil within such a harbour.
- (3) Any document required or authorised, by virtue of any statutory provision, to be served on a foreign company for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under section 130 alleged to have been committed by the company as the owner of the ship shall be treated as duly served on that company if the document is served on the master of the ship.
- (4) Any person authorised to serve any document for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under this Chapter shall, for that purpose, have the right to go on board the ship in question.
- (5) In subsection (3) “foreign company” means a company or body which is not one to which any of sections 62A or 147(2) of the Companies Act 1981 applies so as to authorise the service of the document in question under any of those provisions.

Power to detain ships for section 130 offences

- 143 (1) Where a harbour master has reason to believe that the master or owner of a ship has committed an offence under section 130 by the discharge from the ship of oil, or a mixture containing oil, into the waters of the harbour, the harbour master may detain the ship.
- (2) Section 242, in its application to the detention of a ship under this section, shall have effect with the omission of subsections (1), (6) and (7) and as if—

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- (a) in subsection (2), the reference to competent authority were a reference to the harbour authority; and
- (b) in subsection (4), the persons in relation to whom that subsection applies were the harbour master or any person acting on his behalf.

(3) Where a harbour master, detains a ship other than a Bermuda ship under this section he shall immediately notify the Minister, who shall then inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.

(4) A harbour master who detains a ship under this section shall immediately release the ship—

- (a) if no proceedings for the offence are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for the offence, having been instituted within that period, are concluded without the master or owner being convicted;
- (c) if either—
  - (i) the sum of \$500,000 is paid to the harbour authority by way of security; or
  - (ii) security which, in the opinion of the harbour authority, is satisfactory and is for an amount not less than \$500,000 is given to the harbour authority, by or on behalf of the master or owner; or
- (d) where the master or owner is convicted of the offence, if any costs or expenses ordered to be paid by him, and any fine imposed on him, have been paid.

(5) The harbour authority shall repay any sum paid in pursuance of subsection (4)(c) or release any security so given—

- (a) if no proceedings for the offence are instituted within the period of seven days beginning with the day on which the sum is paid; or
- (b) if proceedings for the offence, having been instituted within that period, are concluded without the master or owner being convicted.

(6) Where a sum has been paid, or security has been given, by any person in pursuance of subsection (4)(c) and the master or owner is convicted of the offence, the sum so paid or the amount made available under the security shall be applied as follows—

- (a) first in payment of any costs or expenses ordered by the court to be paid by the master or owner; and
- (b) next in payment of any fine imposed by the court;

and any balance shall be repaid to the first-mentioned person.

(7) This section does not apply in relation to a ship of Her Majesty's Navy or any government ship.

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(8) In subsection (3) “Bermuda ship” has the same meaning as in section 93(4).

### Interpretation of section 143

144 (1) This section has effect for the interpretation of the references in section 143 to the institution of proceedings or their conclusion without the master or owner of a ship being convicted of an offence under section 130.

(2) For the purposes of section 143 in its application to Bermuda—

(a) proceedings for an offence under section 130 are instituted—

(i) when a magistrate issues a summons or warrant under section 3 of the Summary Jurisdiction Act 1930 in respect of the offence;

(ii) when a person is charged with the offence after being arrested without a warrant;

(iii) when a bill of indictment is preferred under section 485 of the Criminal Code Act 1907; and

(b) proceedings for the offence are concluded without the master or owner being convicted on the occurrence of one of the following events—

(i) the discontinuance of the proceedings;

(ii) the acquittal of the master or owner;

(iii) the quashing of the master’s or owner’s conviction of the offence;

(iv) the grant of Her Majesty’s pardon in respect of the masters or owner’s conviction of the offence.

### Enforcement and application of fines

145 (1) Where a fine imposed by a court in proceedings against the owner or master of a ship for an offence under this Chapter is not paid, or any costs or expenses ordered to be paid by him are not paid, at the time ordered by the court, the court shall, in addition to any other powers of enforcing payment, have power to direct the amount remaining unpaid to be levied by distress, of the ship and its equipment.

(2) Where a person is convicted of an offence under section 130, and the court imposes a fine in respect of the offence, then, if it appears to the court that any person has incurred, or will incur, expenses in removing any pollution, or making good any damage, which is attributable to the offence, the court may order the whole or part of the fine to be paid to that person for or towards defraying those expenses.

### Enforcement of Conventions relating to oil pollution

146 (1) The Minister may by order empower such persons as may be designated by or under the order to go on board any Convention ship while the ship is within a harbour in Bermuda, and to require production of any oil record book required to be carried in accordance with the Convention.

(2) An order under this section may, for the purposes of the order, and with any necessary modifications, apply any of the provisions of this Chapter relating to the production and inspection of oil record books and the taking of copies of entries therein, and to the admissibility in evidence of such oil record books and copies, including any penal provisions of this Chapter in so far as they relate to those matters, and may also apply section 220.

(3) The Minister, if satisfied that the government of any country has accepted, or denounced, the Convention, or that the Convention extends, or has ceased to extend, to any territory, may by order make a declaration to that effect.

(4) In this section—

“the Convention” means any Convention accepted by Her Majesty’s Government in Bermuda in so far as it relates to the prevention of pollution of the sea by oil; and

“Convention ship” means a ship registered in—

- (a) a country the government of which has been declared by an order under subsection (3) to have accepted the Convention, and has not been so declared to have denounced it; or
- (b) a territory to which it has been so declared that the Convention extends, not being a territory to which it has been so declared that the Convention has ceased to extend.

*Miscellaneous and supplementary*

Power of the Minister to grant exemptions

147 The Minister may exempt from any of the provisions of this Chapter or of any regulations made thereunder, either absolutely or subject to such conditions as he thinks fit—

- (a) any ship or classes of ships;
- (b) any discharge of, or of a mixture containing, oil.

Application to Government ships

148 (1) This Chapter does not apply to ships of Her Majesty’s navy, nor to Government ships in the service of the Secretary of State while employed for the purposes of Her Majesty’s navy.

(2) Subject to subsection (1) and to section 140(4) and section 143(7)—

- (a) provisions of this Chapter which are expressed to apply only to Bermuda ships apply to Government ships registered in Bermuda and also to Government ships not so registered but held for the purposes of Her Majesty’s Government in Bermuda.

- (b) provisions of this Chapter which are expressed to apply to ships generally apply to Government ships.

Interpretation

149 (1) In this Chapter—

“harbour authority” means a person or body of persons empowered by an enactment to make charges in respect of ships entering a harbour in Bermuda or using facilities therein;

“harbour in Bermuda” means a port, estuary, haven, dock or other place the waters of which are within Bermuda waters and in respect of entry into or the use of which by ships a person or body of persons is empowered by an enactment to make any charges other than charges in respect of navigational aids or pilotage;

“harbour master” includes a dock master or pier master, and any person specially appointed by a harbour authority for the purpose of enforcing the provisions of this Chapter in relation to the harbour;

“oil” means oil of any description and includes spirit produced from oil of any description, and also includes coal tar;

“oil residues” means any waste consisting of, or arising from, oil or a mixture containing oil;

“place on land” has the meaning given in section 130(5);

“transfer”, in relation to oil, means transfer in bulk.

(2) For the purposes of the definition of “harbour in Bermuda” “charges in respect of navigational aids” means general light dues, local light dues and any other charges payable in respect of lighthouses, buoys or beacons.

(3) Any reference in any provision of this Chapter to a mixture containing oil shall be construed as a reference to any mixture of oil (or, as the case may be, of oil of a description referred to in that provision) with water or with any other substance.

(4) Any reference in this Chapter, other than in section 134, to the discharge of oil or a mixture containing oil, or to its being discharged, from a ship, place or thing, except where the reference is to its being discharged for a specific purpose, includes a reference to the escape of oil or mixture, or (as the case may be) to its escaping, from that ship, place or thing.

(5) For the purposes of any provision of this Chapter relating to the discharge of oil or a mixture containing oil from a ship, any floating craft (other than a ship) which is attached to a ship shall be treated as part of the ship.

(6) Any power conferred by section 220 in its application to this Chapter to test any equipment on board a ship shall be construed as including a power to require persons on board the ship to carry out such work as may be requisite for the purpose of testing the equipment; and any provision of that section as to submitting equipment for testing shall be construed accordingly.

- (7) Nothing in this Chapter shall—
- (a) affect any restriction imposed by or under any other enactment, whether contained in a public general Act or a local or private Act; or
  - (b) derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Chapter.

CHAPTER IV  
LIABILITY FOR OIL POLLUTION

*Preliminary*

Meaning of “Bunkers Convention” and “Liability Convention” and related expressions

150 (1) In this chapter—

“Bunkers Convention” means the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001;

“Bunkers Convention Country” means a country in respect of which the Bunkers Convention is in force;

“Bunkers Convention State” means a State which is a party to the Bunkers Convention;

“the Liability Convention” means the International Convention on Civil Liability for Oil Pollution Damage 1992;

“Liability Convention country” means a country in respect of which the Liability Convention is in force; and

“Liability Convention State” means a State which is a party to the Liability Convention.

(2) If the Minister by Order declares that any State specified in the Order is a party to the Bunkers Convention or the Liability Convention in respect of any country so specified in the Order, the Order shall while in force, be conclusive evidence that, that State is a party to that Convention, as the case may be, in respect of that country.

*[Section 150 amended by 2008:41 s.2 effective 10 December 2008]*

*Liability*

Liability for oil pollution in case of tankers

151 (1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship to which this section applies, then (except as otherwise provided by this Chapter) the registered owner of the ship shall be liable—

- (a) for any damage caused outside the ship in the territory of Bermuda by contamination resulting from the discharge or escape; and

- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of Bermuda by contamination resulting from the discharge or escape; and
- (c) for any damage caused in the territory of Bermuda by any measures so taken.

(2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship to which this section applies by the contamination that might result if there were a discharge or escape of oil from the ship, then (except as otherwise provided by this Chapter) the registered owner of the ship shall be liable—

- (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of Bermuda; and
- (b) for any damage caused outside the ship in the territory of Bermuda by any measures so taken.

(2A) In this Chapter, a threat is a threat referred to in subsection (2) as a relevant threat of contamination.

(3) Subject to subsection (4), this section applies to any ship constructed or adapted for carrying oil in bulk as cargo.

(4) Where any ship so constructed or adapted is capable of carrying other cargoes besides oil, this section shall apply to any such ship—

- (a) while it is carrying oil in bulk as cargo; and
- (b) unless it is proved that no residues from the carriage of any such oil remain in the ship, while it is on any voyage following the carriage of any such oil;

but not otherwise.

(5) Where a person incurs a liability under subsection (1) or (2) he shall also be liable for any damage or cost for which he would be liable under that subsection if the references in it to the territory of Bermuda included the territory of any other Liability Convention country.

(6) Where—

- (a) as a result of any occurrence, a liability is incurred under this section by the registered owner of each of two or more ships; but
- (b) the damage or cost for which each of the registered owners would be liable cannot reasonably be separated from that for which the other or others would be liable;

each of the registered owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(7) *[Repealed]*

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(8) *[Repealed]*

*[Section 151 amended by 2008:41 s.3 effective 10 December 2008]*

### Liability for pollution by bunker oil

151A (1) Subject to subsection (3), where, as a result of any occurrence, any bunker oil is discharged or escapes from a ship then (except as otherwise provided by this Chapter) the owner of the ship is liable—

- (a) for any damage caused outside the ship in Bermuda by contamination resulting from the discharge or escape; and
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in Bermuda by contamination resulting from the discharge or escape; and
- (c) for any damage caused in Bermuda by any measures so taken.

(2) Subject to subsection (3), where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship by the contamination that might result if there were a discharge or escape of bunker oil from the ship then (except as otherwise provided by this Chapter) the owner of the ship shall be liable—

- (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in Bermuda; and
- (b) for any damage caused outside the ship in Bermuda by any measures so taken.

(3) There shall be no liability under this section in relation to—

- (a) a discharge or escape of bunker oil from a ship to which section 151 applies; or
- (b) a threat mentioned in subsection (2) arising in relation to a potential discharge or escape of bunker oil from such a ship, where that bunker oil is also persistent hydrocarbon mineral oil.

(4) In the subsequent provisions of this Chapter—

- (a) a discharge or escape of bunker oil from a ship, other than a discharge or escape of oil excluded by subsection (3), is referred to as a discharge or escape of bunker oil falling within subsection (1); and
- (b) a threat mentioned in subsection (2), other than one excluded by subsection (3), is referred to as a relevant threat of contamination falling within subsection (2).

(5) Where a person incurs a liability under subsection (1) or (2) he shall also be liable for any damage or cost for which he would be liable under that subsection if the references in it to the territory of Bermuda included the territory of any other Bunkers Convention country.

(6) Where—

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- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more ships; and
- (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(7) In this Chapter (except in section 168(1)) “owner”, except when used in the term “registered owner”, means the registered owner, bareboat charterer, manager or operator of the ship.

*[Section 151A inserted by 2008:41 s.4 effective 10 December 2008]*

### Liability for oil pollution in other cases

152 (1) Subject to subsection (2A), as a result of any occurrence, any oil is discharged or escapes from a ship, then (except as otherwise provided by this Chapter) the registered owner of the ship shall be liable—

- (a) for any damage caused outside the ship in the territory of Bermuda by contamination resulting from the discharge or escape; and
- (b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of Bermuda by contamination resulting from the discharge or escape; and
- (c) for any damage so caused in the territory of Bermuda by any measures so taken.

(2) Subject to subsection (2A), as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship by the contamination which might result if there were a discharge or escape of oil from the ship, then (except as otherwise provided by this Chapter) the registered owner of the ship shall be liable—

- (a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of Bermuda; and
- (b) for any damage caused outside the ship in the territory of Bermuda by any measures so taken.

(2A) No liability shall be incurred under this section by reason of—

- (a) a discharge or escape of oil from a ship to which section 151 applies or a relevant threat of contamination falling within subsection (2) of that section; or
- (b) a discharge or escape of bunker oil falling within section 151A(1) or a relevant threat of contamination falling within section 151A(2).

(2B) In the subsequent provisions of this Chapter—

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- (a) a discharge or escape of oil from a ship, other than one excluded by subsection (2A), is referred to as a discharge or escape of oil falling within subsection (1); and
  - (b) a threat mentioned in subsection (2), other than one excluded by subsection (2A), is referred to as a relevant threat of contamination falling within subsection (2).
- (3) Where—
- (a) as a result of any occurrence, a liability is incurred under this section by the registered owner of each of two or more ships; but
  - (b) the damage or cost for which each of the registered owners would be liable cannot reasonably be separated from that for which the other or others would be liable;

each of the registered owners shall be liable, jointly with the other or others, for the whole of the damage or cost for which the registered owners together would be liable under this section.

(4) The Law Reform (Liability in Tort) Act 1951 shall apply in relation to any damage or cost for which a person is liable under this section, but which is not due to his fault, as if it were due to his fault.

(5) In this section, except for subsection (2A), “ship” includes a vessel which is not seagoing.

*[Section 152 amended by 2008:41 s.5 effective 10 December 2008]*

### Exceptions from liability under sections 151, 151A and 152

153 (1) No liability shall be incurred by a person (“the defendant”) under section 151, 151A or 152 by reason of a discharge or escape of oil or bunker oil from a ship, or of a relevant threat of contamination, if the defendant proves that subsection (2) applies.

(2) This subsection applies if the discharge or escape or the relevant threat of contamination (as the case may be)—

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;
- (b) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the defendant, with intent to do damage; or
- (c) was due wholly to the negligence or wrongful act of a government in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

*[Section 153 repealed and substituted by 2008:41 s.6 effective 10 December 2008]*

### Restriction of liability for pollution from oil or bunker oil

154 (1) Where, as a result of any occurrence—

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- (a) there is a discharge or escape of oil from a ship to which section 151 applies or there arises a relevant threat of contamination falling within subsection (2) of that section; or
- (b) there is a discharge or escape of oil falling within section 152(1) or there arises a relevant threat of contamination falling within section 152(2),

then, whether or not the registered owner of the ship in question incurs a liability under section 151 or 152—

- (i) he shall not be liable otherwise than under that section for any such damage or cost as is mentioned in it; and
- (ii) no person to whom this paragraph applies shall be liable for any such damage or cost unless it resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

(2) Subsection (1)(ii) applies to—

- (a) any servant or agent of the registered owner of the ship;
- (b) any person not falling within paragraph (a) but employed or engaged in any capacity on board the ship or to perform any service for the ship;
- (c) any charterer of the ship (however described and including a demise charterer), and any manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the registered owner of the ship or on the instructions of a competent public authority;
- (e) any person taking any such measures as are mentioned in subsection (1) (b) or (2)(a) of section 151 or 152;
- (f) any servant or agent of a person falling within paragraph (c), (d) or (e).

(2A) Where, as a result of any occurrence—

- (a) there is a discharge or escape of bunker oil falling within section 151A(1); or
- (b) there arises a relevant threat of contamination falling within section 151A(2),

then, whether or not the registered owner of the ship in question incurs any liability under section 151A—

- (i) he shall not be liable otherwise than under that section for any such damage or cost as is mentioned in it; and
- (ii) no person to whom this paragraph applies shall be liable for any such damage or cost unless it resulted from anything done or omitted to be done by him either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

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(2B) Subsection (2A)(ii) applies to—

- (a) any servant or agent of the registered owner;
- (b) any person not falling within paragraph (a) but engaged in any capacity on board the ship or to perform any service for the ship;
- (c) any person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority;
- (d) any person taking any such measures as are mentioned in section 151A(1)(b) or (2)(a);
- (e) any servant or agent of a person falling within paragraph (c) or (d).

(3) The liability of a person under section 151, 151A or 152 for any impairment of the environment shall be taken to be a liability only in respect of—

- (a) any resulting loss of profits; and
- (b) the cost of any reasonable measures of reinstatement actually taken or to be taken.

*[Section 154 amended by 2008:41 s.7 effective 10 December 2008]*

Liability under section 151, 151A or 152: supplementary provisions

154A (1) For the purposes of this Chapter—

- (a) references to a discharge or escape of oil or bunker oil from a ship are references to such a discharge or escape wherever it may occur;
- (b) references to a discharge or escape of oil from a ship include a discharge or escape of oil carried in the bunkers of the ship;
- (c) where more than one discharge or escape of oil or bunker oil results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one, but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape; and
- (d) where a relevant threat of contamination results from a series of occurrences having the same origin, they shall be treated as a single occurrence.

(2) Subsections (3), (4), (5) and (6) shall apply in relation to any damage or cost for which a person is liable under section 151, 151A or 152, but which is not due to his fault, as if it were due to his fault.

(3) Where any person suffers damage as a result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

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(4) Subsection (3) shall not operate to defeat any defence arising under a contract; and where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant under subsection (3) shall not exceed the maximum limit so applicable.

(5) Where damages are recoverable by any person under subsection (3) subject to such reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(6) Where, in any case to which subsection (3) applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading the Limitation Act 1984, or any other enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contributions from that other person or representative by virtue of the said subsection.

(7) Where any case to which subsection (3) applies is tried with a jury, the jury shall determine the total damages which would have been recoverable if the claimant had not been at fault and the extent to which those damages are to be reduced.

*[Section 154A inserted by 2008:14 s.8 effective 10 December 2008]*

### *Limitation of liability*

#### Limitation of liability under section 151

155 (1) Where, as a result of any occurrence, the registered owner of a ship incurs liability under section 151 by reason of a discharge or escape or by reason of any relevant threat of contamination falling within subsection (2) of that section, then subject to subsection (3)—

- (a) he may limit that liability in accordance with the provisions of this Chapter; and
- (b) if he does so, his liability (being the aggregate of his liabilities under section 151 resulting from the occurrence) shall not exceed the relevant amount.

(2) In subsection (1), “the relevant amount” means—

- (a) in relation to a ship not exceeding 5,000 tons, 4.51 million special drawing rights;
- (b) in relation to a ship exceeding 5,000 tons, 4.51 million special drawing rights together with an additional 631 special drawing rights for each ton of its tonnage in excess of 5,000 tons up to a maximum amount of 89.77 million special drawing rights;

but the Minister may by order make such amendments of paragraphs (a) and (b) as appear to him to be appropriate for the purpose of giving effect to the entry into force of any amendment of the limits of liability laid down in paragraph I of Article V of the Liability Convention.

(3) Subsection (1) shall not apply in a case where it is proved that the discharge or escape, or (as the case may be) the relevant threat of contamination, resulted from

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anything done or omitted to be done by the registered owner either with intent to cause any such damage or cost as is mentioned in section 151 or recklessly and in the knowledge that any such damage or cost would probably result.

(4) For the purposes of this section a ship's tonnage shall be its gross tonnage calculated in such manner as may be prescribed by an order made by the Minister.

(5) Any such order shall, so far as it appears to the Minister to be practicable, give effect to the regulations in Annex 1 of the International Convention on Tonnage Measurement of Ships 1969.

*[Section 155 subsection (2) amended by 2004:16 s.5 effective 18 June 2004; section 155 amended by 2008:41 s.9 effective 10 December 2008]*

### Limitation actions

156 (1) Where the registered owner of a ship has or is alleged to have incurred a liability under section 151 he may apply to the court for the limitation of that liability to an amount determined in accordance with section 155.

(2) If on such an application the court finds that the applicant has incurred such a liability but has not found that he is entitled to limit it, the court shall, after determining the limit which would apply to the applicant's liability if he were entitled to limit it and directing payment into court of the amount of that limit—

- (a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings; and
- (b) direct the distribution of the amount paid into court (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims, subject to the following provisions of this section.

(3) Where—

- (a) a distribution is made under subsection (2)(b) without the court having found that the applicant is entitled to limit his liability; and
- (b) the court subsequently finds that the applicant is not so entitled;

the making of the distribution is not to be regarded as affecting the applicant's liability in excess of the amount distributed.

(4) A payment into court of the amount of a limit determined in pursuance of this section shall be made in United States dollars; and—

- (a) for the purpose of converting such an amount from special drawing rights into United States dollars one special drawing right shall be treated as equal to such a sum in United States dollars the International Monetary Fund have fixed as being the equivalent of one special drawing right for—
  - (i) the day on which the determination is made; or

- (ii) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed;
  - (b) a certificate given by or on behalf of the Minister responsible for finance stating—
    - (i) that a particular sum in United States dollars has been so fixed for the day on which the determination was made; or
    - (ii) that no sum has been so fixed for that day and that a particular sum in United States dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the determination was made;shall be conclusive evidence of those matters for the purposes of this Chapter;
  - (c) a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.
- (5) No claim shall be admitted in proceedings under this section unless it is made within such time as the court may direct or such further time as the court may allow.
- (6) Where any sum has been paid in or towards satisfaction of any claim in respect of the damage or cost to which the liability extends—
- (a) by the registered owner or the persons referred to in section 163 as “the insurer” (in relation to any insurance or other security provided as mentioned in subsection (1) of that section); or
  - (b) by a person who has or is alleged to have incurred a liability, otherwise than under section 151, for the damage or cost and who is entitled to limit his liability in connection with the ship by virtue of section 181 or 182;
- the person who paid the sum shall, to the extent of that sum, be in the same position with respect to any distribution made in proceedings under this section as the person to whom it was paid would have been.
- (7) Where the person who incurred the liability has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce damage to which the liability extends or might have extended he shall be in the same position with respect to any distribution made in proceedings under this section as if he had a claim in respect of the liability equal to the cost of the sacrifice or other measures.
- (8) The court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court of any country outside Bermuda.

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(9) No lien or other right in respect of any ship or other property shall affect the proportions in which any amount is distributed in accordance with subsection (2)(b).

*[Section 156 amended by 2008:41 s.10 effective 10 December 2008]*

### Restriction on enforcement after establishment of limitation fund

157 (1) Where the court has found that a person who has incurred a liability under section 151 is entitled to limit that liability to any amount and he has paid into court a sum not less than that amount—

- (a) the court shall order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest; and
- (b) no judgment or decree for any such claim shall be enforced, except so far as it is for costs;

if the sum paid into court, or such part thereof as corresponds to the claim, will be actually available to the claimant or would have been available to him if the proper steps in the proceedings under section 156 had been taken.

### Concurrent liabilities of owners and others

158 Where, as a result of any discharge or escape of oil from a ship or as a result of any relevant threat of contamination, the registered owner of the ship incurs a liability under section 151 and any other person incurs a liability, otherwise than under that section, for any such damage or cost as is mentioned in subsection (1) or (2) of that section then, if—

- (a) the registered owner has been found, in proceedings under section 156 to be entitled to limit his liability to any amount and has paid into court a sum not less than that amount; and
- (b) the other person is entitled to limit his liability in connection with the ship by virtue of section 181 or 182;

no proceedings shall be taken against the other person in respect of his liability, and if any such proceedings were commenced before the registered owner paid the sum into court, no further steps shall be taken in the proceedings except in relation to costs.

*[Section 158 amended by 2008:41 s.11 effective 10 December 2008]*

### Establishment of limitation fund outside Bermuda

159 Where the events resulting in the liability of any person under section 151 also resulted in a corresponding liability under the law of another Liability Convention country sections 157 and 158 shall apply as if the references to sections 151 and 156 included references to the corresponding provisions of that law and the references to sums paid into court included references to any sums secured under those provisions in respect of the liability.

*Limitation period for claims under this Chapter*

Extinguishment of claims

160 No action to enforce a claim in respect of a liability incurred under section 151, 151A or 152 shall be entertained by any court in Bermuda unless the action is commenced not later than three years after the claim arose nor later than six years after the occurrence or first of the occurrences resulting in the discharge or escape, or (as the case may be) in the relevant threat of contamination, by reason of which the liability was incurred.

*[Section 160 amended and title inserted before headnote by 2008:41 s.12 effective 10 December 2008]*

*Compulsory insurance*

Compulsory insurance against liability for pollution

161 (1) Subject to the provisions of this Chapter relating to Government ships, subsection (2) shall apply to any ship carrying in bulk a cargo of more than 2,000 tons of oil of a description specified in regulations made by the Minister.

(2) The ship shall not enter or leave a port in Bermuda or arrive at or leave a terminal in the territorial sea of Bermuda nor, if the ship is a Bermuda ship, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force a certificate complying with the provisions of subsection (3) and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention (cover for owner's liability).

(3) The certificate must be—

- (a) if the ship is a Bermuda ship, a certificate issued by the Minister;
- (b) if the ship is registered in a Liability Convention country other than Bermuda, a certificate issued by or under the authority of the government of the other Liability Convention country; and
- (c) if the ship is registered in a country which is not a Liability Convention country, a certificate issued by the Minister or by or under the authority of the government of any Liability Convention country other than Bermuda.

(4) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to any officer of customs or of the Minister and, if the ship is a Bermuda ship, to any proper officer.

(5) If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of subsection (2), the master or registered owner shall be liable—

- (a) on summary conviction to a fine of \$100,000; or
- (b) on conviction on indictment to a fine of \$200,000.

(6) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (4), the master shall be guilty of an offence and shall be liable on summary conviction to a fine of \$5000.

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(7) If a ship attempts to leave a port in Bermuda in contravention of this section the ship may be detained.

*[Section 161 subsection (5) amended by 2008:41 s.13 effective 10 December 2008]*

Compulsory insurance against liability for pollution from bunker oil

161A (1) Subject to the provisions of this Chapter relating to government ships, subsection (2) shall apply to any ship having a gross tonnage greater than 1,000 tons calculated in the manner prescribed by an Order made by the Minister under paragraph 5(2) of Part II of Schedule 6.

(2) The ship shall not enter or leave a port in Bermuda or arrive at or leave a terminal in the territorial sea of Bermuda nor, if the ship is a Bermuda ship, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force—

- (a) a contract of insurance or other security in respect of the ship satisfying the requirements of Article 7 of the Bunkers Convention; and
- (b) a certificate complying with subsection (3) showing that there is in force in respect of the ship a contract of insurance or other security satisfying those requirements.

(3) The certificate must be—

- (a) if the ship is a Bermuda ship, a certificate issued by the Minister;
- (b) if the ship is registered in a Bunkers Convention country other than Bermuda, a certificate issued by or under the authority of the government of the other Bunkers Convention country; and
- (c) if the ship is registered in a country which is not a Bunkers Convention country, a certificate issued by the Minister or by or under the authority of the government of any Bunkers Convention country other than Bermuda.

(4) Any certificate required by this section to be in force in respect of a ship shall be carried on the ship and shall, on demand, be produced by the master to any Customs officer, or the Minister and if the ship is a Bermuda ship, to a proper officer.

(5) If a ship enters or leaves, or attempts to enter or leave a port or arrives at or leaves, or attempts to arrive or leave a terminal, in contravention of subsection (2) by reason of there being no certificate in force as mentioned in that subsection, the master or registered owner is liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding \$10,000.

(6) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (4), the master is liable on summary conviction to a fine not exceeding \$ 5,000.

(7) If a ship attempts to leave a port in Bermuda in contravention of subsection (2), the ship may be detained.

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(8) Section 147(2) of the Companies Act 1981 which deals with service of process on an overseas company shall not apply to this section and any document required or authorised, by virtue of any statutory provision, to be served on an overseas company for the purposes of the institution of or in connection with proceedings for an offence under subsection (5) against the company as registered owner of the ship shall be treated as duly served on the company if the document is served on the master of the ship.

(9) Any person authorised to serve any document for the purposes of the institution of (or otherwise in connection with) the institution of proceedings for an offence under this section shall, for that purpose, have the right to go on board the ship in question.

(9A) In this section “overseas company” has the same meaning as “overseas company” under section 2(1) of the Companies Act 1981.

(10) In the case of a ship of which, at any relevant time, the tonnage has not been and cannot be ascertained in the manner set out in subsection (1), the best available evidence shall be used in calculating the tonnage of the ship in accordance with any Order under paragraph 5(2) of Part II of Schedule 6.

*[Section 161A inserted by 2008:41 s.14 effective 10 December 2008; subsection (8) repealed and substituted by 2009:24 s.2(a) effective 19 June 2009; subsection (9) inserted by 2009:24 s.2(b) effective 19 June 2009]*

### Issue of certificate by Minister

162 (1) Subject to subsection (2) if the Minister is satisfied, on the application for such a certificate as is mentioned in section 161(2) in respect of a Bermuda ship or a ship registered in any country which is not a Liability Convention country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention, the Minister shall issue such a certificate to the registered owner.

(1A) Subject to subsection (2), if the Minister is satisfied, on the application for such a certificate as is mentioned in section 161A(2) in respect of a Bermuda ship or a ship registered in any country which is not a Bunkers Convention country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article 7 of the Bunkers Convention, the Minister shall issue such a certificate to the registered owner.

(2) The Minister may refuse the certificate if he is of the opinion that there is a doubt whether—

- (a) the person providing the insurance or other security will be able to meet his obligations thereunder; or
- (b) the insurance or other security will cover the registered owner’s liability under section 151, or the owner’s liability under section 151A, as the case may be.

(3) The Minister may make regulations providing for the cancellation and delivery up of a certificate under this section in such circumstances as may be prescribed by the regulations.

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(4) If a person required by regulations under subsection (3) to deliver up a certificate fails to do so he shall be guilty of an offence and shall be liable on summary conviction to a fine of \$5000.

(5) The Minister shall send a copy of any certificate issued by him under this section in respect of a Bermuda ship to the Registrar, and the Registrar shall make the copy available for public inspection.

*[Section 162 amended by 2008:41 s.15 effective 10 December 2008; subsection (1A) amended by 2009:24 s.3 effective 19 June 2009]*

### Rights of third parties against insurers

163 (1) Where it is alleged that the registered owner of a ship has incurred a liability under section 151 as a result of any discharge or escape of oil occurring, or as a result of any relevant threat of contamination arising, while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 161(2) related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security.

(1A) Where it is alleged that the owner of a ship has incurred a liability under section 151A as a result of any discharge or escape of bunker oil occurring, or as a result of any relevant threat of contamination arising, while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 161A(2) related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security.

(1B) In the following provisions of this section, "the insurer" means the person who provided the insurance or other security referred to in subsection (1) or subsection (1A), as the case may be.

(2) In any proceedings brought against the insurer by virtue of this section in respect of liability under section 151 it shall be a defence (in addition to any defence affecting the registered owner's liability) to prove that the discharge or escape, or (as the case may be) the threat of contamination, was due to the willful misconduct of the registered owner himself.

(3) The insurer may limit his liability in respect of claims in respect of liability under section 151 which are made against him by virtue of this section in like manner and to the same extent as the registered owner may limit his liability under section 155 but the insurer may do so whether or not the discharge or escape, or (as the case may be) the threat of contamination, resulted from anything done or omitted to be done by the registered owner as mentioned in section 155(3).

(4) Where the registered owner and the insurer each apply to the court for the limitation of his liability (in relation to liability under section 151) any sum paid into court in pursuance of either application shall be treated as paid also in pursuance of the other.

(4A) In any proceedings brought against the insurer by virtue of this section in respect of liability under section 151A it shall be a defence (in addition to any defence affecting the owner's liability) to prove that the discharge or escape, or (as the case may be) the threat of contamination, was due to the wilful misconduct of the owner himself.

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(4B) The insurer may limit his liability in respect of claims in respect of liability under section 151A which are made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability by virtue of section 181; but the insurer may do so whether or not the discharge or escape, or (as the case may be) the threat of contamination, resulted from any act or omission mentioned in Article 4 of the Convention set out in Part I of Schedule 6.

(4C) Where the owner and the insurer each apply to the court for the limitation of his liability (in relation to liability under section 151A) any sum paid into court in pursuance of either application shall be treated as paid also in pursuance of the other.

(5) The Third Parties (Rights against Insurers) Act 1963 shall not apply in relation to any contract of insurance to which such a certificate as is mentioned in section 161 or 161A relates.

*[Section 163 amended by 2008:41 s.16 effective 10 December 2008; subsection (3) amended by 2009:24 s.4 effective 19 June 2009]*

### *Supplementary*

#### Jurisdiction of Bermuda courts and registration of foreign judgments

164 (1) Paragraph 1(l)(d) of Schedule 1 to the Administration of Justice Act 1956 (Admiralty jurisdiction in claims for damage done by ships) as applied in Bermuda by the Admiralty Jurisdiction (Bermuda) Order 1974 shall be construed as extending to any claim in respect of a liability incurred under this Chapter.

(2) Where—

- (a) there is a discharge or escape of oil from a ship to which section 151 applies, or a discharge or escape of oil falling within section 152(1) which does not result in any damage caused by contamination in Bermuda and no measures are reasonably taken to prevent or minimise such damage in Bermuda; or
- (b) any relevant threat of contamination falling within section 151(2) or 152(2) arises but no measures are reasonably taken to prevent or minimise such damage in Bermuda;

no court in Bermuda shall entertain any action (whether in rem or in personam) to enforce a claim arising from any relevant damage or cost

- (i) against the registered owner of the ship; or
- (ii) against any person to whom section 154(1)(ii) applies, unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.”;

(3) In subsection (2), “relevant damage or cost” means—

- (a) in relation to any such discharge or escape as is mentioned in paragraph (a) of that subsection, any damage caused in the territory of another Liability Convention country by contamination resulting from the

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discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country;

- (b) in relation to any such threat of contamination as is mentioned in paragraph (b) of that subsection, any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country; or
- (c) any damage caused by any measures taken as mentioned in paragraph (a) or (b);

and section 154(2)(e) shall have effect for the purposes of subsection (2)(ii) above as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b).

(3A) Where—

- (a) there is a discharge or escape of bunker oil falling within section 151A(1) which does not result in any damage caused by contamination in Bermuda and no measures are reasonably taken to prevent or minimise such damage in Bermuda; or
- (b) any relevant threat of contamination falling within section 151A(2) arises but no measures are reasonably taken to prevent or minimise such damage in Bermuda,

no court in Bermuda shall entertain any action (whether in rem or in personam) to enforce a claim arising from any relevant damage or cost—

- (i) against the owner of the ship; or
- (ii) against any person to whom section 154(2A)(ii) applies, unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.

(3B) In subsection (3A), “relevant damage or cost” means—

- (a) in relation to any such discharge or escape as is mentioned in paragraph (a) of that subsection, any damage caused in the territory of another Bunkers Convention country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Bunkers Convention country;
- (b) in relation to any such threat of contamination as is mentioned in paragraph (b) of that subsection, any cost incurred in taking measures to prevent or minimise such damage in the territory of another Bunkers Convention country; or
- (c) any damage caused by any measures taken as mentioned in paragraph (a) or (b) above;

and section 154(2B)(d) shall have effect for the purpose of subsection (3A)(ii) as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b).

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(4) The Judgments (Reciprocal Enforcement) Act 1958 shall apply in respect of the enforcement of any judgment of a court in the UK or a court in a jurisdiction specified in an Order made by the Governor under the Judgments (Reciprocal Enforcement) Act 1958 as a court to which that Act shall apply in respect of any liability incurred under section 151 or 151A or any provision corresponding to section 151 or 151A.

(5) A judgment given by a court in a Liability Convention country or a Bunkers Convention country other than the UK or a court in a jurisdiction specified in an Order made by the Governor under the Judgments (Reciprocal Enforcement) Act 1958, in respect of any liability incurred by a Liability Convention country or a Bunkers Convention country under section 151 or 151A or any provision corresponding to section 151 or 151A which is enforceable in the State of origin and is no longer subject to ordinary forms of review, shall be recognised in Bermuda unless—

- (a) the judgment was obtained by fraud; or
- (b) the defendant was not given reasonable notice and a fair opportunity to present his or her case.

(6) A judgment recognised by Bermuda under subsection (5), shall be enforceable in Bermuda as soon as the formalities required in that State (which shall not permit the merits of the case to be re-opened) have been complied with.

*[Section 164 amended by 2008:41 s.17 effective 10 December 2008; subsections (4) and (5) repealed and substituted, and subsection (6) added by 2009:24 s.5 effective 19 June 2009]*

### Government ships

165 (1) Nothing in the preceding provisions of this Chapter applies in relation to any warship or any ship for the time being used by the government of any State for other than commercial purposes.

(2) In relation to a ship owned by a State and for the time being used for commercial purposes—

- (a) it shall be sufficient compliance with section 161(2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article I of the Liability Convention will be met up to the limit prescribed by Article V of that Convention; and
- (b) it shall be sufficient compliance with section 161A(2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article 1 of the Bunkers Convention will be met up to the limits set out in Chapter II of the Convention in Part I of Schedule 6.

(3) Every Liability Convention State shall, for the purposes of any proceedings brought in a court in Bermuda to enforce a claim in respect of a liability incurred under section 151, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced

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and carried on; but nothing in this subsection shall authorise the issue of execution against the property of any State.

(4) Every Bunkers Convention State shall, for the purposes of any proceedings brought in a court in Bermuda to enforce a claim in respect of a liability incurred under section 151A, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection shall authorise the issue of execution against the property of any State.

*[Section 165 amended by 2008:41 s.18 effective 10 December 2008]*

### Limitation of liability under section 151A or 152

166 For the purposes of section 181 any liability incurred under section 151A or 152 shall be deemed to be a liability to damages in respect of such damage to property as is mentioned in paragraph 1 (a) of Article 2 of the Convention in Part I of Schedule 6.

*[Section 166 and headnote amended by 2008:41 s.19 effective 10 December 2008]*

### Saving for recourse actions

167 Nothing in this Chapter shall prejudice any claim, or the enforcement of any claim, a person incurring any liability under this Chapter may have against another person in respect of that liability.

### Interpretation

168 (1) In this Chapter—

“bunker oil” means any hydrocarbon mineral oil (including lubricating oil) which is carried by a ship and used or intended to be used for the operation or propulsion of that ship and any residues of such oil;

“the court” means the Supreme Court;

“damage” includes loss;

“oil”, except in the term “bunker oil”, means persistent hydrocarbon mineral oil;

“owner” has the same meaning as “owner” under section 151A(7);

“registered owner” means the person registered as the owner of the ship or in the absence of registration, the person owning the ship, except that, in relation to a ship owned by a State, which is operated by a person registered as the ship’s operator, it means the person registered as its operator;

“relevant threat of contamination” includes –

- (a) a relevant threat of contamination falling within section 151(2) (as defined in section 151(2A));
- (b) a relevant threat of contamination falling within section 151A(2) (as defined in section 151A(4)); and

- (c) a relevant threat of contamination falling within section 152(2) (as defined in section 152(2B));

“ship” (subject to section 152(5)) means any sea-going vessel or seaborne craft of any type whatsoever.

(2) In relation to any damage or cost resulting in the discharge or escape of any oil or bunker oil from a ship, or from a relevant threat of contamination, references in this Chapter to the owner or the registered owner of the ship are references to the owner or the registered owner (as the case may be) at the time of the occurrence or first of the occurrences resulting in the discharge or escape or (as the case may be) in the threat of contamination.

(3) References in this Chapter to the territory of any country include the territorial sea of that country and—

- (a) in the case of Bermuda, any area within the fishery limits set by or under the Proclamation Extending the Limits of the Fishery Zone of Bermuda 1977; and
- (b) in the case of any other Liability Convention country or Bunkers Convention country, the exclusive economic zone of that country established in accordance with international law, or, if such a zone has not been established, such area adjacent to the territorial sea of that country and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured as may have been determined by that State in question in accordance with international law.

*[Section 168 amended by 2008:41 s.20 effective 10 December 2008; “registered owner” inserted by 2009:24 s.6 effective 19 June 2009]*

## CHAPTER V

### INTERNATIONAL OIL POLLUTION COMPENSATION FUND

#### *Preliminary*

Meaning of the “Liability Convention”, “the Fund Convention” and related expressions

169 (1) In this Chapter—

- (a) “the Liability Convention” has the same meaning as in Chapter IV of this Part; and
- (b) “the Fund Convention” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992;
- (c) “the Fund” means the International Fund established by the Fund Convention; and

(d) "Fund Convention country" means a country in respect of which the Fund Convention is in force.

(2) If the Minister by order declares that any State specified in the order is a party to the Fund Convention in respect of any country so specified, the order shall, while in force, be conclusive evidence that that State is a party to that Convention in respect of that country.

*Contributions to Fund*

Contributions by importers of oil and others

170 (1) Contributions shall be payable to the Fund in respect of oil carried by sea to ports or terminal installations in Bermuda otherwise than on a voyage only within its national waters.

(2) Subsection (1) applies whether or not the oil is being imported, and applies even if contributions are payable in respect of carriage of the same oil on a previous voyage.

(3) Contributions shall also be payable to the Fund in respect of oil when first received in any installation in Bermuda after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country.

(4) The person liable to pay contributions is—

- (a) in the case of oil which is being imported into Bermuda, the importer; and
- (b) otherwise, the person by whom the oil is received.

(5) A person shall not be liable to make contributions in respect of the oil imported or received by him in any year if the oil so imported or received in the year does not exceed 150,000 tonnes.

(6) For the purpose of subsection (5)—

- (a) all the members of a group of companies shall be treated as a single person; and
- (b) any two or more companies which have been amalgamated into a single company shall be treated as the same person as that single company.

(7) The contributions payable by a person for any year shall—

- (a) be of such amount as may be determined by the Director of the Fund under Article 12 of the Fund Convention and notified to that person by the Fund;
- (b) be payable in such instalments, becoming due at such times, as may be so notified to him;

and if any amount due from him remains unpaid after the date on which it became due, it shall from then on bear interest, at a rate determined from time to time by the Assembly of the Fund, until it is paid.

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(8) The Minister may by regulations impose on persons who are or may be liable to pay contributions under this section obligations to give security for payment to the Minister, or the Fund.

(9) Regulations under subsection (8)—

- (a) may contain such supplemental or incidental provisions as appear to the Minister expedient; and
- (b) may impose penalties for contravention of the regulations punishable on summary conviction by a fine not exceeding \$10,000, or such lower limit as may be specified in the regulations.

(10) In this section and in section 171, unless the context otherwise requires—

“company” means a body incorporated in Bermuda or in any other country;

“group” in relation to companies, means a holding company and its subsidiaries as defined by section 2 of the Companies Act 1981, subject, in the case of a company incorporated outside Bermuda, to any necessary modifications of those definitions;

“importer” means the person by whom or on whose behalf the oil in question is entered for customs or excise purposes on importation, and “import” shall be construed accordingly;

“oil” means crude oil and fuel oil; and

- (a) “crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes—
  - (i) crude oils from which distillate fractions have been removed; and
  - (ii) crude oils to which distillate fractions have been added;
- (b) “fuel oil” means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the “American Society for Testing and Materials’ Specification for Number Four Fuel Oil (Designation D39669)”, or heavier;

“terminal installation” means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated offshore and linked to any such site.

### Power to obtain information

171 (1) For the purpose of transmitting to the Fund the names and addresses of the persons who under section 170 are liable to make contributions to the Fund for any year, and the quantity of oil in respect of which they are so liable, the Minister may by notice require any person engaged in producing, treating, distributing or transporting oil to furnish such information as may be specified in the notice.

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(2) A notice under this section may require a company to give such information as may be required to ascertain whether its liability is affected by section 170(6).

(3) A notice under this section may specify the way in which, and the time within which, it is to be complied with.

(4) In proceedings by the Fund against any person to recover any amount due under section 170, particulars contained in any list transmitted by the Minister to the Fund shall, so far as those particulars are based on information obtained under this section, be admissible as evidence of the facts stated in the list; and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars shall be presumed to be accurate until the contrary is proved.

(5) If a person discloses any information which has been furnished to or obtained by him under this section, or in connection with the execution of this section, then, unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the execution of this section; or
- (c) for the purposes of any legal proceedings arising out of this section or of any report of such proceedings;

he shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

(6) A person who—

- (a) refuses or wilfully neglects to comply with a notice under this section; or
- (b) in furnishing any information in compliance with a notice under this section makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular;

shall be guilty of an offence and liable—

- (i) on summary conviction, to a fine of \$5,000 in the case of an offence under paragraph (a) and of \$10,000 in the case of an offence under paragraph (b); and
- (ii) on conviction on indictment, to a fine of \$50,000, or to imprisonment for a term of twelve months, or both.

### Liability of the Fund

172 (1) The Fund shall be liable for pollution damage in the territory of Bermuda if the person suffering the damage has been unable to obtain full compensation under section 151—

- (a) because the discharge or escape, or the relevant threat of contamination, by reason of which the damage was caused—
  - (i) resulted from an exceptional, inevitable and irresistible phenomenon;

(ii) was due wholly to anything done or omitted to be done by another person (not being a servant or agent of the owner) with intent to do damage; or

(iii) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible;

and because liability is accordingly wholly displaced by section 153; or

(b) because the owner or guarantor liable for the damage cannot meet his obligations in full; or

(c) because the damage exceeds the liability under section 151 as limited by section 155.

(2) Subsection (1) shall apply with the substitution for the words "Bermuda" of the words "a Fund Convention country" where—

(a) the headquarters of the Fund is for the time being in Bermuda, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country; or

(b) the incident has caused pollution damage in the territory of Bermuda and of another Fund Convention country, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country or in Bermuda.

(3) Where the incident has caused pollution damage in the territory of Bermuda and of another country in respect of which the Liability Convention is in force, references in this section to the provisions of Chapter IV of this Part shall include references to the corresponding provisions of the law of any country giving effect to the Liability Convention.

(4) Where proceedings under the Liability Convention for compensation for pollution damage have been brought in a country which is not a Fund Convention country and the Fund is liable for that pollution damage by virtue of subsection (2)(a), references in this section to the provisions of Chapter IV of this Part shall be treated as references to the corresponding provisions of the law of the country in which those proceedings were brought.

(5) For the purposes of this section an owner or guarantor is to be treated as incapable of meeting his obligations if the obligations have not been met after all reasonable steps to pursue the legal remedies available have been taken.

(6) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise pollution damage shall be treated as pollution damage for the purposes of this section, and accordingly he shall be in the same position with respect to claims against the Fund under this section as if he had a claim in respect of liability under section 151.

(7) The Fund shall incur no obligation under this section if—

(a) it proves that the pollution damage—

- (i) resulted from an act of war, hostilities, civil war or insurrection; or
  - (ii) was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the occurrence, only on government non-commercial service; or
  - (b) the claimant cannot prove that the damage resulted from an occurrence involving a ship identified by him, or involving two or more ships one of which is identified by him.
- (8) If the Fund proves that the pollution damage resulted wholly or partly—
- (a) from anything done or omitted to be done with intent to cause damage by the person who suffered the damage; or
  - (b) from the negligence of that person;

the Fund may (subject to subsection (10)) be exonerated wholly or partly from its obligations to pay compensation to that person.

(9) Where the liability under section 151 in respect of the pollution damage is limited to any extent by subsection (8) of that section, the Fund shall (subject to subsection (10)) be exonerated to the same extent.

(10) Subsections (8) and (9) shall not apply where the pollution damage consists of the costs of preventive measures or any damage caused by such measures.

#### Limitation of Fund's liability under section 172

173 (1) The Fund's liability under section 172 shall be subject to the limits imposed by paragraphs 4 and 5 of Article 4 of the Fund Convention (which impose an overall limit on the liabilities of the Fund and the text of which is set out in Schedule 4), and in those provisions references to the Liability Convention are references to the Liability Convention within the meaning of this Chapter.

(2) A certificate given by the Director of the Fund stating that subparagraph (c) of paragraph 4 of Article 4 of the Fund Convention is applicable to any claim under section 172 shall be conclusive evidence for the purposes of this Chapter that it is so applicable.

(3) For the purpose of giving effect to paragraphs 4 and 5 of Article 4 of the Fund Convention a court giving judgment against the Fund in proceedings under section 172 shall notify the Fund, and—

- (a) no steps shall be taken to enforce the judgment unless and until the court gives leave to enforce it;
- (b) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under those paragraphs, or that it is to be reduced to a specified amount; and
- (c) in the latter case the judgment shall be enforceable only for the reduced amount.

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(4) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned in subsection (3) shall be steps to obtain payment in United States dollars; and—

- (a) for the purpose of converting such an amount from special drawing rights into United States dollars one special drawing right shall be treated as equal to such a sum in United States dollars as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—
  - (i) the relevant day, namely the day on which the Assembly of the Fund decide the date for the first payment of compensation in respect of the incident; or
  - (ii) if no sum has been so fixed for the relevant day, the last day before that day for which a sum has been so fixed; and
- (b) a certificate given by or on behalf of the Minister stating—
  - (i) that a particular sum in United States dollars has been so fixed for the relevant day; or
  - (ii) that no sum has been so fixed for the relevant day and that a particular sum in United States dollars has been so fixed for a day which is the last day for which a sum in United States dollars has been so fixed before the relevant day;

shall be conclusive evidence of those matters for the purposes of this Chapter.

(5) The Minister may by order make such amendments of this section and Schedule 4 as appear to him to be appropriate for the purpose of giving effect to the entry into force of any amendment of the provisions set out in that Schedule.

(6) Any document purporting to be such a certificate as mentioned in subsection (2) or (4)(b) shall, in any legal proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

### *Supplemental*

#### Jurisdiction and effect of judgments

174 (1) Paragraph 1(l)(d) of Schedule I to the Administration of Justice Act 1956 (Admiralty jurisdiction in claims for damage done by ships) as applied in Bermuda by the Admiralty Jurisdiction (Bermuda) Order 1974 shall be construed as extending to any claim in respect of a liability falling on the Fund under this Chapter.

(2) Where in accordance with rules of court made for the purposes of this subsection the Fund has been given notice of proceedings brought against an owner or guarantor in respect of liability under section 151, any judgment given in the proceedings shall, after it has become final and enforceable, become binding upon the Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund even if the Fund has not intervened in the proceedings.

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(3) Where a person incurs a liability under the law of a Fund Convention country corresponding to Chapter IV of this Part for damage which is partly in the territory of Bermuda, subsection (2) shall, for the purpose of proceedings under this Chapter, apply with any necessary modifications to a judgment in proceedings under that law of the said country.

(4) Subject to subsection (5) the Judgments (Reciprocal Enforcement) Act 1958 shall apply, whether or not it would so apply apart from this subsection, to any judgment given by a court in a Fund Convention country to enforce a claim in respect of liability incurred under any provision corresponding to section 172; and in its application to such a judgment the said Act shall have effect with the omission of sections 4(2) and (3) of that Act.

(5) No steps shall be taken to enforce such a judgment unless and until the court in which it is registered under the Act of 1958 gives leave to enforce it; and—

- (a) that leave shall not be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under paragraph 4 of Article 4 of the Fund Convention (as set out in Schedule 4 to this Act) or that it is to be reduced to a specified amount; and
- (b) in the latter case, the judgment shall be enforceable only for the reduced amount.

### Extinguishment of claims

175 (1) No action to enforce a claim against the Fund under this Chapter shall be entertained by a court in Bermuda unless—

- (a) the action is commenced; or
- (b) a third party notice of an action to enforce a claim against the owner or his guarantor in respect of the same damage is given to the Fund;

not later than three years after the claim against the Fund arose.

(2) No action to enforce a claim against the Fund under this Chapter shall be entertained by a court in Bermuda unless the action is commenced not later than six years after the occurrence, or first of the occurrences, resulting in the discharge or escape, or (as the case may be) in the relevant threat of contamination, by reason of which the claim against the Fund arose.

(3) In subsection (1) “third party notice” means a notice of the kind described in sections 174(2) and (3).

### Subrogation

176 (1) In respect of any sum paid by the Fund as compensation for pollution damage the Fund shall acquire by subrogation any rights in respect of the damage which the recipient has (or but for the payment would have) against any other person.

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(2) In respect of any sum paid by a public authority in Bermuda as compensation for pollution damage, that authority shall acquire by subrogation any rights which the recipient has against the Fund under this Chapter.

### Supplementary provisions as to proceedings involving the Fund

177 (1) Any proceedings by or against the Fund may either be instituted by or against the Fund in its own name or be instituted by or against the Director of the Fund as the Fund's representative.

(2) Evidence of any instrument issued by any organ of the Fund or of any document in the custody of the Fund, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund; and any document purporting to be such a copy shall, in any such proceedings, be received in evidence without proof of the official position or handwriting of the person signing the certificate.

### Interpretation

178 (1) In this Chapter, unless the context otherwise requires—

“damage” includes loss;

“discharge or escape”, in relation to pollution damage, means the discharge or escape of oil from the ship;

“guarantor” means any person providing insurance or other financial security to cover the owner's liability of the kind described in section 161;

“incident” means any occurrence, or series of occurrences having the same origin, resulting in a discharge or escape of oil from a ship or in a relevant threat of contamination;

“oil”, except in sections 170 and 171, means persistent hydrocarbon mineral oil;

“owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, except that, in relation to a ship owned by a State which is operated by a person registered as the ship's operator, it means the person registered as its operator;

“pollution damage” means—

(a) damage caused outside a ship by contamination resulting from a discharge or escape of oil from the ship;

(b) the cost of preventive measures; and

(c) further damage caused by preventive measures;

but does not include any damage attributable to any impairment of the environment except to the extent that any such damage consists of—

(i) any loss of profits; or

- (ii) the cost of any reasonable measures of reinstatement actually taken or to be taken;

“preventive measures” means any reasonable measures taken by any person to prevent or minimise pollution damage, being measures taken—

- (a) after an incident has occurred; or
- (b) in the case of an incident consisting of a series of occurrences, after the first of those occurrences;

“relevant threat of contamination” means a grave and imminent threat of damage being caused outside a ship by contamination resulting from a discharge or escape of oil from the ship; and

“ship” means any ship (within the meaning of Chapter IV of this Part) to which section 151 applies.

(2) For the purposes of this Chapter—

- (a) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur, and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank; and
- (b) where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they shall be treated as one.

(3) References in this Chapter to the territory of any country shall be construed in accordance with section 168(3) reading the reference to a Liability Convention country as a reference to a Fund Convention country.

## CHAPTER VI

### CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES

#### Introductory

178A (1) In this Chapter, unless the context otherwise requires, “the Convention” means the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996.

(2) The text of the Convention, excluding the annexes, is set out in Schedule 4A.

(3) In interpreting the definition of “hazardous and noxious substances” in Article 1, paragraph 5 of the Convention, any reference in that paragraph to a particular convention or code as amended shall be taken to be a reference to that convention or code as amended from time to time (whether before or after the commencement of this Chapter).

*[Section 178A inserted by 2004:16 s.6 effective 18 June 2004]*

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### Power to give effect to Convention

178B (1) The Minister may by order make such provision as he considers appropriate for the purpose of giving effect to—

- (a) the Convention on or after its signature or ratification by the United Kingdom on behalf of Bermuda; or
- (b) any revision of the Convention which appears to the Minister to have been agreed to by the United Kingdom on behalf of Bermuda.

(2) The power conferred by subsection (1) to make provision for the purpose of giving effect to the Convention or an agreement revising the Convention includes power to provide for the provision to come into force even though the Convention or the agreement has not come into force.

(3) Without prejudice to the generality of subsection (1), an order under that subsection may include provision—

- (a) requiring contributions to be paid in accordance with the Convention to the International Hazardous and Noxious Substances Fund established under the Convention;
- (b) for applying for the purpose mentioned in subsection (1) any enactment or instrument relating to the pollution of the sea or other waters (including provisions creating offences) with such modifications, if any, as may be prescribed by the order;
- (c) making such modifications of any enactment or instrument (including, where the order is made under paragraph (b) of that subsection, modifications of Schedule 4A and section 178C) as appear to the Minister to be appropriate for the purpose specified in that subsection;
- (d) with respect to the application of the order to the Crown;
- (e) for detaining any ship in respect of which a contravention of a provision made by or under the order is suspected to have occurred and, in relation to such a ship, for applying section 242 with such modifications, if any, as are prescribed by the order;
- (f) for a certificate issued by or on behalf of the Minister stating that at a particular time a particular substance was, or was not, a hazardous or noxious substance for the purposes of the Convention to be conclusive evidence of that matter.

(4) An order under subsection (1) may—

- (a) make different provision for different circumstances;
- (b) make provision for references in the order to any specified document to operate as references to that document as revised or re-issued from time to time;
- (c) provide for the delegation of functions exercisable by virtue of the order;

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(d) include such incidental, supplemental and transitional provisions as appear to the Minister to be expedient for the purposes of the order.

(5) The Minister may make regulations for the purposes of this section.

(6) An order and regulations made under this section are subject to negative resolution procedure.

*[Section 178B inserted by 2004:16 s.6 effective 18 June 2004]*

### Power of Minister to amend Schedule 4A

178C (1) The Minister may by order make such amendments of Schedule 4A as appears to him to be appropriate for the purpose of giving effect to any amendment of a relevant limit which is adopted in accordance with article 48 of the Convention.

(2) In subsection (1), “a relevant limit” means any of the limits for the time being specified in article 9, paragraph 1 and article 14, paragraph 5, of the Convention.

*[Section 178C inserted by 2004:16 s.6 effective 18 June 2004]*

## PART VIII

### LIABILITY OF SHIPOWNERS AND OTHERS

#### *CARRIAGE OF PASSENGERS AND LUGGAGE BY SEA*

#### Scheduled convention to have force of law

179 (1) The provisions of the Convention relating to the Carriage of Passengers and their Luggage by Sea as set out in Part I of Schedule 5 (hereafter in this section and in Part II of that Schedule referred to as “the Convention”) shall have the force of law in Bermuda.

(2) The provisions of Part II of that Schedule shall have effect in connection with the Convention and subsection (1) shall have effect subject to the provisions of that Part.

(3) If it appears to the Minister that there is a conflict between the provisions of this section or of Part I or II of Schedule 5 and any provisions relating to the carriage of passengers or luggage for reward by land, sea or air—

(a) any convention which has been signed or ratified by the United Kingdom on behalf of Bermuda before 4th April 1979 (excluding the Convention);  
or

(b) any enactment of the Legislature of Bermuda giving effect to such a convention;

he may by order make such modifications of this section or that Schedule or any such enactment as he considers appropriate for resolving the conflict.

(4) If it appears to the Minister that the Government of the United Kingdom has agreed in respect of Bermuda to any revision of the Convention the Minister may by order make such modification of Parts I and II of Schedule 5 as he considers appropriate in consequence of the revision.

(5) Nothing in subsection (1) or (2) or in any modification made by virtue of subsection (3) or (4) shall affect any rights or liabilities arising out of an occurrence which took place before the day on which the said subsection (1) or (2), or as the case may be, the modification, comes into force.

(6) This section shall bind the Crown, and any order made by virtue of this section may provide that the order or specified provisions of it shall bind the Crown.

(7) An order made under this section shall be subject to affirmative resolution procedure.

Application of Schedule 5 to carriage within Bermuda

180 (1) The Minister may by order provide that Part I of Schedule 5—

- (a) shall have the force of law in Bermuda, with such modifications as are specified in the order, in relation to, and to matters connected with, a contract of carriage where the places of departure and destination under the contract are within Bermuda and under the contract there is no intermediate port of call outside Bermuda; and
- (b) shall, as modified in pursuance of paragraph (a), have effect in relation to, and to matters connected with, any such contract subject to the provisions of Part II of that Schedule or to those provisions with such modifications as are specified in the order.

(2) An order made by virtue of subsection (1) may provide that the order or specified provisions of it shall bind the Crown.

(3) An order made under this section shall be subject to affirmative resolution procedure.

(4) In subsection (1) expressions to which meanings are assigned by article I of the Convention set out in Part I of Schedule 5 have those meanings but any reference to a contract of carriage excludes such a contract which is not for reward.

*Limitation of liability of shipowners, etc. and salvors for maritime claims*

Limitation of liability for maritime claims

181 (1) The provisions of the Convention on Limitation of Liability for Maritime Claims 1976 as set out in Part I of Schedule 6 (in this section and Part II of that Schedule referred to as “the Convention”) shall have the force of law in Bermuda.

(2) The provisions of Part II of that Schedule shall have effect in connection with the Convention, and subsection (1) shall have effect subject to the provisions of that Part.

(3) The provisions having the force of law under this section shall apply in relation to Government ships as they apply in relation to other ships.

(4) The provisions having the force of law under this section shall not apply to any liability in respect of loss of life or personal injury caused to, or loss of or damage to any

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property of, a person who is on board the ship in question or employed in connection with that ship or with the salvage operations in question if—

- (a) he is so on board or employed under a contract of service governed by the law of Bermuda; and
- (b) the liability arises from an occurrence which took place after the commencement of this Act.

(5) In subsection (4), “ship” and “salvage operations” have the same meaning as in the Convention.

### Exclusion of liability

182 (1) Subject to subsection (3), the owner of a Bermuda ship shall not be liable for any loss or damage in the following cases, namely—

- (a) where any property on board the ship is lost or damaged by reason of fire on board the ship; or
- (b) where any gold, silver, watches, jewels or precious stones on board the ship are lost or damaged by reason of theft, robbery or other dishonest conduct and their nature and value were not at the time of shipment declared by their owner or shipper to the owner or master of the ship in the bill of lading or otherwise in writing.

(2) Subject to subsection (3), where the loss or damage arises from anything done or omitted by any person in his capacity of master or member of the crew or (otherwise than in that capacity) in the course of his employment as a servant of the owner of the ship, subsection (1) shall also exclude the liability of—

- (a) the master, member of the crew or servant; and
- (b) in a case where the master or member of the crew is the servant of a person whose liability would not be excluded by that subsection apart from this paragraph, the person whose servant he is.

(3) This section does not exclude the liability of any person for any loss or damage resulting from any such personal act or omission of his as is mentioned in Article 4 of the Convention set out in Part I of Schedule 6.

(4) This section shall apply in relation to Government ships as it applies in relation to other ships.

(5) In this section “owner”, in relation to a ship, includes any part owner and any charterer, manager or operator of the ship.

### *Multiple fault; apportionment, liability and contribution*

#### Damage or loss: apportionment of liability

183 (1) Where, by the fault of two or more ships, damage or loss is caused to one or more of those ships, to their cargoes or freight, or to any property on board, the liability to

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make good the damage or loss shall be in proportion to the degree in which each ship was in fault.

(2) If, in any such case, having regard to all the circumstances, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

(3) This section applies to persons other than the owners of a ship who are responsible for the fault of the ships, as well as to the owners of a ship and where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship, this section applies to the charterers or other persons for the time being so responsible instead of the owners.

(4) Nothing in this section shall operate so as to render any ship liable for any loss or damage to which the fault of the ship has not contributed.

(5) Nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

(6) In this section "freight" includes passage money and hire.

(7) In this section references to damage or loss caused by the fault of a ship include references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

### Loss of life or personal injuries: joint and several liability

184 (1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships shall be joint and several.

(2) Section 183(3) applies also to this section.

(3) Nothing in this section shall be construed as depriving any person of any right of defence on which, apart from this section, he might have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in the manner provided by law.

(4) Section 183(7) applies also for the interpretation of this section.

### Loss of life or personal injuries: right of contribution

185 (1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, and a proportion of the damages is recovered against the owners of one of the ships which exceeds the proportion in which the ship was in fault, they may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault.

(2) Section 183(3) applies also to this section.

(3) Nothing in this section authorises the recovery of any amount which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(4) In addition to any other remedy provided by law, the persons entitled to any contribution recoverable under this section shall, for the purposes of recovering it, have the same rights and powers as the persons entitled to sue for damages in the first instance.

*Time limit for proceedings against owners or ship*

Time limit for proceedings against owners or ship

186 (1) This section applies to any proceedings to enforce any claim or lien against a ship or her owners—

- (a) in respect of damage or loss caused by the fault of that ship to another ship, its cargo or freight or any property on board it; or
- (b) for damages for loss of life or personal injury caused by the fault of that ship to any person on board another ship.

(2) The extent of the fault is immaterial for the purposes of this section.

(3) Subject to subsections (5) and (6), no proceedings to which this section applies shall be brought after the period of two years from the date when—

- (a) the damage or loss was caused; or
- (b) the loss of life or injury was suffered.

(4) Subject to subsections (5) and (6), no proceedings under any of sections 183 to 185 to enforce any contribution in respect of any overpaid proportion of any damages for loss of life or personal injury shall be brought after the period of one year from the date of payment.

(5) Any court having jurisdiction in such proceedings may, in accordance with rules of court, extend the period allowed for bringing proceedings to such extent and on such conditions as it thinks fit.

(6) Any such court, if satisfied that there has not been during any period allowed for bringing proceedings any reasonable opportunity of arresting the defendant ship within—

- (a) the jurisdiction of the court; or
- (b) the territorial sea of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his principal place of business;

shall extend the period allowed for bringing proceedings to an extent sufficient to give a reasonable opportunity of so arresting the ship.

*Limitation of liability of harbour and dock authorities*

Limitation of liability

187 (1) This section applies in relation to the following authorities and persons, that is to say, a harbour authority and the owners of any dock.

(2) The liability of any authority or person to which this section applies for any loss or damage caused to any ship, or to any goods, merchandise or other things whatsoever on board any ship shall be limited in accordance with subsection (5) by reference to the tonnage of the largest Bermuda ship which, at the time of the loss or damage is, or within the preceding five years has been, within the area over which the authority or person discharges any functions.

(3) The limitation of liability under this section relates to the whole of any losses and damages which may arise on any one distinct occasion, although such losses and damages may be sustained by more than one person, and shall apply whether the liability arises at common law or under any general or local or private Act, and notwithstanding anything contained in such an Act.

(4) This section does not exclude the liability of an authority or person to which it applies for any loss or damage resulting from any such personal act or omission of the authority or person as is mentioned in Article 4 of the Convention set out in Part I of Schedule 6.

(5) The limit of liability shall be ascertained by applying to the ship by reference to which the liability is to be determined the method of calculation specified in paragraph I (b) of Article 6 of the Convention set out in Part I of Schedule 6 read with paragraphs 5(l) and (2) of Part II of that Schedule.

(6) Articles 11 and 12 of that Convention and paragraphs 8 and 9 of Part II of that Schedule shall apply for the purposes of this section.

(7) For the purposes of subsection (2) a ship shall not be treated as having been within the area over which a harbour authority discharges any functions by reason only that it has been built or fitted out within the area, or that it has taken shelter within or passed through the area on a voyage between two places both situated outside that area, or that it has loaded or unloaded mails or passengers within the area.

(8) Nothing in this section imposes any liability for any loss or damage where no liability exists apart from this section.

(9) In this section—

“dock” includes wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharves, piers, stages, landing places and jetties; and

“owners of any dock or canal” includes any authority or person having the control and management of any dock or canal, as the case may be.

*Application to Crown and its ships*

Application to Crown and its ships

188 (1) Sections 181, 182, 183, 184, 185 and 186 (except subsection (6)) apply in the case of Her Majesty's ships as they apply in relation to other ships and section 187 applies to the Crown in its capacity as an authority or person specified in subsection (1) of that section.

(2) In this section "Her Majesty's ships" means—

- (a) ships of which the beneficial interest is vested in Her Majesty;
- (b) ships which are registered as Government ships;
- (c) ships which are for the time being demised or sub-demised to or in the exclusive possession of the Crown;

except that it does not include any ship in which Her Majesty is interested otherwise than in right of Her Government in Bermuda unless that ship is for the time being demised or sub-demised to Her Majesty in right of Her Government in Bermuda or in the exclusive possession of Her Majesty in that right.

PART IX

SALVAGE AND WRECK

CHAPTER I

SALVAGE

Salvage convention 1989 to have force of law

189 (1) The provisions of the International Convention on Salvage, 1989 as set out in Part I of Schedule 7 (in this Chapter referred to as "the Salvage Convention") shall have the force of law in Bermuda.

(2) The provisions of Part II of that Schedule shall have effect in connection with the Salvage Convention, and subsection (1) shall have effect subject to the provisions of that Part.

(3) If it appears to the Minister that the Government of the United Kingdom has agreed in respect of Bermuda to any revision of the Salvage Convention he may by order make such modifications of Parts I and II of Schedule 7 as he considers appropriate in consequence of the revision.

(4) Nothing in subsection (1) or (2) shall affect any rights or liabilities arising out of any salvage operations started or other acts done before the date of commencement of this Part.

(5) Nothing in any modification made by virtue of subsection (3) shall affect any rights or liabilities arising out of any salvage operations started or other acts done before the day on which the modification comes into force.

(6) As respects any period before the entry into force of the Salvage Convention any reference in the Salvage Convention to a State Party to the Convention shall be read as a reference to Bermuda.

#### Valuation of property by Receiver

190 (1) Where any dispute as to salvage arises, the Receiver may, on the application of either party, appoint a valuer to value the property.

(2) When the valuation has been made the Receiver shall give copies of it to both parties.

(3) A copy of the valuation purporting to be signed by the valuer, and to be certified as a true copy by the Receiver, shall be admissible as evidence in any subsequent proceedings.

(4) There shall be paid in respect of the valuation by the person applying for it such fee as the Minister may direct.

#### Detention of property liable for salvage by Receiver

191 (1) Where salvage is due to any person under this Chapter, the Receiver shall—

(a) if the salvage is due in respect of services rendered—

(i) in assisting a vessel; or

(ii) in saving life from a vessel; or

(iii) in saving the cargo and equipment of a vessel;

detain the vessel and cargo or equipment; and

(b) if the salvage is due in respect of the saving of any wreck, and the wreck is not sold as unclaimed under this Chapter, detain the wreck.

(2) Subject to subsection (3), the Receiver shall detain the vessel and the cargo and equipment, or the wreck, as the case may be, until payment is made for salvage, or process is issued for the arrest or detention of the property by the court.

(3) The Receiver may release any property detained under subsection (2) if security is given—

(a) to his satisfaction; or

(b) where—

(i) the claim for salvage exceeds \$7,500; and

(ii) any question is raised as to the sufficiency of the security;

to the satisfaction of the court.

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(4) Any security given for salvage under this section to an amount exceeding \$7,500 may be enforced by the court in the same manner as if bail had been given in that court.

(5) In this section “the court” means the Supreme Court.

### Sale of detained property by Receiver

192 (1) The Receiver may sell any detained property if the persons liable to pay the salvage in respect of which the property is detained are aware of the detention, in the following cases.

(2) Those cases are—

- (a) where the amount is not disputed, and payment of the amount due is not made within twenty days after the amount is due;
- (b) where the amount is disputed, but no appeal lies from the first court to which the dispute is referred, and payment is not made within twenty days after the decision of the first court;
- (c) where the amount is disputed and an appeal lies from the decision of the first court to some other court, and within twenty days of the decision of the first court neither payment of the sum due is made nor proceedings are commenced for an appeal.

(3) The proceeds of sale of detained property shall, after payment of the expenses of the sale, be applied by the Receiver in payment of the expenses, fees and salvage and any excess shall be paid to the owners of the property or any other persons entitled to it.

(4) In this section “detained property” means property detained by the Receiver under section 191(2).

### Apportionment of salvage under \$7,500 by the Receiver

193 (1) Where—

- (a) the aggregate amount of salvage payable in respect of salvage services rendered in Bermuda waters has been finally determined and does not exceed \$7,500; but
- (b) a dispute arises as to the apportionment of the amount among several claimants;

the person liable to pay the amount may apply to the Receiver for leave to pay it to him.

(2) The Receiver shall, if he thinks fit, receive the amount and, if he does, he shall give the person paying it a certificate stating the amount paid and the services in respect of which it is paid.

(3) A certificate under subsection (2) shall be a full discharge and indemnity to the person by whom it was paid, and to his vessel, cargo, equipment and effects against the claims of all persons in respect of the services mentioned in the certificate.

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(4) The Receiver shall with all convenient speed distribute any amount received by him under this section among the persons entitled to it, on such evidence, and in such shares and proportions, as he thinks fit.

(5) Any decision by the Receiver under subsection (4) shall be made on the basis of the criteria contained in Article 13 of the Salvage Convention.

(6) The Receiver may retain any money which appears to him to be payable to any person who is absent.

(7) A distribution made by the Receiver under this section shall be final and conclusive as against all persons claiming to be entitled to any part of the amount distributed.

### Apportionment of salvage by the court

194 (1) Where—

- (a) the aggregate amount of salvage payable in respect of salvage services rendered in Bermuda waters has been finally determined and exceeds \$7,500; or
- (b) the aggregate amount of salvage payable in respect of salvage services rendered outside Bermuda (of whatever amount) has been finally determined; but
- (c) in either case, any delay or dispute arises as to the apportionment of the amount;

the court may cause the amount of salvage to be apportioned among the persons entitled to it in such manner as it thinks just.

(2) Any decision of the court under this section shall be made on the basis of the criteria contained in Article 13 of the Salvage Convention.

(3) For the purpose of making that apportionment, the court may—

- (a) appoint any person to carry that apportionment into effect;
- (b) compel any person in whose hands or under whose control the amount may be to distribute it or to pay it into court to be dealt with as the court directs; and
- (c) issue such process as it thinks fit.

(4) In this section “the court” means the Supreme Court.

### Salvage claims against the Crown and Crown rights of salvage and regulation thereof

195 (1) Subject to section 20 of the Crown Proceedings Act 1966 (exclusion of proceedings in rem against the Crown) (so far as consistent with the Salvage Convention) the law relating to civil salvage, whether of life or property, except sections 190, 191 and 192, shall apply in relation to salvage services in assisting any of Her Majesty’s ships, or in saving life therefrom, or in saving any cargo or equipment belonging to Her Majesty in right

of Her Government in Bermuda, in the same manner as if the ship, cargo or equipment belonged to a private person.

(2) Where salvage services are rendered by or on behalf of Her Majesty, whether in right of Her Government in Bermuda or otherwise, Her Majesty shall be entitled to claim salvage in respect of those services to the same extent as any other salvor, and shall have the same rights and remedies in respect of those services as any other salvor.

(3) No claim for salvage services by the commander or crew, or part of the crew, of any of Her Majesty's ships shall be finally adjudicated upon without the consent of the Minister to the prosecution of the claim.

(4) Any document purporting to give the consent of the Minister for the purposes of subsection (3) and to be signed by an officer of the Ministry shall be evidence of that consent.

(5) If a claim is prosecuted without the consent required by subsection (3) the claim shall be dismissed with costs.

(6) "Her Majesty's ships" has the same meaning in this section as in section 188.

## CHAPTER II

### WRECK

#### *Vessels in distress*

Application of, and discharge of function under sections 197, 198 and 199

196 (1) Sections 197, 198, and 199 apply in circumstances where a Bermuda or foreign vessel is wrecked, stranded, or in distress at any place on or near the coast of Bermuda or any tidal water within Bermuda waters.

(2) Where any function is conferred on the Receiver by any of those sections that function may be discharged by any officer of customs.

(3) An officer discharging any such functions of the Receiver shall, with respect to any goods or articles belonging to a vessel the delivery of which to the Receiver is required by any provision of this Chapter, be treated as the agent of the Receiver.

(4) However, an officer discharging such functions shall not—

(a) be entitled to any fees payable to the Receiver; or

(b) be deprived of any right to salvage to which he would otherwise be entitled.

(5) In any of those sections "shipwrecked persons", in relation to a vessel, means persons belonging to the vessel.

Duty of Receiver where vessel in distress

197 (1) In circumstances in which this section applies by virtue of section 196 in relation to any vessel the Receiver shall, on being informed of the circumstances, discharge the following functions.

(2) Subject to subsection (3), the Receiver shall—

- (a) forthwith proceed to the place where the vessel is;
- (b) take command of all persons present; and
- (c) assign such duties and give such directions to each person as thinks fit for the preservation of the vessel and of the lives of the shipwrecked persons.

(3) The Receiver shall not interfere between the master and crew of the vessel in reference to the management of the vessel unless he is requested to do so by the master.

(4) Subject to subsection (3), if any person intentionally disobeys the direction of the Receiver he shall be liable, on summary conviction, to a fine of \$10,000.

#### Powers of Receiver in case of vessel in distress

198 (1) In circumstances where this section applies by virtue of section 196 in relation to any vessel the Receiver may, for the purpose of the preservation of shipwrecked persons or of the vessel, cargo and equipment—

- (a) require such persons as he thinks necessary to assist him;
- (b) require the master, or other person having the charge, of any vessel near at hand to give such assistance with his men, or vessel, as may be in his power; and
- (c) require the use of any vehicle that may be near at hand.

(2) If any person refuses, without reasonable excuse, to comply with any requirement made under subsection (1) he shall be liable, on summary conviction, to a fine of \$ 10,000.

#### Power to pass over adjoining land

199 (1) In circumstances where this section applies by virtue of section 196 in relation to any vessel, all persons may, subject to subsections (3) and (4), for the purpose of—

- (a) rendering assistance to the vessel;
- (b) saving the lives of shipwrecked persons; or
- (c) saving the cargo or equipment of the vessel;

pass and repass over any adjoining land without being subject to interruption by the owner or occupier and deposit on the land any cargo or other article recovered from the vessel.

(2) The right of passage conferred by subsection (1) is a right of passage with or without vehicles.

(3) No right of passage is conferred by subsection (1) where there is some public road equally convenient.

(4) The rights conferred by subsection (1) shall be so exercised as to do as little damage as possible.

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(5) Any damage sustained by an owner or occupier of land in consequence of the exercise of the rights conferred by this section shall be a charge on the vessel, cargo or articles in respect of or by which the damage is caused.

(6) Any amount payable in respect of such damage shall, in case of dispute, be determined and shall, in default of payment, be recoverable in the same manner as the amount of salvage is determined and recoverable under this Part.

(7) If the owner or occupier of any land—

- (a) impedes or hinders any person in the exercise of the rights conferred by this section;
- (b) impedes or hinders the deposit on the land of any cargo or other article recovered from the vessel; or
- (c) prevents or attempts to prevent any cargo or other article recovered from the vessel from remaining deposited on the land for a reasonable time until it can be removed to a safe place of public deposit;

he shall be liable on summary conviction to a fine of \$10,000.

### *Dealing with wreck*

#### Duties of finder etc. of wreck

200 (1) If any person finds or takes possession of any wreck in Bermuda waters or finds or takes possession of any wreck outside Bermuda waters and brings it within those waters he shall—

- (a) if he is the owner of it, give notice to the Receiver stating that he has found or taken possession of it and describing the marks by which it may be recognised;
- (b) if he is not the owner of it, give notice to the Receiver that he has found or taken possession of it and, as directed by the Receiver, either hold it to the Receiver's order or deliver it to the Receiver.

(2) If any person fails, without reasonable excuse, to comply with subsection (1) he shall be liable on summary conviction to a fine of \$5,000 and if he is not the owner of the wreck he shall also—

- (a) forfeit any claim to salvage; and
- (b) be liable to pay twice the value of the wreck—
  - (i) if it is claimed, to the owner of it; or
  - (ii) if it is unclaimed, to the person entitled to the wreck.

(3) Any sum payable under subsection (2)(b) to the owner of the wreck or to the persons entitled to the wreck may be recovered summarily as a civil debt.

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Provisions as respects cargo, etc.

201 (1) Where a vessel is wrecked, stranded, or in distress at any place on or near the coast of Bermuda or any tidal water within Bermuda waters, any cargo or other articles belonging to or separated from the vessel which are washed on shore or otherwise lost or taken from the vessel shall be delivered to the Receiver.

(2) If any person (whether the owner or not)—

- (a) conceals or keeps possession of any such cargo or article; or
- (b) refuses to deliver any such cargo or article to the Receiver or to any person authorised by the Receiver to require delivery;

he shall be liable, on summary conviction, to a fine of \$25,000.

(3) The Receiver or any person authorised by him may take any such cargo or article (if necessary by force) from any person who refuses to deliver it.

Receiver to give notice of wreck

202 (1) Where the Receiver takes possession of any wreck he shall, within 48 hours—

- (a) make a record describing the wreck and any marks by which it is distinguished;
- (b) cause to be published in the Gazette such a description; and
- (c) if in his opinion the value of the wreck exceeds \$7,500, also transmit a similar description to the chief executive officer of Lloyd's in London.

(2) The record made by the Receiver under subsection (1)(a) shall be kept by him available for inspection by any person during reasonable hours without charge.

(3) The notice sent under subsection (1)(c) to the chief executive officer of Lloyd's shall be posted by him in some conspicuous position for inspection.

Claims of owners to wreck

203 (1) The owner of any wreck in the possession of the Receiver who establishes his claim to the wreck to the satisfaction of the Receiver within one year from the time when the wreck came into the Receiver's possession shall, on paying the salvage, fees and expenses due, be entitled to have the wreck delivered or the proceeds of sale paid to him.

(2) Where—

- (a) a foreign ship has been wrecked on or near the coast of Bermuda; or
- (b) any articles belonging to or forming part of or of the cargo of a foreign ship which has been wrecked on or near the coast of Bermuda are found on or near the coast or are brought into any port;

the appropriate consular officer shall, in the absence of the owner and of the master or other agent of the owner, be treated as the agent of the owner for the purposes of the custody and disposal of the wreck and such articles.

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(3) In subsection (2) “the appropriate consular officer”, in relation to a foreign ship, means the consul general of the country to which the ship or, as the case may be, the owners of the cargo may have belonged or any consular officer of that country authorised for the purpose by any treaty or arrangement with that country.

### Immediate sale of wreck in certain cases

204 (1) The Receiver may at any time sell any wreck in his possession if, in his opinion—

- (a) it is under the value of \$7,500;
- (b) it is so much damaged or of so perishable a nature that it cannot with advantage be kept; or
- (c) it is not of sufficient value to pay for storage.

(2) The proceeds of sale shall, after defraying the expenses of the sale, be held by the Receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold.

### *Unclaimed wreck*

#### Right of Crown to unclaimed wreck

205 Her Majesty in right of Her Government in Bermuda is entitled to all unclaimed wreck found in Bermuda or in Bermuda waters except in places where Her Majesty in right of Her Government in Bermuda has granted the right to any other person.

#### Notice of unclaimed wreck to be given to persons entitled

206 (1) Any person who is entitled to unclaimed wreck found at any place in Bermuda or in Bermuda waters shall give the Receiver a statement containing the particulars of his entitlement and specifying an address to which notices may be sent.

(2) Where a statement has been given to the Receiver under subsection (1) and the entitlement is proved to the satisfaction of the Receiver, the Receiver shall, on taking possession of any wreck found at a place to which the statement refers, within 48 hours, send to the specified address a description of the wreck and of any marks distinguishing it.

#### Disposal of unclaimed wreck

207 (1) Where, as respects any wreck found in Bermuda or in Bermuda waters and in the possession of the Receiver, no owner establishes a claim to it within one year after it came into the Receiver’s possession, the wreck shall be dealt with as follows.

(2) If the wreck is claimed by any person who has delivered the statement required by section 206 and has proved to the satisfaction of the Receiver his entitlement to receive unclaimed wreck found at the place where the wreck was found, the wreck shall, on payment of all expenses, costs, fees and salvage due in respect of it, be delivered to that person.

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(3) If the wreck is not claimed by any person in accordance with section 206, the Receiver shall sell the wreck and pay the proceeds as directed by subsection (6), after making the deductions required by subsection (4) and paying to the salvors the amount of salvage determined under subsection (5).

(4) The amounts to be deducted by the Receiver are—

- (a) the expenses of the sale;
- (b) any other expenses incurred by him; and
- (c) his fees.

(5) The amount of salvage to be paid by the Receiver to the salvors shall be such amount as the Minister directs generally or in the particular case.

(6) The proceeds of sale (after making those deductions and salvage payments) shall be paid by the Receiver into the Consolidated Fund.

### Effect of delivery of wreck under this Part

208 (1) Delivery of wreck or payment of the proceeds of sale of wreck by the Receiver under this Chapter shall discharge the Receiver from all liability in respect of the delivery or payment.

(2) Delivery of wreck by the Receiver under this Chapter shall not, however, prejudice or affect any question which may be raised by third parties concerning the right or title to the wreck or concerning the title to the soil of the place at which the wreck was found.

### *Offences in respect of wreck*

#### Taking wreck to foreign port

209 (1) A person commits an offence if without the permission of the owner or Receiver or other lawful authority he takes into any foreign port and sells—

- (a) any vessel stranded, derelict or otherwise in distress found on or near the coast of Bermuda or any tidal water within Bermuda waters;
- (b) any part of the cargo or equipment of, or anything belonging to, such a vessel; or
- (c) any wreck found within those waters.

(2) A person who is guilty of an offence under this section shall be liable on conviction on indictment to a fine of \$250,000 or to imprisonment for a term of five years or both.

#### Interfering with wrecked vessel or wreck

210 (1) Subject to subsection (2), a person commits an offence if, without the permission of the master, he boards or attempts to board any vessel which is wrecked, stranded or in distress.

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(2) No offence is committed under subsection (1) if the person is the Receiver or a person lawfully acting as the Receiver or if he acts by command of the Receiver or a person so acting.

(3) A person commits an offence if—

- (a) he impedes or hinders or attempts to impede or hinder the saving of—
  - (i) any vessel stranded or in danger of being stranded, or otherwise in distress, on or near any coast or tidal water; or
  - (ii) any part of the cargo or equipment of any such vessel; or
  - (iii) any wreck;
- (b) he conceals any wreck;
- (c) he defaces or obliterates any mark on a vessel; or
- (d) he wrongfully carries away or removes—
  - (i) any part of any vessel stranded or in danger of being stranded, or otherwise in distress, on or near any coast or tidal water;
  - (ii) any part of the cargo or equipment of any such vessel; or
  - (iii) any wreck.

(4) The master of a vessel may forcibly repel any person committing or attempting to commit an offence under subsection (1).

(5) A person who is guilty of an offence under this section shall be liable, on summary conviction—

- (a) in the case of an offence under subsection (1), to a fine of \$10,000;
- (b) in the case of an offence under subsection (3), to a fine of \$25,000.

Powers of entry etc.

211 (1) Where the Receiver has reason to believe that—

- (a) any wreck is being concealed by or is in the possession of some person who is not the owner of it; or
- (b) any wreck is being otherwise improperly dealt with;

he may apply to a magistrate for a search warrant.

(2) Where a search warrant is granted under subsection (1) to the Receiver, the Receiver may, by virtue of the warrant—

- (a) enter any house, or other place (wherever situated) or any vessel; and
- (b) search for, seize and detain any wreck found there.

(3) If any seizure of wreck is made under this section in consequence of information given by any person to the Receiver, the person giving the information shall be entitled, by way of salvage, to such sum, not exceeding \$150, as the Receiver may allow.

CHAPTER III  
SUPPLEMENTAL  
*Administration*

Functions of Minister

212 (1) The Minister shall have the general superintendence throughout Bermuda of all matters relating to wreck.

(2) The Collector of Customs, shall exercise the powers and discharge the functions of the Receiver of wreck under this Part, and shall discharge such functions as are assigned to him by the Minister responsible for finance.

Expenses and fees of the Receiver

213 (1) There shall be paid to the Receiver the expenses properly incurred by him in the discharge of his functions and also in respect of such matters as may be prescribed by regulations made by the Minister responsible for finance such fees as may be so prescribed.

(2) The Receiver shall, in addition to all other rights and remedies for the recovery of those expenses and fees, have the same rights and remedies in respect of those expenses and fees as a salvor has in respect of salvage due to him.

*Release from customs control*

Release of goods from customs control

214 (1) The Collector of Customs shall, subject to taking security for the protection of the revenue in respect of the goods, permit all goods saved from any ship stranded or wrecked on its homeward voyage to be forwarded to the port of its original destination.

(2) The Collector of Customs shall, subject to taking such security, permit all goods saved from any ship stranded or wrecked on her outward voyage to be returned to the port at which they were shipped.

(3) In this section "goods" includes wares and merchandise.

*Removal of wrecks*

Powers of Minister in relation to wrecks

215 (1) Where any vessel is sunk, stranded or abandoned—

- (a) in or near any approach to, any harbour or tidal water in Bermuda; or
- (b) in any fairway or on the seashore or on or near any rock, shoal or bank in Bermuda;

in such a manner as, in the opinion of the Minister, to be, or be likely to become, an obstruction or danger to navigation or to lifeboats engaged in lifeboat service, the Minister may exercise any of the following powers.

(2) Those powers are—

- (a) to take possession of, and raise, remove or destroy the whole or any part of the vessel and any other property to which the power extends;
- (b) to light or buoy the vessel or part of the vessel and any such other property until it is raised, removed or destroyed; and
- (c) subject to subsections (5) and (6), to sell, in such manner as the Minister thinks fit, the vessel or part of the vessel so raised or removed and any other property recovered in the exercise of the powers conferred by paragraph (a) or (b);
- (d) to reimburse the Crown, out of the proceeds of the sale, for the expenses incurred by it in relation to the sale.

(3) The other property to which the powers conferred by subsection (2) extend is every article or thing or collection of things being or forming part of the equipment, cargo, stores or ballast of the vessel.

(4) Any surplus of the proceeds of a sale under subsection (2)(c) shall be held by the Minister on trust for the persons entitled thereto.

(5) Except in the case of property which is of a perishable nature or which would deteriorate in value by delay, no sale shall be made under subsection (2)(c) until at least seven days notice of the intended sale has been given by advertisement in a local newspaper circulating in Bermuda.

(6) At any time before any property is sold under subsection (2)(c), the owner of the property shall be entitled to have it delivered to him on payment of its fair market value.

(7) The market value of property for the purposes of subsection (6) shall be that agreed on between the Minister and the owner or, failing agreement, that determined by a person appointed for the purpose by the Minister.

(8) The sum paid to the Minister in respect of any property under subsection (6) shall, for the purposes of this section, be treated as the proceeds of sale of the property.

(9) Any proceeds of sale arising under subsection (2)(c) from the sale of a vessel and any other property recovered from the vessel shall be paid into the consolidated fund.

#### Interpretation

216 (1) In this Part—

“Receiver” means the person referred to in section 212(2);

“salvage” includes, subject to the Salvage Convention, all expenses properly incurred by the salvor in the performance of the salvage services;

“the Salvage Convention” has the meaning given by section 189(1);

“salvor” means, in the case of salvage services rendered by the officers or crew or part of the crew of any ship belonging to Her Majesty, the person in command of the ship;

“tidal water” means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides, and not being a harbour;

“vessel” includes any ship or boat, or any other description of vessel used in navigation; and

“wreck” includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water.

- (2) Fishing boats or fishing gear lost or abandoned at sea and either—
- (a) found or taken possession of within Bermuda waters; or
  - (b) found or taken possession of beyond those waters and brought within those waters;

shall be treated as wreck for the purposes of this Part.

## PART X

### ENFORCEMENT OFFICERS AND POWERS

#### *Enforcement Officers*

#### Appointment of inspectors and surveyors

217 (1) The Minister may, if he thinks fit, appoint any person as an inspector to report to him—

- (a) upon the nature and causes of any accident or damage which any ship has or is alleged to have sustained or caused;
- (b) whether any requirements, restrictions or prohibitions imposed by or under this Act have been complied with or (as the case may be) contravened;
- (c) whether the hull and machinery of a ship are sufficient and in good condition;
- (d) what measures have been taken to prevent the escape of oil or mixtures containing oil.

(2) The Minister may, at such ports as he thinks fit, appoint persons to be surveyors of ships for the purposes of this Act and may remove any person so appointed.

(3) A surveyor of ships may be appointed either as a ship surveyor or as an engineer surveyor or as a nautical surveyor or a combination thereof.

(4) A surveyor of ships may be appointed either generally or for any particular case or purpose.

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(5) The Minister may appoint persons to be inspectors for the purposes of sections 222 to 227.

(6) Every inspector appointed under section (1) shall be treated as appointed under subsection (5).

(7) Every surveyor of ships shall be treated as a person appointed generally under subsection (1) to report to the Minister in every kind of case falling within paragraphs (b) and (d) of that subsection in relation to Chapter III of Part VII.

(8) In this Act—

- (a) “Departmental inspector” means an inspector appointed under subsection (1);
- (b) “surveyor of ships” means a surveyor appointed under subsection (2);
- (c) “Departmental officer” means any officer of the Minister discharging functions of his for the purposes of this Act;

and the reference to requirements, restrictions or prohibitions under this Act includes any such requirements, restrictions or prohibitions constituting the terms of any approval, licence, consent or exemption given in any document issued under this Act.

### *Inspection etc. powers*

#### Powers to require production of ships documents

218 (1) The powers conferred by this section are conferred in relation to Bermuda ships and are available to any of the following officers, namely—

- (a) any Departmental officer;
- (b) any commissioned naval officer;
- (c) any British consular officer;
- (d) the Registrar or any person discharging his functions;
- (e) the Collector of Customs;
- (f) any superintendent;

whenever the officer has reason to suspect that this Act or any law for the time being in force relating to merchant seafarers or navigation is not complied with.

(2) Those powers are—

- (a) to require the owner, master, or any of the crew to produce any official log-books or other documents relating to the crew or any member of the crew in their possession or control;
- (b) to require the master to produce a list of all persons on board his ship, and take copies of or extracts from the official log-books or other such documents;

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- (c) to muster the crew; and
  - (d) to require the master to appear and give any explanation concerning the ship or her crew or the official log-books or documents produced or required to be produced.
- (3) If any person, on being duly required by an officer under this section to produce a log-book or any document, fails without reasonable excuse to produce the log-book or document, he shall be guilty of an offence and liable on summary conviction to a fine of \$2,000.
- (4) If any person, on being duly required by any officer under this section—
- (a) to produce a log-book or document, refuses to allow the log-book or document to be inspected or copied;
  - (b) to muster the crew, impedes the muster; or
  - (c) to give any explanation, refuses or neglects to give the explanation or knowingly misleads or deceives the officer;

he shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

*[Section 218 amended by 2012 : 30 s. 3 effective 30 June 2014]*

Powers to inspect ships and their equipment, etc.

219 (1) For the purpose of seeing that the provisions of this Act other than Chapter III of Part VII the provisions of regulations and rules made under this Act (other than that Chapter) are complied with or that the terms of any approval, licence, consent, direction or exemption given by virtue of such regulations are duly complied with, the following persons, namely—

- (a) a surveyor of ships;
- (b) a superintendent;
- (c) any person appointed by the Minister, either generally or in a particular case, to exercise powers under this section;

may at all reasonable times go on board a ship in Bermuda or Bermuda waters and inspect the ship and its equipment or any part thereof, any articles on board and any document carried in the ship in pursuance of this Act or in pursuance of regulations or rules under this Act .

(2) The powers conferred by subsection (1) are not exercisable in relation to a qualifying foreign ship while the ship is exercising the right of innocent passage.

(3) The powers conferred by subsection (1) are, if the ship is a Bermuda ship, also exercisable outside Bermuda waters and may be so exercised by a proper officer as well as the persons mentioned in that subsection.

(4) A person exercising powers under this section shall not unnecessarily detain or delay a ship but may, if he considers it necessary in consequence of an accident or for any other reason, require a ship to be taken into dock for a survey of its hull or machinery.

(5) Where any such person as is mentioned in subsection (1) has reasonable grounds for believing that there are on any premises provisions or water intended for supply to a Bermuda ship which, if provided on the ship, would not be in accordance with safety regulations containing requirements as to provisions and water to be provided on ships he may enter the premises and inspect the provisions or water for the purpose of ascertaining whether they would be in accordance with the regulations.

(6) If any person obstructs a person in the exercise of his powers under this section, or fails to comply with a requirement made under subsection (4), he shall be guilty of an offence and liable, on summary conviction, to a fine of \$10,000.

#### Powers of inspectors in relation to premises and ships

220 (1) The powers conferred by this section are conferred in relation to—

- (a) any premises in Bermuda; or
- (b) any Bermuda ship wherever it may be and any other ship which is present in Bermuda or in Bermuda waters;

and are available to any Departmental inspector, or any inspector appointed under section 217(5), for the purpose of performing his functions.

(2) Such an inspector—

- (a) may at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time)—
  - (i) enter any premises; or
  - (ii) board any ship;if he has reason to believe that it is necessary for him to do so;
- (b) may, on entering any premises by virtue of paragraph (a) or on boarding a ship by virtue of that paragraph, take with him any other person authorised for the purpose by the Minister and any equipment or materials he requires;
- (c) may make such examination and investigation as he considers necessary;
- (d) may give a direction requiring that the premises or ship or any part of the premises or ship or any thing in the premises or ship or such a part shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under paragraph (c);
- (e) may take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c);
- (f) may take samples of any articles or substances found in the premises or ship and of the atmosphere in or in the vicinity of the premises or ship;

- (g) may, in the case of any article or substance which he finds in the premises or ship and which appears to him to have caused or to be likely to cause danger to health or safety, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is in the circumstances necessary);
- (h) may, in the case of any such article or substance as is mentioned in paragraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
  - (i) to examine it and do to it anything which he has power to do under that paragraph;
  - (ii) to ensure that it is not tampered with before his examination of it is completed;
  - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Act or any instrument made under it;
- (i) may require any person who he has reasonable cause to believe is able to give any information relevant to any examination or investigation under paragraph (c)—
  - (i) to attend at a place and time specified by the inspector; and
  - (ii) to answer (in the absence of persons other than any persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the inspector thinks fit to ask; and
  - (iii) to sign a declaration of the truth of his answers;
- (j) may require the production of, and inspect and take copies of or of any entry in,—
  - (i) any books or documents which by virtue of any provision of this Act are required to be kept; and
  - (ii) any other books or documents which he considers it necessary for him to see for the purposes of any examination or investigation under paragraph (c);
- (k) may require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by this subsection.

(3) The powers conferred by subsection (2) to require the production of any document and copy of it include, in relation to oil record books required to be carried under section 141, power to require the master to certify the copy as a true copy.

(4) The powers conferred by subsection (2) to inspect premises shall also be exercisable, for the purpose of Chapter III of Part VII, in relation to any apparatus used for transferring oil.

(5) The powers conferred by subsection (2)(a), (c) and (j) shall also be exercisable, in relation to a ship in a harbour in Bermuda, by the harbour master or other persons appointed by the Minister for the purpose, for the purpose of ascertaining the circumstances relating to an alleged discharge of oil or a mixture containing oil from the ship into the harbour.

(6) It is hereby declared that nothing in the preceding provisions of this section authorises a person unnecessarily to prevent a ship from proceeding on a voyage.

(7) The Minister may by regulations provide as to the procedure to be followed in connection with the taking of samples under subsection (2)(f) and subsection (10) and provision as to the way in which samples that have been so taken are to be dealt with.

(8) Where an inspector proposes to exercise the power conferred by subsection (2)(g) in the case of an article or substance found in any premises or ship, he shall, if so requested by a person who at the time is present in and has responsibilities in relation to the premises or ship, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of that person.

(9) Before exercising the power conferred by subsection (2)(g), an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.

(10) Where under the power conferred by subsection (2)(h) an inspector takes possession of any article or substance found in any premises or ship, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practicable for him to do so, take a sample of the substance and give to a responsible person at the premises or on board the ship a portion of the sample marked in a manner sufficient to identify it.

(11) No answer given by a person in pursuance of a requirement imposed under subsection (2)(i) shall be admissible in evidence against that person or the husband or wife of that person in any proceedings except proceedings in pursuance of subsection (1)(c) of section 221 in respect of a statement in or a declaration relating to the answer; and a person nominated as mentioned in the said subsection (2)(i) shall be entitled, on the occasion on which the questions there mentioned are asked, to make representations to the inspector on behalf of the person who nominated him.

Provisions supplementary to section 220

221 (1) A person who—

- (a) intentionally obstructs an inspector in the exercise of any power available to him under section 220; or

- (b) without reasonable excuse, does not comply with a requirement imposed in pursuance of section 220 or prevents another person from complying with such a requirement; or
- (c) without prejudice to the generality of paragraph (b), makes a statement or signs a declaration which he knows is false, or recklessly makes a statement or signs a declaration which is false, in purported compliance with a requirement made in pursuance of subsection (2)(i) of section 220; shall be guilty of an offence and liable—
  - (i) on summary conviction, to a fine of \$10,000;
  - (ii) on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term of two years, or both.

(2) Nothing in section 220 shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the Supreme Court or, as the case may be, on an order for the production of documents in an action in the Court of Appeal.

(3) A person who complies with a requirement imposed on him in pursuance of paragraph (j) or (k) of subsection (2) of section 220 shall be entitled to recover from the person who imposed the requirement such sums in respect of the expenses incurred in complying with the requirement as are prescribed by regulations made by the Minister.

(4) Regulations under subsection (3) may make different provision for different circumstances.

(5) Any payments under subsection (3) shall be made out of money provided by the Legislature.

*Improvement notices and prohibition notices*

Improvement notices

222 (1) If an inspector appointed under section 217(5) is of the opinion that a person—

- (a) is contravening one or more of the relevant statutory provisions; or
- (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated;

he may serve on that person a notice under this section, (referred to in the following sections of this Part as an improvement notice).

(2) An improvement notice shall—

- (a) state that the inspector is of the said opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and

- (b) require the person on whom the notice is served to remedy the contravention in question or (as the case may be) the matters occasioning it within such period as may be specified in the notice.

(3) The period specified in pursuance of subsection (2)(b) shall not expire before the end of the period within which a notice can be given under section 225 requiring questions relating to the improvement notice to be referred to arbitration.

(4) In this and the following sections of this Part “the relevant statutory provisions” means—

- (a) sections 56, 57, 59 to 67, 93, 94, 96 (and Schedule 2), 97 (and Schedule 3), 98, 107, 122, 123, 124, 125 and 130 to 149; and
- (b) the provisions of any instrument of a legislative character having effect under any of those provisions.

#### Prohibition notices

223 (1) If, as regards any relevant activities which are being or are likely to be carried on board any ship by or under the control of any person, an inspector appointed under section 217(5) is of the opinion that, as so carried on or as likely to be so carried on, the activities involve or (as the case may be) will involve the risk of—

- (a) serious personal injury to any person (whether on board the ship or not);  
or
- (b) serious pollution of any navigable waters;

the inspector may serve on the first-mentioned person a notice under this section (referred to in the following sections of this Part as a “prohibition notice”).

(2) In subsection (1) “relevant activities” means activities to or in relation to which any of the relevant statutory provisions apply or will, if the activities are carried on as mentioned in that subsection, apply.

(3) A prohibition notice shall—

- (a) state that the inspector is of the said opinion;
- (b) specify the matters which in his opinion give or (as the case may be) will give rise to the said risk;
- (c) where in his opinion any of those matters involve or (as the case may be) will involve a contravention of any of the relevant statutory provisions state that he is of that opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and
- (d) direct—
  - (i) that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served; or
  - (ii) that the ship shall not go to sea;

(or both of those things) unless the matters specified in the notice in pursuance of paragraph (b), and any associated contraventions of any provision so specified in pursuance of paragraph (c), have been remedied.

- (4) A direction contained in a prohibition notice in pursuance of subsection (3)(d) shall take effect—
- (a) at the end of a period specified in the notice; or
  - (b) if the direction is given in pursuance of subsection (3)(d)(ii) or the notice so declares, immediately.

#### Provisions supplementary to sections 222 and 223

224 (1) An improvement notice or a prohibition notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.

(2) An improvement notice or a prohibition notice shall not direct any measures to be taken to remedy the contravention of any of the relevant statutory provisions that are more onerous than those necessary to secure compliance with that provision.

(3) Where an improvement notice or a prohibition notice that is not to take immediate effect has been served—

- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified in it in pursuance of section 222(2)(b) or (as the case may be) section 223(4); and
- (b) the period so specified may be extended or further extended by an inspector at any time when a reference to arbitration in respect of the notice is not pending under section 225.

#### References of notices to arbitration

225 (1) Any question—

- (a) as to whether any of the reasons or matters specified in an improvement notice or a prohibition notice in pursuance of section 222(2)(a) or 223(3)(b) or (c) in connection with any opinion formed by the inspector constituted a valid basis for that opinion; or
- (b) as to whether any directions included in the notice in pursuance of section 223(l) were reasonable;

shall, if the person on whom the notice was served so requires by a notice given to the inspector within 21 days from the service of the notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by him.

- (2) Where a notice is given by a person in accordance with subsection (1), then—

- (a) in the case of an improvement notice, the giving of the notice shall have the effect of suspending the operation of the improvement notice until the decision of the arbitrator is published to the parties or the reference is abandoned by that person;
- (b) in the case of a prohibition notice, the giving of the notice shall have the effect of so suspending the operation of the prohibition notice if, but only if, on the application of that person the arbitrator so directs (and then only from the giving of the direction).

(3) Where on a reference under this section the arbitrator decides as respects any reason, matter or direction to which the reference relates, that in all the circumstances—

- (a) the reason or matter did not constitute a valid basis for the inspector's opinion; or
- (b) the direction was unreasonable;

he shall either cancel the notice or affirm it with such modifications as he may in the circumstances think fit; and in any other case the arbitrator shall affirm the notice in its original form.

(4) Where any reference under this section involves the consideration by the arbitrator of the effects of any particular activities or state of affairs on the health or safety of any persons, he shall not on that reference make any decision such as is mentioned in subsection (3)(a) or (b) except after—

- (a) in the case of an improvement notice, affording an opportunity of making oral representations to him with respect to those effects to a member of any such panel of representatives of maritime trade unions as may be appointed by the Minister for the purposes of this subsection; or
- (b) in the case of a prohibition notice affording an opportunity of making such representations to him to either—
  - (i) a representative of a trade union representing persons whose interests it appears to him that the notice was designed to safeguard; or
  - (ii) a member of any such panel as is referred to in paragraph (a);  
as he thinks appropriate; and
- (c) (in either case) considering any representations made to him in pursuance of paragraph (a) or (b).

(5) A person shall not be qualified for appointment as an arbitrator under this section unless he is—

- (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate;
- (b) a naval architect;

(c) a person falling within subsection (6); or

(d) a person with special experience of shipping matters, of the fishing industry, or of activities carried on in ports.

(6) For the purposes of subsection (5)(c) a person falls within this subsection if he is a barrister and attorney of at least 10 years standing.

(7) In connection with his functions under this section an arbitrator shall have the powers conferred on an inspector by section 220 other than subsections (3), (4) and (6).

#### Compensation in connection with invalid prohibition notices

226 (1) If on a reference under section 225 relating to a prohibition notice—

(a) the arbitrator decides that any reason or matter did not constitute a valid basis for the inspector's opinion; and

(b) it appears to him that there were no reasonable grounds for the inspector to form that opinion;

the arbitrator may, subject to subsection (3), award the person on whom the notice was served such compensation in respect of any loss suffered by him in consequence of the service of the notice as the arbitrator thinks fit.

(2) If on any such reference the arbitrator decides that any direction included in the notice was unreasonable, the arbitrator may, subject to subsection (3), award the person on whom the notice was served such compensation in respect of any loss suffered by him in consequence of the direction as the arbitrator thinks fit.

(3) An arbitrator shall not award any compensation under subsection (1) or (2) in the case of any prohibition notice unless—

(a) it appears to him that the direction given in pursuance of section 223(3)(d) contained any such requirement as is mentioned in subparagraph (ii) of that provision; or

(b) it appears to him that—

(i) the inspector was of the opinion that there would be such a risk of injury or pollution as is referred to in the notice if the ship went to sea; and

(ii) the effect of the direction given in pursuance of section 223(3)(d) was to prohibit the departure of the ship unless the matters, or (as the case may be) the matters and contraventions, referred to in the direction were remedied.

#### Offences

227 (1) Any person who contravenes any requirement imposed by an improvement notice shall be guilty of an offence and liable—

(a) on summary conviction, to a fine of \$10,000;

(b) on conviction on indictment, to a fine of \$50,000.

(2) Any person who contravenes any prohibition imposed by a prohibition notice shall be guilty of an offence and liable—

(a) on summary conviction, to a fine of \$10,000;

(b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term of two years or both.

(3) It shall be a defence for a person charged with an offence under this section to prove that he exercised all due diligence to avoid a contravention of the requirement or prohibition in question.

(4) In this section any reference to an improvement notice or a prohibition notice includes a reference to any such notice as modified under section 225(3).

## PART XI

### ACCIDENT INVESTIGATIONS AND INQUIRIES

#### *Marine accident investigations*

##### Investigation of marine accidents

228 (1) The Minister shall, for the purpose of the investigation of any such accidents as are mentioned in subsection (2), appoint inspectors of marine accidents.

(2) The accidents referred to in subsection (1) are—

(a) any accident involving a ship or ship's boat where, at the time of the accident—

(i) the ship is a Bermuda ship; or

(ii) the ship, or (in the case of an accident involving a ship's boat) that boat, is within Bermuda waters; and

(b) such other accidents involving ships or ships' boats as the Minister may determine.

(3) The Minister may by regulations make such provision as he considers appropriate with respect to the investigation of any such accidents as are mentioned in subsection (2).

(4) Any such regulations may, in particular, provide—

(a) with respect to the definition of "accident" for the purposes of this section and the regulations;

(b) imposing requirements as to the reporting of accidents;

(c) prohibiting, pending investigation, access to or interference with any ship or ship's boat involved in an accident;

- (d) authorising any person, so far as may be necessary for the purpose of determining whether an investigation should be carried out, to have access to, examine, remove, test, take measures for the preservation of, or otherwise deal with, any such ship or boat or any other ship or ship's boat;
- (e) specifying, with respect to the investigation of accidents, the functions of the Chief Marine Surveyor (which may include the function of determining whether, and if so by whom, particular accidents should be investigated), the functions of other inspectors of marine accidents, and the manner in which any such functions are to be discharged;
- (f) for the appointment by the Chief Marine Surveyor, in such circumstances as may be specified in the regulations, of persons to carry out investigations under this section who are not inspectors of marine accidents;
- (g) for the appointment by the Minister of persons to review any findings or conclusions of a person carrying out an investigation under this section;
- (h) for the procedure to be followed in connection with investigations or reviews under this section;
- (i) for conferring on persons discharging functions under the regulations who are not inspectors of marine accidents all or any of the powers conferred on an inspector by section 220;
- (j) for the submission to the Minister, and the publication by him, of reports of investigations or reviews under this section;
- (k) for the publication by the Chief Marine Surveyor of reports and other information relating to accidents.

(5) Regulations under this section may provide for any provisions of the regulations to apply to any specified class or description of incidents or situations which involve, or occur on board, ships or ships' boats but are not accidents for the purposes of the regulations, being a class or description framed by reference to any of the following, namely—

- (a) the loss or destruction of or serious damage to any ship or structure;
- (b) the death of or serious injury to any person; or
- (c) environmental damage;

whether actually occurring or not, and (subject to such modifications as may be specified in the regulations) for those provisions to apply in relation to any such incidents or situations as they apply in relation to accidents.

(6) Regulations under this section may provide that a contravention of the regulations shall be an offence punishable on summary conviction by a fine of \$10,000 and on conviction on indictment by a fine of \$50,000.

(7) The Chief Marine Surveyor, or (as the case may be) inspectors of marine accidents generally, shall discharge such functions in addition to those conferred by or under the preceding provisions of this section as the Minister may determine.

(8) Any inspector of marine accidents shall, for the purpose of discharging any functions conferred on him by or under this section, have the powers conferred on an inspector by section 220.

(9) In this section—

(a) references to an accident involving a ship or ship's boat include references to an accident occurring on board a ship or ship's boat (and any reference to a ship or ship's boat involved in an accident shall be construed accordingly); and

(b) "ship's boat" includes a life-raft.

#### Formal investigation into marine accidents

229 (1) Where any accident has occurred, the Minister may (whether or not an investigation into it has been carried out under section 228) cause a formal investigation into the accident to be held by a wreck commissioner.

(2) A wreck commissioner holding a formal investigation shall conduct it in accordance with rules under section 231(l); and those rules shall require the assistance of one or more assessors and, if any question as to the cancellation or suspension of an officer's certificate is likely, the assistance of not less than two assessors.

(3) Section 9 of the Magistrates Act 1948 (which provides for the attendance of witnesses) shall apply in relation to a formal investigation held by a wreck commissioner as if the wreck commissioner were a magistrates' court and the investigation a complaint; and the wreck commissioner shall have power to administer oaths for the purposes of the investigation.

(4) If as a result of the investigation the wreck commissioner is satisfied, with respect to any officer, of any of the matters mentioned in paragraphs (a) to (c) of section 73(1) and, if it is a matter mentioned in paragraph (a) or (b) of that section, is further satisfied that it caused or contributed to the accident, he may cancel or suspend any certificate issued to the officer under section 59 or censure him; and if he cancels or suspends the certificate the officer shall deliver it forthwith to him or to the Minister.

(5) If a person fails to deliver a certificate as required under subsection (4) he shall be guilty of an offence and liable on summary conviction to a fine of \$2,000.

(6) Where a certificate has been cancelled or suspended under this section, the Minister, if of the opinion that the justice of the case requires it, may re-issue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate.

(7) The wreck commissioner may make such awards as he thinks just with regard to the costs (or, as the case may be, expenses) of the investigation and of any parties at the

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investigation, and with regard to the parties by whom those costs or expenses are to be paid; and any such award of the wreck commissioner may, on the application of any party named in it, be made an order of the Supreme Court.

(8) Any costs or expenses directed by an award to be paid in full shall be taxable.

(9) The wreck commissioner shall make a report on the investigation to the Minister.

(10) In this section “accident” means any accident to which regulations under section 228 apply or any incident or situation to which any such regulations apply by virtue of subsection (5) of that section.

### Re-hearing of and appeal from investigations

230 (1) Where a formal investigation has been held under section 229 the Minister may order the whole or part of the case to be reheard, and shall do so—

- (a) if new and important evidence which could not be produced at the investigation has been discovered; or
- (b) if there appear to the Minister to be other grounds for suspecting that a miscarriage of justice may have occurred.

(2) An order under subsection (1) may provide for the rehearing to be by a wreck commissioner or the Supreme Court.

(3) Any re-hearing under this section which is not held by the Supreme Court shall be conducted in accordance with rules made under section 231(l); and section 229 shall apply in relation to a rehearing of an investigation by a wreck commissioner as it applies in relation to the holding of an investigation.

(4) Where the wreck commissioner holding the investigation has decided to cancel or suspend the certificate of any person or has found any person at fault, then, if no application for an order under subsection (1) has been made or such an application has been refused, that person or any other person who, having an interest in the investigation, has appeared at the hearing and is affected by the decision or finding, may appeal to the Supreme Court.

(5) Section 229 (7) applies for the purposes of this section as it applies for the purposes of that section.

### Rules as to investigations and appeals

231 (1) The Minister may make rules for the conduct of formal investigations under section 229 and for the conduct of any rehearing under section 230 which is not held by the Supreme Court.

(2) Without prejudice to the generality of subsection (1), rules under this section may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected.

(3) Rules of court made for the purpose of re-hearings under section 230 which are held by the Supreme Court, or of appeals to the Court of Appeal, may require the court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a re-hearing or hear such an appeal with the assistance of one or more assessors.

*Inquiries into and reports on deaths and injuries*

Inquiries into deaths of crew members and others

232 (1) Subject to subsection (6), where—

- (a) any person dies in a Bermuda ship or in a boat or liferaft from such a ship; or
- (b) the master of or a seafarer employed in such a ship dies in a country outside Bermuda;

an inquiry into the cause of the death shall be held by a superintendent or proper officer or such other person as the Minister may appoint at the next port where the ship calls after the death or at such other place as the Minister may direct.

(2) Subject to subsection (6), where it appears to the Minister that—

- (a) in consequence of an injury sustained or a disease contracted by a person when he was the master of or a seafarer employed in a Bermuda ship, he ceased to be employed in the ship and subsequently died; and
- (b) the death occurred in a country outside Bermuda during the period of one year beginning with the day on which he so ceased;

the Minister may arrange for an inquiry into the cause of the death to be held by a superintendent or proper officer or such other person as the Minister may appoint.

(3) Subject to subsection (6), where it appears to the Minister that a person may—

- (a) have died in a Bermuda ship or in a boat or life-raft from such a ship; or
- (b) have been lost from such a ship, boat or life-raft and have died in consequence of being so lost;

the Minister may arrange for an inquiry to be held by a superintendent or proper officer or such other person as the Minister may appoint into whether the person died as mentioned and, if the superintendent or officer or other person finds that he did, into the cause of the death.

(4) The superintendent or officer or other person holding the inquiry shall for the purpose of the inquiry have the powers conferred on an inspector by section 220.

(5) The person holding the inquiry shall make a report of his findings to the Minister who shall make the report available—

- (a) if the person to whom the report relates was employed in the ship and a person was named as his next of kin in the crew agreement or list of the

crew in which the name of the person to whom the report relates last appeared, to the person so named;

- (b) in any case, to any person requesting it who appears to the Minister to be interested.

(6) No inquiry shall be held under this section where, in Bermuda, a coroner's inquest is to be held.

*[Section 232 amended by 2012 : 30 s. 3 effective 30 June 2014]*

#### Transmission of particulars of certain deaths on ships

233 Where—

- (a) an inquest is held into a death or a post-mortem examination is made of a dead body as a result of which the coroner is satisfied that an inquest is unnecessary; and
- (b) it appears to the coroner that the death in question is such as is mentioned in section 121(2),

it shall be the duty of the coroner to send to the Registrar particulars in respect of the deceased of a kind prescribed by regulations made by the Minister.

## PART XII

### LEGAL PROCEEDINGS

#### *Prosecution of offences*

#### Time limit for summary offences

234 (1) Subject to subsections (2) and (3), no person shall be convicted of an offence under this Act in summary proceedings unless—

- (a) the proceedings were commenced within six months beginning with the date on which the offence was committed; or
- (b) in a case where the accused happens during that period to be out Bermuda, the proceedings were commenced within two months after he first happens to arrive within Bermuda and before the expiration of three years beginning with the date on which the offence was committed.

(2) Nothing in subsection (1) shall apply in relation to any indictable offence.

(3) Subsection (1) shall not prevent a conviction for an offence in summary proceedings begun before the expiration of three years beginning with the date on which the offence was committed and before—

- (a) the expiration of the period of six months beginning with the day when evidence which the Minister considers is sufficient to justify a prosecution for the offence came to his knowledge; or

- (b) the expiration of two months beginning with the day when the accused was first present in Bermuda after the expiration of the period mentioned in paragraph (a) if throughout that period the accused was absent from Bermuda.
- (4) For the purpose of subsection (3)—
  - (a) a certificate of the Minister stating that evidence came to his knowledge on a particular day shall be conclusive evidence of that fact; and
  - (b) a document purporting to be a certificate of the Minister and to be signed on his behalf shall be presumed to be such a certificate unless the contrary is proved.

Time limit for summary orders

235 No order for the payment of money shall be made under this Act in proceedings before a magistrates' court unless—

- (a) the proceedings were commenced within six months beginning with the date on which the matter of complaint arose; or
- (b) in a case where both or either of the parties to the proceedings happen during that period to be out of Bermuda, the proceedings were commenced within six months after they both first happen to arrive, or to be at one time, within Bermuda.

Offences by officers of bodies corporate

236 (1) Where a body corporate is guilty of an offence under this Act or any instrument made under it, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in such a capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

*Jurisdiction*

Jurisdiction in relation to offences

237 (1) For the purpose of conferring jurisdiction, any offence under this Act shall be deemed to have been committed in any place in Bermuda where the offender may for the time being be.

(2) For the same purpose, any matter of complaint under this Act shall be deemed to have arisen in any place in Bermuda where the person complained against may for the time being be.

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(3) The jurisdiction under subsections (1) and (2) shall be in addition to and not in derogation of any jurisdiction or power of a court under any other enactment.

### Jurisdiction over ships lying off coast

238 (1) A court shall have jurisdiction as respects offences under this Act over any vessel being on, or lying or passing off, the coast of Bermuda or being in or near a bay, channel, or navigable water in Bermuda and over all persons on board that vessel or for the time being belonging to it.

(2) The jurisdiction under subsection (1) shall be in addition to and not in derogation of any jurisdiction or power of a court of summary jurisdiction under the Magistrates' Act 1948.

### Jurisdiction in cases of offences on board ship

239 (1) Where any person is charged with having committed any offence under this Act then—

- (a) if he is a British citizen or a British overseas territory citizen possessing Bermudian status and is charged with having committed it—
  - (i) on board any Bermuda ship on the high seas;
  - (ii) in any foreign port or harbour; or
  - (iii) on board any foreign ship to which he does not belong; or
- (b) if he is not a British citizen or a British overseas territory citizen possessing such status and is charged with having committed it on board any Bermuda ship on the high seas;

and he is found within the jurisdiction of any court in Bermuda which would have had jurisdiction in relation to the offence if it had been committed on board a Bermuda ship within the limits of its ordinary jurisdiction to try the offence that court shall have jurisdiction to try the offence as if it had been so committed.

(2) In subsection (1) "Bermudian status" has the meaning given in the Bermuda Immigration and Protections Act 1956.

### Offences committed by Bermuda seafarers

240 (1) Any act in relation to property or person done in or at any place (ashore or afloat) outside Bermuda by any master or seafarer who at the time is employed in a Bermuda ship, which, if done in Bermuda, would be an offence under the law of Bermuda, shall—

- (a) be an offence under that law; and
- (b) be treated for the purposes of jurisdiction and trial, as if it had been done within the jurisdiction of the competent court.

(2) Subsection (1) also applies in relation to a person who had been so employed within the period of three months expiring with the time when the act was done.

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(3) Subsections (1) and (2) apply to omissions as they apply to acts.

*[Section 240 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### *Return of offenders*

#### Return of offenders

241 (1) The powers conferred on a British consular officer by subsection (2) are exercisable in the event of any complaint being made to him—

(a) that any offence against property or persons has been committed at any place (ashore or afloat) outside Bermuda by any master or seafarer who at the time when the offence was committed, or within three months before that time, was employed in a Bermuda ship; or

(b) that any offence on the high seas has been committed by any master or seafarer belonging to any Bermuda ship.

(2) Those powers are—

(a) to inquire into the case upon oath; and

(b) if the case so requires, to take any steps in his power for the purpose of placing the offender under the necessary restraint and sending him by a Bermuda ship as soon as practicable in safe custody to Bermuda for proceedings to be taken against him.

(3) The consular officer may, subject to subsections (4) and (5), order the master of any Bermuda ship bound for Bermuda to receive and carry the offender and the witnesses to Bermuda; and the officer shall endorse upon the agreement of the ship such particulars with respect to them as the Minister requires.

(4) A consular officer shall not exercise the power conferred by subsection (3) unless no more convenient means of transport is available or it is available only at disproportionate expense.

(5) No master of a ship may be required under subsection (3) to receive more than one offender for every 100 tons of his ship's registered tonnage, or more than one witness for every 50 tons of his ship's registered tonnage.

(6) The master of any ship to whose charge an offender has been committed under subsection (3) shall, on his ship's arrival in Bermuda, give the offender into the custody of a police officer.

(7) If any master of a ship, when required under subsection (3) to receive and carry any offender or witness in his ship—

(a) fails to do so; or

(b) in the case of an offender, fails to deliver him as required by subsection (6);

he shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

(8) The expense of imprisoning any such offender and of carrying him and witnesses to Bermuda otherwise than in the ship to which they respectively belong shall be paid out of money provided by the Legislature.

(9) References in this section to carrying a person in a ship include affording him subsistence during the voyage.

*[Section 241 amended by 2012 : 30 s. 3 effective 30 June 2014]*

*Detention of ship and distress on ship*

Enforcing detention of ship

242 (1) Where under this Act a ship is to be or may be detained any of the following officers may detain the ship—

- (a) any commissioned naval or military officer;
- (b) any officer of the Department of Maritime Administration who is authorised by the Minister either generally or in a particular case, to exercise powers under this section;
- (c) any officer of customs; and
- (d) any British consular officer.

(2) A notice of detention may—

- (a) include a direction that the ship—
  - (i) must remain in a particular place; or
  - (ii) must be moved to a particular anchorage or berth; and
- (b) if it includes such a direction, may specify circumstances relating to safety or the prevention of pollution in which the master may move his ship from that place, anchorage or berth.

(3) If a ship as respects which notice of detention has been served on the master proceeds to sea, otherwise than in accordance with such a notice, before it is released by a competent authority, the master of the ship shall be guilty of an offence.

(4) If a ship as respects which notice of detention has been served on the master fails to comply with a direction given under subsection (2)(a), the master of the ship shall be guilty of an offence.

(5) A person guilty of an offence under subsection (3) or (4) shall be liable—

- (a) on summary conviction, to a fine of \$100,000;
- (b) on conviction on indictment, to a fine of \$200,000.

(6) The owner of a ship, and any person who sends to sea a ship, as respects which an offence is committed under subsection (3) or (4) shall, if party or privy to the offence, also be guilty of an offence under that subsection and liable accordingly.

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(7) Where a ship proceeding to sea in contravention of subsection (3) or failing to comply with a direction given under subsection (2)(a) carries away without his consent any of the following who is on board the ship in the execution of his duty, namely—

- (a) any officer authorised by subsection (1) to detain the ship; or
- (b) any surveyor of ships;

the owner and master of the ship shall each—

- (i) be liable to pay all expenses of and incidental to the officer or surveyor being so carried away; and
- (ii) be guilty of an offence.

(8) A person guilty of an offence under subsection (7) shall be liable—

- (a) on summary conviction, to a fine of \$10,000;
- (b) on conviction on indictment, to a fine of \$50,000.

(9) Where under this Act a ship is to be detained an officer of customs shall, and where under this Act a ship may be detained an officer of customs may, refuse to clear the ship outwards or grant a transire to the ship.

(10) When any provision of this Act provides that a ship may be detained until any document is produced to the proper officer of customs the officer able to grant a clearance or transire of the ship is (unless the context otherwise requires) that officer.

(11) Any reference in this section to proceeding to sea includes a reference to going on a voyage or excursion that does not involve going to sea, and references to sending or taking to sea shall be construed accordingly

Sums ordered to be paid leviable by distress on the ship

243 (1) Where any court has power to make an order directing payment to be made of any seafarer's wages, fines or other sums of money, then, if the person directed to pay is the master or owner of the ship and the money directed to be paid is not paid in accordance with the order, the court who made the order may, direct the amount remaining unpaid to be levied by distress, of the ship and its equipment.

(2) The remedy made available by this section is in addition to any other powers for compelling the payment of money ordered to be paid.

*[Section 243 amended by 2012 : 30 s. 3 effective 30 June 2014]*

### *Special evidential provisions*

Depositions of persons abroad admissible

244 (1) If the evidence of any person is required in the course of any legal proceeding before a judge or magistrate in relation to the subject matter of the proceeding and it is proved that that person cannot be found in Bermuda, any deposition that he may have

previously made at a place outside Bermuda in relation to the same subject matter shall, subject to subsection (2), be admissible in evidence in those proceedings.

(2) For a deposition to be admissible under subsection (1) in any proceedings, the deposition—

- (a) must have been taken on oath;
- (b) must have been taken before a justice or magistrate in the United Kingdom, any colony or a British consular officer in any other place;
- (c) must be authenticated by the signature of the justice, magistrate or officer taking it; and
- (d) must, if the proceedings are criminal proceedings, have been taken in the presence of the accused;

and, in a case falling within paragraph (d), the deposition shall be certified by the justice, magistrate or officer taking it to have been taken in the presence of the accused.

(3) No proof need be given of the signature or official character of the person appearing to have signed any such deposition and, in any criminal proceedings, a certificate stating that the deposition was taken in the presence of the accused shall, unless the contrary is proved, be evidence of that fact.

(4) This section also applies to proceedings before any person authorised by law or consent of the parties to receive evidence.

(5) Nothing in this section affects the admissibility in evidence of depositions under any other enactment or the practice of any court.

#### Admissibility in evidence and inspection of certain documents

245 (1) The following documents shall be admissible in evidence and, when in the custody of the Registrar, shall be open to public inspection—

- (a) documents purporting to be submissions to or decisions by superintendents or proper officers under section 46;
- (b) the official log book of any ship kept under section 87 and, without prejudice to section 246(2), any document purporting to be a copy of an entry therein and to be certified as a true copy by the master of the ship;
- (c) crew agreements, lists of crews made under section 88 and notices given under Part V of additions to or changes in crew agreements and lists of crews;
- (d) returns or reports under section 121;
- (e) documents transmitted to the Registrar under section 13.

(2) A certificate issued under section 59 shall be admissible in evidence.

Admissibility of documents in evidence

246 (1) Where a document is by this Act declared to be admissible in evidence the document shall, on its production from proper custody—

- (a) be admissible in evidence in any court or before any person having by law or consent of parties authority to receive evidence; and
- (b) subject to all just exceptions, be evidence of the matters stated in the document.

(2) A copy of, or extract from, any document so made admissible in evidence shall, subject to subsection (3), also be admissible in evidence and evidence of the matters stated in the document.

(3) A copy of, or extract from, a document shall not be admissible by virtue of subsection (2) unless—

- (a) it is proved to be an examined copy or extract; or
- (b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted;

and that officer shall furnish the certified copy or extract to any person who applies for it at a reasonable time and pays the prescribed fee.

(4) A person shall, on payment of such fee, be entitled to have a certified copy of any declaration or document a copy of which is made evidence by this Act.

(5) If any officer having duties of certification under subsection (3) in relation to any document intentionally certifies any document as being a true copy or extract knowing that the copy or extract is not a true copy or extract he shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$10,000 or to imprisonment for a term of six months;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term of two years or both.

Inspection and admissibility in evidence of copies of certain documents

247 (1) Where under any enactment a document is open to public inspection when in the custody of the Registrar—

- (a) there may be supplied for public inspection a copy or other reproduction of the document instead of the original; but
- (b) the original shall nevertheless be made available for public inspection if the copy or other reproduction is illegible.

(2) Where the Registrar destroys any document which has been sent to him under or by virtue of any enactment, and keeps a copy or other reproduction of that document, then—

- (a) any enactment providing for that document to be admissible in evidence or open to public inspection; and
- (b) in the case of a document falling within subsection (1), that subsection;

shall apply to the copy or other reproduction as if it were the original.

(3) For the purposes of this section, and of section 246(2) in its application to documents in the custody of the Registrar, a copy is to be taken to be the copy of a document notwithstanding that it is taken from a copy or other reproduction of the original.

Proof, etc. of exemptions

248 (1) Where any exception, exemption, excuse or qualification applies in relation to an offence under this Act—

- (a) it may be proved by the defendant; but
- (b) need not be specified or negated in any information or complaint;

and, if so specified or negated, shall not require to be proved by the informant or complainant.

(2) This section applies in relation to an offence whether or not the exception, exemption, excuse or qualification is contained in the section creating the offence.

#### *Service of documents*

Service of documents

249 (1) Any document authorised or required to be served on any person may be served on that person—

- (a) by delivering it to him;
- (b) by leaving it at his proper address; or
- (c) by sending it by post to him at his proper address.

(2) Any such document required to be served on the master of a ship may be served—

- (a) where there is a master, by leaving it for him on board the ship with the person appearing to be in command or charge of the ship;
- (b) where there is no master, on—
  - (i) the managing owner of the ship; or
  - (ii) if there is no managing owner, on any agent of the owner; or
  - (iii) where no such agent is known or can be found, by leaving a copy of the document fixed to the mast of the ship.

(3) Any document authorised or required to be served on any person may—

- (a) in the case of a body corporate, be served on the secretary or clerk of that body;
  - (b) in the case of a partnership, be served on a partner or a person having the control or management of the partnership business.
- (4) Any notice authorised or required by or under Part IV to be served on the Minister may be served by post.
- (5) Any notice authorised by section 222, 223, 224 or 225 to be given to an inspector may be given by delivering it to him or by leaving it at, or sending it by post to, his office.
- (6) Any document authorised or required by or under any enactment to be served on the registered owner of a Bermuda ship shall be treated as duly served on him if served on such persons, in such circumstances and by such method, as may be specified in registration regulations.
- (7) For the purposes of this section the proper address of any person on whom any document is to be served shall be his last known address, except that—
- (a) in the case of a body corporate or their secretary or clerk it shall be the address of the registered or principal office of that body;
  - (b) in the case of a partnership or a person having the control or management of the partnership business, it shall be the principal office of the partnership;
- and for the purposes of this subsection the principal office of a company registered outside Bermuda or of a partnership carrying on business outside Bermuda shall be their principal office in Bermuda.
- (8) If the person to be served with any notice has (whether in pursuance of registration regulations or otherwise) specified an address in Bermuda other than his proper address within the meaning of subsection (7) as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section as his proper address.

### PART XIII

#### SUPPLEMENTAL

##### *Financial Provisions*

##### Fees

- 250 (1) The Minister may make regulations prescribing the fees to be paid in respect of the performance of any function under this Act by a public officer and for the inspection of any register or records required to be kept by a public officer thereunder.
- (2) Fees prescribed under subsection (1) shall be paid into the Consolidated Fund of Bermuda and any provision of this Act—

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- (a) authorizing any person to fix or determine any fee, shall be construed as authorizing the Minister to prescribe that fee under subsection (1);
- (b) requiring the payment of any fee into any fund, shall be construed as requiring payment of that fee into the Consolidated Fund of Bermuda.

(3) In this section the performance of a function includes the registration of any ship, the grant of any clearance, licence, certificate, permit or other document and the performance of services or surveys.

(4) Regulations made under this section shall be subject to the affirmative resolution procedure.

*[Section 250 subsection (4) inserted by 2007:17 s.2 effective 1 June 2007]*

### *Registration and tonnage fees*

#### Registration fee

251 (1) There shall be charged, levied and collected on the initial registration of a ship or re-registration or renewal of registration of a ship or on the issuance of a provisional certificate of registry of a ship entered on the register a fee at the applicable rate specified in regulations made under section 250.

(2) The Registrar shall not register, re-register, or renew the registration, as the case may be, unless the fee specified in respect thereof has been paid.

*[Section 251 subsection (1) amended by 2007:17 s.3 effective 1 June 2007]*

#### Tonnage Fee

252 (1) Subject to subsection (3), there shall be charged, levied and collected on every registered ship an annual tonnage fee at the applicable rate specified in regulations made under section 250.

(2) The tonnage fee shall be payable to the Registrar on or before 1 April in each year.

(3) Notwithstanding subsection (1), where a ship is registered after 1 April in any year the tonnage fee payable shall be, in respect of each month or part thereof, beginning with the date of registration and ending on 31 March of the next ensuing year, one-twelfth of the annual tonnage fee.

(4) Where—

- (a) the tonnage fee has been paid in respect of a ship for any year; and
- (b) it is shown to the satisfaction of the Minister that the ship has been laid up for a period exceeding three consecutive months in that year;

the Minister shall cause to be made to the owner of the ship, a refund of one-twelfth the annual tonnage fee in respect of each month during which the ship was so laid up.

(5) For the purposes of subsections (3) and (4), the expression “ship” does not include a yacht.

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(6) *[repealed]*

(7) *[repealed]*

(8) The Crown may recover unpaid tonnage fees as a debt owing to the Crown; and such unpaid fees shall constitute a maritime lien on the ship second only to liens for wages and salvage.

*[Section 252 subsection (1) amended, subsections (6) and (7) repealed, by 2007:17 s.4 effective 1 June 2007]*

Expenses charged on money provided by Legislature

253 Any expenses incurred by the Minister under this Act shall be defrayed out of moneys provided by the Legislature.

### *Subordinate Legislation*

Regulations, rules and orders, etc.

254 (1) Except where otherwise provided, regulations, orders or rules under this Act shall be subject to negative resolution procedure.

(2) Before making the following orders or regulations, namely—

(a) an order under section 6;

(b) regulations under Part V or under section 121 or 125;

the Minister shall consult with organisations in Bermuda appearing to him representative of persons who will be affected by the orders or regulations.

(3) Any direction, notice, order or authorisation under this Act given or made by the Minister shall be in writing.

(4) Any power to give a direction includes power to vary or revoke the direction by a subsequent direction.

### *Final provisions*

Repeals consequential amendments and transitional provisions

255 (1) The enactments specified in Schedule 9 shall, subject to subsection (3), be repealed to the extent specified in the second column of that Schedule.

(2) The enactments specified in Schedule 10 shall have effect subject to the amendments specified in that Schedule.

(3) The saving and transitional provisions in Schedule 11 shall have effect.

(4) The Minister may by order amend any enactment relating to merchant shipping or otherwise as he thinks fit in consequence of this Act.

(5) An order made under this section is subject to affirmative resolution procedure.

SCHEDULE 1

(Section 30)

PRIVATE LAW PROVISIONS FOR REGISTERED SHIPS

*GENERAL*

1 (1) Subject to any rights and powers appearing from the register to be vested in any other person, the registered owner of a ship or of a share in a ship shall have power absolutely to dispose of it provided the disposal is made in accordance with this Schedule and registration regulations.

(2) Subparagraph (1) does not imply that interests arising under contract or other equitable interests cannot subsist in relation to a ship or a share in a ship; and such interests may be enforced by or against owners and mortgagees of ships in respect of their interest in the ship or share in the same manner as in respect of any other personal property.

(3) The registered owner of a ship or of a share in a ship shall have power to give effectual receipts for any money paid or advanced by way of consideration on any disposal of the ship or share.

*TRANSFERS ETC. OF REGISTERED SHIPS*

2 (1) Any transfer of a registered ship, or a share in such a ship, shall be effected by a bill of sale satisfying the prescribed requirements, unless the transfer will result in the ship ceasing to have a Bermuda connection.

(2) Where any such ship or share has been transferred in accordance with subparagraph (1), the transferee shall not be registered as owner of the ship or share unless—

- (a) he has made the prescribed application to the Registrar; and
- (b) the Registrar is satisfied that the ship retains a Bermuda connection and that he would not refuse to register the ship.

(3) If an application under subparagraph (2) is granted by the Registrar, the Registrar shall register the bill of sale in the prescribed manner.

(4) Bills of sale shall be registered in the order in which they are produced to the Registrar for the purposes of registration.

3 (1) Where a registered ship, or a share in a registered ship, is transmitted to any person by any lawful means other than a transfer under paragraph 2 and the ship continues to have a Bermuda connection, that person shall not be registered as owner of the ship or share unless—

- (a) he has made the prescribed application to the Registrar; and

(b) the Registrar is satisfied that the ship retains a Bermuda connection and that he would not refuse to register the ship.

(2) If an application under subparagraph (1) is granted by the Registrar, the Registrar shall cause the applicant's name to be registered as owner of the ship or share.

4 (1) Where the property in a registered ship or share in a registered ship is transmitted to any person by any lawful means other than a transfer under paragraph 2, but as a result the ship no longer has a Bermuda connection, the Supreme Court may, on application by or on behalf of that person, order a sale of the property so transmitted and direct that the proceeds of sale, after deducting the expenses of the sale, shall be paid to that person or otherwise as the court direct.

(2) The court may require any evidence in support of the application it thinks requisite, and may make the order on any terms and conditions it thinks just, or may refuse to make the order, and generally may act in the case as the justice of the case requires.

(3) Every such application must be made within the period of 28 days beginning with the date of the occurrence of the event on which the transmission has taken place, or within such further time (not exceeding one year) as the court may allow.

(4) If—

(a) such an application is not made within the time allowed by or under subparagraph (3); or

(b) the court refuses an order for sale;

the ship or share transmitted shall be liable to forfeiture.

5 (1) Where any court (whether under paragraph 4 or otherwise) orders the sale of any registered ship or share in a registered ship, the order of the court shall contain a declaration vesting in some named person the right to transfer the ship or share.

(2) The person so named shall be entitled to transfer the ship or share in the same manner and to the same extent as if he were the registered owner of the ship or share.

(3) The Registrar shall deal with any application relating to the transfer of the ship or share made by the person so named as if that person were the registered owner.

6 (1) The Supreme Court may, if it thinks fit (without prejudice to the exercise of any other power), on the application of any interested person, make an order prohibiting for a specified time any dealing with a registered ship or share in a registered ship.

(2) The court may make the order on any terms or conditions it thinks just, or may refuse to make the order, or may discharge the order when made (with or without costs) and generally may act in the case as the justice of the case requires.

(3) The order, when a copy is served on the Registrar, shall be binding on him whether or not he was made a party to the proceedings.

*MORTGAGES OF REGISTERED SHIPS*

7 (1) A registered ship, or share in a registered ship, may be made a security for the repayment of a loan or the discharge of any other obligation.

(2) The instrument creating any such security (referred to in the following provisions of this Schedule as a “mortgage”) shall be in the form prescribed by or approved under registration regulations.

(3) Where a mortgage executed in accordance with subparagraph (2) is produced to the Registrar, he shall register the mortgage in the prescribed manner.

(4) Mortgages shall be registered in the order in which they are produced to the Registrar for the purposes of registration.

*PRIORITY OF REGISTERED MORTGAGES*

8 (1) Where two or more mortgages are registered in respect of the same ship or share, the priority of the mortgagees between themselves shall, subject to subparagraph (2), be determined by the order in which the mortgages were registered (and not by reference to any other matter).

(2) Registration regulations may provide for the giving to the Registrar by intending mortgagees of “priority notices” in a form prescribed by or approved under the regulations which, when recorded in the register, determine the priority of the interest to which the notice relates.

*REGISTERED MORTGAGEE'S POWER OF SALE*

9 (1) Subject to subparagraph (2), every registered mortgagee shall have power, if the mortgage money or any part of it is due, to sell the ship or share in respect of which he is registered, and to give effectual receipts for the purchase money.

(2) Where two or more mortgagees are registered in respect of the same ship or share, a subsequent mortgagee shall not, except under an order of a court of competent jurisdiction, sell the ship or share without the concurrence of every prior mortgagee.

*PROTECTION OF REGISTERED MORTGAGEES*

10 Where a ship or share is subject to a registered mortgage then—

- (a) except so far as may be necessary for making the ship or share available as a security for the mortgage debt, the mortgagee shall not by reason of the mortgage be treated as owner of the ship or share; and
- (b) the mortgagor shall be treated as not having ceased to be owner of the ship or share.

*TRANSFER OF REGISTERED MORTGAGE*

11 (1) A registered mortgage may be transferred by an instrument made in the form prescribed by or approved under registration regulations.

(2) Where any such instrument is produced to the Registrar, the Registrar shall register the transferee in the prescribed manner.

*TRANSMISSION OF REGISTERED MORTGAGE BY OPERATION OF LAW*

12 Where the interest of a mortgagee in a registered mortgage is transmitted to any person by any lawful means other than by a transfer under paragraph 11, the Registrar shall, on production of the prescribed evidence, cause the name of that person to be entered in the register as mortgagee of the ship or share in question.

*DISCHARGE OF REGISTERED MORTGAGE*

13 Where a registered mortgage has been discharged, the Registrar shall, on production of the mortgage deed and such evidence of the discharge of the mortgage as may be prescribed, cause an entry to be made in the register to the effect that the mortgage has been discharged.

*DEFINITIONS*

14 In this Schedule—

“mortgage” shall be construed in accordance with paragraph 7(2);

“prescribed” means prescribed in registration regulations; and

“registered mortgage” means a mortgage registered under paragraph 7(3).

SCHEDULE 2

(Section 96)

REGULATIONS RELATING TO SUBMERSIBLE AND SUPPORTING APPARATUS

- 1 (1) In this Schedule “regulations” means regulations made under section 96 and “prescribed” means prescribed by regulations.
- (2) Nothing in this Schedule shall be taken to prejudice the generality of section 96.

*REGISTRATION OF SUBMERSIBLE APPARATUS*

- 2 Regulations made by virtue of section 96(2)(e) of this Act may provide—
- (a) for all matters relevant to the maintenance of a register of submersible apparatus;
  - (b) without prejudice to subparagraph (a), for the period for which any registration or exemption is to remain effective without renewal, the alteration or cancellation in any prescribed circumstances of registration or exemption or of any conditions attached thereto, the person by whom and manner in which applications in connection with any registration or exemption are to be made, and information and evidence to be furnished in connection with any such application;
  - (c) for the marking or other means of identification of any submersible apparatus;
  - (d) for the issue of certificates of registration or exemption, and the custody, surrender, production or display of the certificates or copies of them;
  - (e) for matters arising out of the termination of any registration or exemption, or any conditions attached thereto.

*OFFENCES*

- 3 (1) Subject to subparagraph (2), regulations—
- (a) may provide for the creation of offences and for their punishment on summary conviction or on conviction on indictment; and
  - (b) may afford, in respect of any description of offence created by the regulations, such defence (if any) as may be prescribed.
- (2) The punishment for an offence created by regulations shall be—
- (a) on summary conviction, a fine of \$10,000;
  - (b) on conviction on indictment, a fine of \$50,000 or to imprisonment for a term of two years, or both,

but without prejudice to any further restriction contained in the regulations on the punishments which can be awarded and without prejudice to the exclusion by the regulations of proceedings on indictment.

*EXEMPTIONS FROM REGULATIONS*

4 (1) The operation of any regulations may be excluded in whole or in part in relation to any class or description of submersible or supporting apparatus by regulations, or in relation to any particular apparatus by the direction of the Minister given in such manner as he thinks appropriate.

(2) Any exemption or exclusion by regulations or by directions of the Minister under this paragraph may be made subject to the imposition of conditions specified by the regulations or directions.

(3) Where, in pursuance of this paragraph, a person is exempted or excluded from the requirements of the provisions of regulations but subject to a condition, and the condition is not observed, the exemption or exclusion shall not have effect, and accordingly proceedings may be brought in respect of any offence created by the regulations.

*GENERAL*

5 Regulations—

- (a) may provide for their operation anywhere outside Bermuda and for their application to persons, whether or not Commonwealth citizens, and to companies, whether or not incorporated in Bermuda;
- (b) may provide that in any proceedings for an offence under the regulations (other than proceedings to which subparagraph (c) applies) an averment in any process of the fact that anything was done or situated within Bermuda waters shall, until the contrary is proved, be sufficient evidence of that fact as stated in the averment;
- (c) may provide that proceedings for an offence under the regulations may be taken, and the offence be treated for all incidental purposes as having been committed, in any place in Bermuda;
- (d) may provide for any provisions of Part XI relating to inquiries and investigations into marine accidents to apply (with such modifications as may be specified) in relation to accidents involving any submersible apparatus which is not a ship as they apply to ships;
- (e) may provide that specified provisions of any enactment (other than section 96 and this Schedule) shall, in such circumstances as may be prescribed, not have effect in relation to such class or description of, or to such particular, submersible or supporting apparatus as may be prescribed;
- (f) may make different provision for different classes or descriptions of submersible or supporting apparatus and for different circumstances;

- (g) may contain such supplemental and incidental provisions as appear to the Minister to be expedient.

SCHEDULE 3

(Section 97)

LOAD LINES

GENERAL PROVISIONS

*Ships to which Schedule applies*

1. This Schedule applies to all ships except—

- (a) ships of war;
- (b) pleasure yachts.

*Loadline rules*

2. (1) The Minister shall make rules in accordance with the following provisions of this Schedule (referred to as “the load line rules”); and in making those rules the Minister shall have regard in particular to the Convention of 1966.

(2) The load line rules shall provide—

- (a) for the surveying and periodical inspection of ships to which this Schedule applies;
- (b) for determining freeboards to be assigned from time to time to such ships;
- (c) for determining, in relation to any such ship, the deck which is to be taken to be the freeboard deck of the ship, and for requiring the position of that deck to be indicated on each side of the ship by a mark of a description prescribed by the rules; and
- (d) for determining, by reference to that mark and the freeboards for the time being assigned to any such ship, the positions in which each side of the ship is to be marked with lines of a description prescribed by the rules, indicating the various maximum depths to which the ship may be loaded in circumstances prescribed by the rules.

(3) The load line rules shall include the following provisions—

- (a) provisions specifying such requirements in respect of the hulls, superstructures, fittings and appliances of ships to which this Schedule applies as appear to the Minister to be relevant to the assignment of freeboards to such ships;
- (b) provisions whereby, at the time when freeboards are assigned to a ship in accordance with the load line rules, such particulars relating to those requirements as may be determined in accordance with the rules are to be recorded in such manner as may be so determined; and
- (c) provisions for determining by reference to those requirements and that record whether, at any time after freeboards have been so assigned to a

ship and while they continue to be so assigned, the ship is for the purposes of this Schedule to be taken to comply, or not to comply, with the conditions of assignment;

and those provisions shall be set out separately in the load line rules under the title of “rules as to conditions of assignment”.

(4) The load line rules shall also include provisions requiring such information relating to the stability of any ship to which freeboards are assigned thereunder, and such information relating to the loading and ballasting of any such ship, as may be determined in accordance with the rules to be provided for the guidance of the master of the ship in such manner as may be so determined.

(5) In relation to any matter authorised or required by this Schedule to be prescribed by the load line rules, those rules may make different provision by reference to (or to any combination of) any of the following, that is to say, different descriptions of ships, different areas, different seasons of the year and any other different circumstances.

(6) Except in so far as the context otherwise requires, in this Schedule “deck-line” means such a mark as is referred to in subparagraph (2)(c), and “load lines” means such lines as are referred to in subparagraph (2)(d).

#### BERMUDA SHIPS

##### *Compliance with load line rules*

3. (1) Subject to any exemption conferred by or under this Schedule, no Bermuda ship to which this Schedule applies shall proceed or attempt to proceed to sea unless—

- (a) the ship has been surveyed in accordance with the load line rules;
- (b) the ship is marked with a deck-line and with load lines in accordance with those rules;
- (c) the ship complies with the conditions of assignment; and
- (d) the information required by those rules to be provided as mentioned in paragraph 2(4) is provided for the guidance of the master of the ship in the manner determined in accordance with the rules.

(2) If any ship proceeds or attempts to proceed to sea in contravention of subparagraph (1), the owner or master of the ship shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$10,000;
- (b) on conviction on indictment, to a fine of \$50,000.

(3) Any ship which in contravention of subparagraph (1) proceeds or attempts to proceed to sea without being surveyed and marked as mentioned in subparagraphs (1)(a) and (b) and which is in Bermuda waters may be detained until it has been so surveyed and marked.

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(4) Any such ship as is mentioned in subparagraph (1) which does not comply with the conditions of assignment shall be deemed to be dangerously unsafe for the purposes of sections 103, 104 and 105.

### *Submersion of load lines*

4. (1) Where a Bermuda ship to which this Schedule applies is marked with load lines, the ship shall not be so loaded that—

- (a) if the ship is in salt water and has no list, the appropriate load line on each side of the ship is submerged; or
- (b) in any other case, the appropriate load line on each side of the ship would be submerged if the ship were in salt water and had no list.

(2) If any ship is loaded in contravention of subparagraph (1), the owner or master of the ship shall (subject to subparagraph (5)) be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$10,000 and to such additional fine, not exceeding an amount calculated in accordance with subparagraph (3), as the court thinks fit to impose, having regard to the extent to which the earning capacity of the ship was increased by reason of the contravention;
- (b) on conviction on indictment, to a fine of \$50,000.

(3) Any additional fine imposed under subparagraph (2)(a) shall not exceed \$2,000 for each complete centimetre by which—

- (a) in a case falling within subparagraph (1)(a), the appropriate load line on each side of the ship was submerged; or
- (b) in a case falling within subparagraph (1)(b), the appropriate load line on each side of the ship would have been submerged as therein mentioned.

(4) If the master of a ship takes the ship to sea when it is loaded in contravention of subparagraph (1), or if any other person, having reason to believe that the ship is so loaded, sends or is party to sending the ship to sea when it is loaded in contravention of that subparagraph, then (without prejudice to any fine to which he may be guilty of an offence and liable in respect of an offence under subparagraph (2) ) he shall commit an offence and shall be liable—

- (a) on summary conviction, to a fine of \$10,000;
- (b) on conviction on indictment, to a fine of \$50,000.

(5) Where a person is charged with an offence under subparagraph (2), it shall be a defence to prove that the contravention was due solely to deviation or delay and that the deviation or delay was caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.

(6) Without prejudice to any proceedings under the preceding provisions of this paragraph, any ship which is loaded in contravention of subparagraph (1) may be detained until it ceases to be so loaded.

(7) For the purposes of the application of this paragraph to a ship in any circumstances prescribed by the load line rules in accordance with paragraph 2(2)(d), “the appropriate load line” means the load line which, in accordance with those rules, indicates the maximum depth to which the ship may be loaded in salt water in those circumstances.

*Miscellaneous offences in relation to marks*

5. Where a Bermuda ship to which this Schedule applies is marked in accordance with any requirements as to marking imposed by or under this Schedule, then if—

- (a) the owner or master of the ship fails without reasonable excuse to keep the ship so marked; or
- (b) any person conceals, removes, alters, defaces or obliterates, or causes or permits any person under his control to conceal, remove, alter, deface or obliterate, any mark with which the ship is so marked, except where he does so under the authority of a person empowered under the load line rules to authorise him for that purpose;

he shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

*Issue of load line certificates*

6. (1) Where a Bermuda ship to which this Schedule applies has been surveyed and marked in accordance with the load line rules, the appropriate certificate shall be issued to the owner of the ship on his application.

(2) For the purposes of this paragraph the appropriate certificate—

- (a) in the case of a pre-1966 Convention ship of not less than 150 tons gross tonnage, and in the case of a post-1966 Convention ship of not less than 24 metres in length, is a certificate which shall continue to be called an “International Load Line Certificate (1966)”; and
- (b) in the case of any other ship, is a certificate which shall continue to be called a “Bermuda load line certificate”.

(3) Subject to subparagraph (4), any certificate required by subparagraph (1) to be issued—

- (a) shall be issued by the Minister or by a person authorised for that purpose by the Minister; and
- (b) shall be in such form, and shall be issued in such manner, as may be prescribed by the load line rules.

(4) The Minister may request a Contracting Government, other than Her Majesty's Government in Bermuda, to issue an International Load Line Certificate (1966) in respect of any ship to which this Schedule applies which is a Bermuda ship falling within subparagraph (2)(a); and the following provisions of this Schedule shall have effect in relation to such a certificate so issued, which contains a statement that it has been issued at the request of Her Majesty's Government in Bermuda, as they have effect in relation to an International Load Line Certificate (1966) issued by the Minister.

*Effect of load line certificate*

7. (1) Where a certificate, issued in pursuance of paragraph 6 and for the time being in force, is produced in respect of the ship to which the certificate relates—

- (a) the ship shall be deemed to have been surveyed in accordance with the load line rules; and
- (b) if lines are marked on the ship corresponding in number and description to the deck-line and load lines as required by the load line rules, and the positions of those lines so marked correspond to the positions of the deck-line and load lines so specified in the certificate, the ship shall be deemed to be marked as required by those rules.

*Duration, endorsement and cancellation of load line certificates*

8. (1) The load line rules shall provide for determining the period during which any certificate issued under paragraph 6 is to remain in force, including—

- (a) provision enabling the period for which any such certificate is originally issued to be extended within such limits and in such circumstances as may be prescribed by the rules; and
- (b) provision for cancelling any such certificate in such circumstances as may be so prescribed.

(2) While any such certificate is in force in respect of a ship, there shall be endorsed on the certificate such information relating to—

- (a) periodical inspections of the ship in accordance with the load line rules; and
- (b) any extension of the period for which the certificate was issued;

as may be prescribed by the rules.

*Ships not to proceed to sea without load line certificate*

9. (1) Subject to any exemption conferred by or under this Schedule, no Bermuda ship to which this Schedule applies shall proceed or attempt to proceed to sea unless the appropriate certificate is in force in respect of the ship.

(2) Before any such ship proceeds to sea, the master of the ship shall produce the appropriate certificate to the officer of customs from whom a clearance for the ship is

demanded; and a clearance shall not be granted, and the ship may be detained, until the appropriate certificate is so produced.

(3) If any ship proceeds or attempts to proceed to sea in contravention of this paragraph, the master of the ship shall be guilty of an offence and liable—

(a) on summary conviction, to a fine of \$10,000;

(b) on conviction on indictment, to a fine of \$50,000.

(4) In this paragraph “the appropriate certificate” means the certificate which is the appropriate certificate for the purposes of paragraph 6 .

*Publication of load line certificate and entry of particulars in official log book*

10. (1) Where a certificate is issued in respect of a ship under paragraph 6 the owner of the ship shall forthwith on receipt of the certificate cause it to be framed and posted up in some conspicuous place on board the ship, and shall cause it to be kept so framed and posted up and legible so long as the certificate remains in force and the ship is in use.

(2) Before any Bermuda ship to which this Schedule applies leaves any dock, wharf, harbour or other place for the purpose of proceeding to sea, the master of the ship, subject to subparagraph (4), shall cause a notice to be posted up in some conspicuous place on board the ship, which shall be in such form and containing such particulars relating to the depth to which the ship is for the time being loaded as may be specified in regulations made by the Minister under this Schedule.

(3) Where a notice required by subparagraph (2) has been posted up, the master of the ship shall cause it to be kept posted up and legible as required by that subparagraph until the ship arrives at some other dock, wharf, harbour or place.

(4) The regulations may exempt ships employed in trading or going between places in the limited European trading area, or any class of such ships specified in the regulations, from the requirements as to notices contained in subparagraph (2) .

(5) If the owner or master of a ship fails to comply with any requirement imposed on him by the preceding provisions of this paragraph, he shall be guilty of an offence and liable on summary conviction to a fine of \$2,000.

(6) In this paragraph “the limited European trading area” has the same meaning as in regulations under section 59.

*Inspection of ships*

11. A ship surveyor or engineer surveyor may inspect any Bermuda ship to which this Schedule applies for the purpose of seeing that the provisions of this Schedule have been complied with in respect of the ship.

NON-BERMUDA SHIPS

*Valid Convention certificates*

12. (1) This paragraph applies to any non-Bermuda ship to which this Schedule applies which—

- (a) is registered in a Convention country or, not being registered in any such country or elsewhere, flies the flag of a Convention country; and
- (b) is either a pre-1966 Convention ship of not less than 150 tons gross tonnage or a post-1966 Convention ship of not less than 24 metres in length.

(2) The Minister may, at the request of the Government of the parent country of a ship to which this paragraph applies, issue in respect of the ship a certificate in such form as may be prescribed by the load line rules, if the Minister is satisfied that he could properly issue a certificate in respect of the ship under paragraph 6(l) if the ship were a Bermuda ship.

(3) The load line rules shall make such provision as appears to the Minister to be appropriate for securing that certificates which are issued as International Load Line Certificates (1966) in respect of ships to which this paragraph applies, and are so issued by Governments other than Her Majesty's Government in Bermuda, shall be recognised for the purposes of this Schedule in such circumstances as may be prescribed by the rules.

(4) Certificates issued as mentioned in subparagraph (2) or (3) shall be included among the certificates called "International Load Line Certificates (1966)".

(5) In this Schedule "valid Convention certificate" means a certificate which either—

- (a) has been issued under subparagraph (2) and is for the time being in force; or
- (b) having been issued as mentioned in subparagraph (3), is produced in circumstances in which it is required by the load line rules to be recognised for the purposes of this Schedule.

*Compliance with load line rules*

13. (1) Subject to subparagraph (2), and to any exemption conferred by or under this Schedule, no non-Bermuda ship to which this Schedule applies shall proceed or attempt to proceed to sea from any port in Bermuda unless—

- (a) the ship has been surveyed in accordance with the load line rules;
- (b) the ship is marked with a deck-line and with load lines in accordance with those rules;
- (c) the ship complies with the conditions of assignment; and
- (d) the information required by those rules to be provided as mentioned in paragraph 2(4) is provided for the guidance of the master of the ship in the manner determined in accordance with the rules.

(2) subparagraph (1) does not apply to a ship in respect of which a valid Convention certificate is produced.

(3) If any ship proceeds or attempts to proceed to sea in contravention of the preceding provisions of this paragraph, the owner or master of the ship shall be guilty of an offence and liable—

(a) on summary conviction, to a fine of \$10,000;

(b) on conviction on indictment, to a fine of \$50,000.

(4) Any ship which in contravention of this paragraph proceeds or attempts to proceed to sea without being surveyed and marked as mentioned in subparagraphs (1)(a) and (b) and which is in Bermuda waters may be detained until it has been so surveyed and marked.

(5) The power of detention conferred by subparagraph (4) is not exercisable in relation to a qualifying foreign ship while the ship is exercising the right of innocent passage.

(6) If any such ship as is mentioned in subparagraph (1), not being a ship in respect of which a valid Convention certificate is produced, does not comply with the conditions of assignment it shall be deemed to be dangerously unsafe for the purposes of sections 103, 104 and 105.

*Submersion of load lines*

14. (1) Where a non-Bermuda ship to which this Schedule applies is within any port in Bermuda, and is marked with load lines, the ship shall not be so loaded that—

(a) if the ship is in salt water and has no list, the appropriate load line on each side of the ship is submerged; or

(b) in any other case, the appropriate load line on each side of the ship would be submerged if the ship were in salt water and had no list.

(2) Subparagraphs (2), (3), (5) and (6) of paragraph 4 shall have effect for the purposes of this paragraph as if any reference in those subparagraphs to subparagraph (1) of that paragraph, or to subparagraph (1)(a) or (b) of that paragraph, were a reference to subparagraph (1), or (as the case may be) to the corresponding provision of subparagraph (1) of this paragraph, subject, however, to subparagraph (3).

(3) In the case of a ship to which paragraph 12 applies, the ship shall not be detained, and no proceedings shall be brought by virtue of subparagraph (2), unless the ship has been inspected by a ship surveyor or engineer surveyor in pursuance of paragraph 17.

(4) In relation to a ship in respect of which a valid Convention certificate is produced, “load line” in subparagraph (1) means a line marked on the ship in the position of a load line specified in that certificate; and for the purposes of the application of the relevant provisions to such a ship in any circumstances for which a particular load line is specified in the certificate, the “appropriate load line” means the load line which, in accordance with the certificate, indicates the maximum depth to which the ship may be loaded in salt water in those circumstances.

(5) Where a valid Convention certificate is not produced in respect of a ship, then, for the purposes of the application of the relevant provisions to that ship in any circumstances prescribed by the load line rules in accordance with paragraph 2(2)(d), “the appropriate load

line” means the load line which, in accordance with those rules, indicates the maximum depth to which the ship may be loaded in salt water in those circumstances.

(6) In subparagraphs (4) and (5) “the relevant provisions” means the provisions of subparagraph (1) and any provisions of paragraph 4 as applied by subparagraph (2).

*Bermuda load line certificates*

15. (1) Where a non-Bermuda ship to which this Schedule applies has been surveyed and marked in accordance with the load line rules, then on the application of the owner of the ship a Bermuda load line certificate shall be issued to him by the Minister or by a person authorised for the purpose by the Minister.

(2) Subject to subparagraph (3), paragraphs 7 and 8 shall have effect in relation to a certificate issued under subparagraph (1) as they have effect in relation to a certificate issued under paragraph 6.

(3) Any certificate issued under subparagraph (1) in respect of a ship to which paragraph 12 applies shall be valid only so long as the ship is not plying on international voyages, and shall be cancelled by the Minister if he has reason to believe that the ship is plying on international voyages.

*Production of certificate to customs officer*

16. (1) Subject to any exemption conferred by or under this Schedule, before a non-Bermuda ship to which this Schedule applies proceeds to sea from any port in Bermuda, the master of the ship shall produce the appropriate certificate to the officer of customs from whom a clearance for the ship is demanded; and a clearance shall not be granted, and the ship may be detained, until the appropriate certificate is so produced.

(2) For the purposes of this paragraph the appropriate certificate—

- (a) in the case of a ship to which paragraph 12 applies, where a clearance for the ship is demanded in respect of an international voyage, is a valid Convention certificate;
- (b) in the case of any such ship, where a clearance for the ship is demanded in respect of any other voyage, is either a valid Convention certificate or a Bermuda load line certificate for the time being in force in respect of the ship; and
- (c) in any other case, is a Bermuda load line certificate for the time being in force in respect of the ship.

*Provisions as to inspection*

17. (1) Subject to the following provisions of this paragraph, a ship surveyor or engineer surveyor may inspect any non-Bermuda ship to which this Schedule applies while the ship is within any port in Bermuda.

(2) Any such surveyor may go on board any ship to which paragraph 12 applies, while the ship is within any port in Bermuda, for the purpose of demanding production of any

International Load Line Certificate (1966) or Bermuda load line certificate for the time being in force in respect of the ship.

(3) If on any such demand a valid Convention certificate is produced to the surveyor in respect of the ship, the powers of the surveyor under subparagraph (1) shall be limited to seeing—

- (a) that the ship is not loaded beyond the limits allowed by the certificate;
- (b) that lines are marked on the ship in the positions of the load lines specified in the certificate;
- (c) that no material alterations have taken place in the hull or superstructures of the ship which affect the position in which any of those lines ought to be marked; and
- (d) that the fittings and appliances for the protection of openings, the guard rails, the freeing ports and the means of access to the crew's quarters have been maintained on the ship in as effective a condition as they were in when the certificate was issued.

(4) If on an inspection of a ship under this paragraph the ship is found to have been so materially altered in respect of the matters referred to in subparagraph (3)(c) or (d) that the ship is manifestly unfit to proceed to sea without danger to human life, it shall be deemed to be dangerously unsafe for the purposes of sections 103, 104 and 105.

(5) Where a ship is detained under the provisions of this Act as applied by subparagraph (4), the Minister shall order the ship to be released as soon as he is satisfied that the ship is fit to proceed to sea without danger to human life.

#### EXEMPTIONS

##### *Power to make exemption orders*

18. (1) If in the opinion of the Minister the sheltered nature and conditions of international voyages—

- (a) between near neighbouring ports in Bermuda and in another Convention country; or
- (b) between near neighbouring ports in any two or more countries or territories outside Bermuda;

make it unreasonable or impracticable to apply the provisions of this Schedule to ships plying on such voyages, and the Minister is satisfied that the Government of the other country (or, as the case may be, of each of the other countries) concurs in that opinion, the Minister may by order specifying those ports direct that ships plying on international voyages between those ports, or any class of such ships specified in the order, shall be exempt from the provisions of this Schedule.

(2) The Minister may by order direct that ships under 80 tons register engaged solely in the coasting trade, or any class of such ships specified in the order, shall be exempt from

the provisions of this Schedule while not carrying cargo, or (if the order so provides) shall be exempt from the provisions of this Schedule whether carrying cargo or not.

(3) Any order under this paragraph may be made subject to such conditions as the Minister thinks fit; and, where any such order is made subject to conditions, the exemption conferred by that order shall not have effect in relation to a ship unless the ship complies with those conditions.

*Further powers to exempt ships*

19. (1) In this paragraph any reference to exempting a ship is a reference to exempting the ship either—

- (a) from all the provisions of this Schedule and of the load line rules; or
- (b) from such of those provisions as are specified in the instrument conferring the exemption.

(2) On the application of the owner of a Bermuda ship to which this Schedule applies which is either a pre- 1966 Convention ship of not less than 150 tons gross tonnage or a post- 1966 Convention ship of not less than 24 metres in length, the Minister may exempt the ship if in his opinion the ship embodies features of a novel kind such that, if the ship had to comply with all the requirements of this Schedule and of the load line rules, the development of those features and their incorporation in ships engaged on international voyages might be seriously impeded.

(3) On the application of the owner of a Bermuda ship to which this Schedule applies which is either—

- (a) a pre-1966 Convention ship of less than 150 tons gross tonnage or a post-1966 Convention' ship of less than 24 metres in length; or
- (b) a ship (not falling within (a)) which does not ply on international voyages;

the Minister may exempt the ship.

(4) Without prejudice to subparagraph (3), where a Bermuda ship to which this Schedule applies which is either a pre- 1966 Convention ship of not less than 150 tons gross tonnage or a post-1966 Convention ship of not less than 24 metres in length, does not normally ply on international voyages but is, in exceptional circumstances, required to undertake a single international voyage, the Minister, on the application of the owner of the ship, specifying the international voyage in question, may exempt the ship while engaged on that voyage.

(5) Any exemption conferred under this paragraph may be conferred subject to such conditions as the Minister thinks fit; and, where any such exemption is conferred subject to conditions, the exemption shall not have effect unless those conditions are complied with.

*Issue of exemption certificates*

20. (1) Where the Minister exempts a ship under paragraph 19 , the Minister shall issue the appropriate certificate to the owner of the ship.

- (2) For the purposes of this paragraph the appropriate certificate—
- (a) where the exemption is conferred under subparagraph (2) or subparagraph (4) of paragraph 19 , is an “International Load Line Exemption Certificate”; and
  - (b) where the certificate is conferred under subparagraph (3) of that paragraph, is a “Minister load line exemption certificate”.
- (3) Any certificate issued under this paragraph shall be in such form, and shall be issued in such manner, as may be prescribed by the load line rules.

*Duration and termination of exemptions, and duration, endorsement and cancellation of exemption certificates*

21. (1) The load line rules shall provide for determining the period during which any exemption conferred under paragraph 19 , or any certificate issued under paragraph 20 , is to remain in force, including—

- (a) provision enabling the period for which any exemption or certificate is originally conferred or issued to be extended within such limits and in such circumstances as may be prescribed by the rules; and
- (b) provision for terminating any such exemption, and for cancelling any such certificate, in such circumstances as may be so prescribed.

(2) While any such certificate is in force in respect of a ship, there shall be endorsed on the certificate such information relating to—

- (a) periodical inspections of the ship in accordance with the load line rules; and
- (b) any extension of the period for which the certificate was issued;

as may be prescribed by the rules.

*International Load Line Exemption Certificates*

22. (1) The load line rules shall make such provision as appears to the Minister to be appropriate for securing that exemption certificates which, in accordance with the Convention of 1966, are issued in respect of ships to which paragraph 12 applies, and are so issued by Governments other than Her Majesty’s Government in Bermuda, shall in such circumstances as may be prescribed by the rules have the like effect for the purposes of this Schedule as if they were valid Convention certificates.

(2) Certificates issued as mentioned in subparagraph (1) shall be included among “International Load Line Exemption Certificates”.

SUBDIVISION LOAD LINES AND DECK CARGO

*Subdivision load lines*

23. (1) Where in pursuance of safety regulations a Bermuda passenger ship to which this Schedule applies is marked with subdivision load lines, and the lowest of those lines is lower than the line which, apart from this subparagraph, would be the appropriate load line for the purposes of paragraph 4, the said paragraph 4 shall have effect as if that subdivision load line were the appropriate load line for the purposes of that paragraph.

(2) Where in pursuance of safety regulations a non-Bermuda passenger ship to which this Schedule applies is marked with subdivision load lines, and the lowest of those load lines is lower than the line which, apart from this subparagraph, would be the appropriate load line for the purposes of paragraph 14, that paragraph shall have effect as if that subdivision load line were the appropriate load line for the purposes of that paragraph.

*Deck cargo*

24. (1) The Minister shall make regulations (in this paragraph referred to as “the deck cargo regulations”) prescribing requirements to be complied with where cargo is carried in any uncovered space on the deck of a ship to which this Schedule applies; and different requirements may be so prescribed in relation to different descriptions of ships, different descriptions of cargo, different voyages or classes of voyages, different seasons of the year or any other different circumstances.

(2) If the load line rules provide (either generally or in particular cases or classes of cases) for assigning special freeboards to ships which are to have effect only where a cargo of timber is so carried, then (without prejudice to the generality of subparagraph (1)) the deck cargo regulations may prescribe special requirements to be complied with in circumstances where any such special freeboard has effect.

(3) In prescribing any such special requirements as are mentioned in subparagraph (2), the Minister shall have regard in particular to the provisions of Chapter IV of the Convention of 1966.

(4) If any provisions of the deck cargo regulations are contravened—

(a) in the case of a Bermuda ship; or

(b) in the case of any other ship while the ship is within any port in Bermuda;

the master of the ship shall (subject to subparagraph (5)) be guilty of an offence and liable—

(i) on summary conviction, to a fine of \$10,000;

(ii) on conviction on indictment, to a fine of \$50,000.

(5) Where a person is charged with an offence under subparagraph (4), it shall be a defence to prove that the contravention was due solely to deviation or delay and that the deviation or delay was caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.

(6) For the purpose of securing compliance with the deck cargo regulations, any person authorised for the purpose by the Minister may inspect any ship to which this Schedule applies which is carrying cargo in any uncovered space on its deck.

MISCELLANEOUS PROVISIONS

*Notice to consular officer of proceedings against foreign ships*

25. (1) Where any non-Bermuda ship is detained under this Schedule, and where any proceedings are taken under this Schedule against the master or owner of any such ship, notice shall forthwith be served on the consular officer for the country to which the ship belongs at or nearest to the port where the ship is for the time being.

(2) A notice under this paragraph shall specify the grounds on which the ship has been detained or the proceedings have been taken.

*Delivery up of certificates*

26. (1) The Minister may require any certificate which can be issued under this Schedule, which has expired or been cancelled, to be delivered up as he directs.

(2) If any owner or master of a ship fails without reasonable excuse to comply with such a requirement he shall be guilty of an offence and liable, on summary conviction, to a fine of \$1,000.

*Penalty for false statements etc.*

27. (1) If any person intentionally makes, or assists in making, or procures to be made, a false or fraudulent certificate which can be issued under this Schedule he shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$10,000 or to imprisonment for a term of six months or both;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term of two years or both.

*Admissibility of certificates in evidence*

28. Any certificate issued under this Schedule shall be admissible in evidence.

*Convention countries*

29. (1) The Minister, if satisfied—

- (a) that the Government of a country has accepted or acceded to, or has denounced, the Convention of 1966; or
- (b) that the Convention of 1966 extends, or has ceased to extend, to a particular territory;

may by order make a declaration to that effect.

- (2) In this Schedule “Convention country” means a country which is either—
- (a) a country the Government of which has been declared under this paragraph to have accepted or acceded to the Convention of 1966, and has not been so declared to have denounced that Convention; or
  - (b) a territory to which it has been so declared that the Convention of 1966 extends, not being a territory to which it has been so declared that that Convention has ceased to extend;

and “Contracting Government” means any such Government as is referred to in (a).

*Orders, rules and regulations*

30. Any order, rules or regulations made under this Schedule may contain such transitional or other incidental and supplementary provisions as may appear to the Minister to be appropriate.

*Interpretation*

31. (1) In this Schedule, except in so far as the context otherwise requires—
- “alteration” includes deterioration;
  - “clearance” includes transire;
  - “the Convention of 1966” means the International Convention on Load Lines which was signed in London on 5th April 1966;
  - “Convention country” and “Contracting Government” have the meanings given to them by paragraph 29(2) ;
  - “non-Bermuda ship” means a ship which is not registered in Bermuda;
  - “post- 1966 Convention ship” means a ship whose keel is laid, or which is at a similar stage of construction, on or after the material date; and
  - “pre-1966 Convention ship” means a ship which is not a post-1966 Convention ship;
  - “parent country”, in relation to a ship, means the country in which the ship is registered, or, if the ship is not registered anywhere, means the country whose flag the ship flies;
  - “valid Convention certificate” has the meaning given to it by paragraph 12(5) .
- (2) For the purposes of the definitions of pre-1966 and post-1966 Convention ship the material date—
- (a) in relation to a ship whose parent country is a Convention country other than Bermuda, is the date as from which it is declared under paragraph 29 either that the Government of that country has accepted or acceded to

the Convention of 1966 or that it is a territory to which that Convention extends; and

(b) in relation to any other ship, is 21st July 1968.

(3) In this Schedule, subject to subparagraph (4), “international voyage” means a voyage between—

(a) a port in Bermuda and a port outside Bermuda; or

(b) a port in a Convention country (other than Bermuda) and a port in any other country (whether a Convention country or not) which is outside Bermuda.

(4) In determining, for the purposes of subparagraph (3), what are the ports between which a voyage is made, no account shall be taken of any deviation by a ship from its intended voyage which is due solely to stress of weather or any other circumstance which neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled; and for the purposes of that subparagraph any colony, protectorate or other dependency, and any territory for whose international relations a Government is separately responsible shall be taken to be a separate territory.

(5) Any reference in this Schedule to the gross tonnage of a ship shall be construed as a reference to the tonnage of the ship as ascertained in accordance with the tonnage regulations; and, where in accordance with those regulations alternative tonnages are assigned to a ship, the gross tonnage of the ship shall, for the purposes of this Schedule, be taken to be the larger of those tonnages.

(6) For the purposes of this Schedule the length of a ship shall be ascertained in accordance with regulations made by the Minister under this Schedule.

(7) Any reference in this Schedule to any provision of the Convention of 1966 shall, in relation to any time after that provision has been amended in pursuance of Article 29 of that Convention, be construed as a reference to that provision as so amended.

SCHEDULE 4

(Section 173(1))

OVERALL LIMIT ON LIABILITY OF FUND

ARTICLE 4 - PARAGRAPHS 4 AND 5

4 (a) Except as otherwise provided in subparagraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall not exceed 203 million units of account.

(b) Except as otherwise provided in subparagraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 203 million units of account.

(c) The maximum amount of compensation referred to in subparagraphs (a) and (b) shall be 300.74 million units of account with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded 600 million tons.

(d) Interest accrued on a fund constituted in accordance with Article V, paragraph 3, of the Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.

(e) The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the Fund as to the first date of payment of compensation.

5 Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants.

*[Schedule 4 paragraph 4(a)-(c) amended by 2004:16 s.7 effective 18 June 2004]*

SCHEDULE 4A

(section 178A(2) )

TEXT OF INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION FOR  
DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS  
SUBSTANCES

The States parties to the present Convention,

Conscious of the dangers posed by the world-wide carriage by sea of hazardous and noxious substances,

Convinced of the need to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by incidents in connection with the carriage by sea of such substances,

Desiring to adopt uniform international rules and procedures for determining questions of liability and compensation in respect of such damage,

Considering that the economic consequences of damage caused by the carriage by sea of hazardous and noxious substances should be shared by the shipping industry and the cargo interests involved,

Have agreed as follows—

CHAPTER I

GENERAL PROVISIONS

DEFINITIONS

*Article 1*

For the purposes of this Convention—

1. “Ship” means any seagoing vessel and seaborne craft, of any type whatsoever.
2. “Person” means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
3. “Owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship’s operator, “owner” shall mean such company.
4. “Receiver” means either—
  - (a) the person who physically receives contributing cargo discharged in the ports and terminals of a State Party; provided that if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund; or

(b) the person in the State Party who in accordance with the national law of that State Party is deemed to be the receiver of contributing cargo discharged in the ports and terminals of a State Party, provided that the total contributing cargo received according to such national law is substantially the same as that which would have been received under (a).

5. "Hazardous and noxious substances" (HNS) means:

(a) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below—

(i) oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;

(ii) noxious liquid substances carried in bulk referred to in appendix II of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category A, B, C or D in accordance with regulation 3(4) of the said Annex II;

(iii) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, 1983, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.3 of the Code;

(iv) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;

(v) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1983, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;

(vi) liquid substances carried in bulk with a flashpoint not exceeding 60 degrees Celsius (measured by a closed cup test);

(vii) solid bulk materials possessing chemical hazards covered by appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code when carried in packaged form; and

(b) residues from the previous carriage in bulk of substances referred to in (a)(i) to (iii) and (v) to (vii) above.

6. "Damage" means—

(a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances;

(b) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;

(c) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

(d) the costs of preventive measures and further loss or damage caused by preventive measures.

Where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage shall be deemed to be caused by the hazardous and noxious substances except if, and to the extent that, the damage caused by other factors is damage of a type referred to in article 4, paragraph 3.

In this paragraph, "caused by those substances" means caused by the hazardous or noxious nature of the substances.

7. "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage.

8. "Incident" means any occurrence or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage.

9. "Carriage by sea" means the period from the time when the hazardous and noxious substances enter any part of the ship's equipment, on loading, to the time they cease to be present in any part of the ship's equipment, on discharge. If no ship's equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship's rail.

10. "Contributing cargo" means any hazardous and noxious substances which are carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

11. The "HNS Fund" means the International Hazardous and Noxious Substances Fund established under article 13.

12. "Unit of account" means the Special Drawing Right as defined by the International Monetary Fund.

13. "State of the ship's registry" means in relation to a registered ship the State of registration of the ship, and in relation to an unregistered ship the State whose flag the ship is entitled to fly.

14. "Terminal" means any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated off-shore and linked by pipeline or otherwise to such site.

15. "Director" means the Director of the HNS Fund.

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16. "Organization" means the International Maritime Organization.
17. "Secretary-General" means the Secretary-General of the Organization.

ANNEXES

ARTICLE 2

The Annexes to this Convention shall constitute an integral part of this Convention.

SCOPE OF APPLICATION

*Article 3*

This Convention shall apply exclusively—

- (a) to any damage caused in the territory, including the territorial sea, of a State Party;
- (b) to damage by contamination of the environment caused in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;
- (c) to damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party; and
- (d) to preventive measures, wherever taken.

*Article 4*

- 1. This Convention shall apply to claims, other than claims arising out of any contract for the carriage of goods and passengers, for damage arising from the carriage of hazardous and noxious substances by sea.
- 2. This Convention shall not apply to the extent that its provisions are incompatible with those of the applicable law relating to workers' compensation or social security schemes.
- 3. This Convention shall not apply—
  - (a) to pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, whether or not compensation is payable in respect of it under that Convention; and
  - (b) to damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended.
- 4. Except as provided in paragraph 5, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.

5. A State Party may decide to apply this Convention to its warships or other vessels described in paragraph 4, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

6. With respect to ships owned by a State Party and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in article 38 and shall waive all defences based on its status as a sovereign State.

*Article 5*

1. A State may, at the time of ratification, acceptance, approval of, or accession to, this Convention, or any time thereafter, declare that this Convention does not apply to ships—

- (a) which do not exceed 200 gross tonnage; and
- (b) which carry hazardous and noxious substances only in packaged form; and
- (c) while they are engaged on voyages between ports or facilities of that State.

2. Where two neighbouring States agree that this Convention does not apply also to ships which are covered by paragraph 1(a) and (b) while engaged on voyages between ports or facilities of those States, the States concerned may declare that the exclusion from the application of this Convention declared under paragraph 1 covers also ships referred to in this paragraph.

3. Any State which has made the declaration under paragraph 1 or 2 may withdraw such declaration at any time.

4. A declaration made under paragraph 1 or 2, and the withdrawal of the declaration made under paragraph 3, shall be deposited with the Secretary-General who shall, after the entry into force of this Convention, communicate it to the Director.

5. Where a State has made a declaration under paragraph 1 or 2 and has not withdrawn it, hazardous and noxious substances carried on board ships covered by that paragraph shall not be considered to be contributing cargo for the purpose of application of articles 18, 20, article 21, paragraph 5 and article 43.

6. The HNS Fund is not liable to pay compensation for damage caused by substances carried by a ship to which the Convention does not apply pursuant to a declaration made under paragraph 1 or 2, to the extent that:

- (a) the damage as defined in article 1, paragraph 6(a), (b) or (c) was caused in:
  - (i) the territory, including the territorial sea, of the State which has made the declaration, or in the case of neighbouring States which have made a declaration under paragraph 2, of either of them; or
  - (ii) the exclusive economic zone, or area mentioned in article 3(b), of the State or States referred to in (i);
- (b) the damage includes measures taken to prevent or minimize such damage.

DUTIES OF STATE PARTIES

*Article 6*

Each State Party shall ensure that any obligation arising under this Convention is fulfilled and shall take appropriate measures under its law including the imposing of sanctions as it may deem necessary, with a view to the effective execution of any such obligation.

CHAPTER II

LIABILITY

LIABILITY OF THE OWNER

*Article 7*

1. Except as provided in paragraphs 2 and 3, the owner at the time of an incident shall be liable for damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship, provided that if an incident consists of a series of occurrences having the same origin the liability shall attach to the owner at the time of the first of such occurrences.

2. No liability shall attach to the owner if the owner proves that:

(a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or

(c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or

(d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either

(i) has caused the damage, wholly or partly; or

(ii) has led the owner not to obtain insurance in accordance with article 12;

provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.

3. If the owner proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from liability to such person.

4. No claim for compensation for damage shall be made against the owner otherwise than in accordance with this Convention.

5. Subject to paragraph 6, no claim for compensation for damage under this Convention or otherwise may be made against:

(a) the servants or agents of the owner or the members of the crew;

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- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) any chartered (howsoever described, including a bareboat charterer), manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) any person taking preventive measures; and
- (f) the servants or agents of persons mentioned in (c), (d) and (e);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

6. Nothing in this Convention shall prejudice any existing right of recourse of the owner against any third party, including, but not limited to, the shipper or the receiver of the substance causing the damage, or the persons indicated in paragraph 5.

### INCIDENTS INVOLVING TWO OR MORE SHIPS

#### *Article 8*

1. Whenever damage has resulted from an incident involving two or more ships each of which is carrying hazardous and noxious substances, each owner, unless exonerated under article 7, shall be liable for the damage. The owners shall be jointly and severally liable for all such damage which is not reasonably separable.
2. However, owners shall be entitled to the limits of liability applicable to each of them under article 9.
3. Nothing in this article shall prejudice any right of recourse of an owner against any other owner.

### LIMITATION OF LIABILITY

#### *Article 9*

1. The owner of a ship shall be entitled to limit liability under this Convention in respect of any one incident to an aggregate amount calculated as follows—
    - (a) 10 million units of account for a ship not exceeding 2,000 units of tonnage; and
    - (b) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (a):
      - for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 units of account
      - for each unit of tonnage in excess of 50,000 units of tonnage, 360 units of account
- provided, however, that this aggregate amount shall not in any event exceed 100 million units of account.

2. The owner shall not be entitled to limit liability under this Convention if it is proved that the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.
3. The owner shall, for the purpose of benefiting from the limitation provided for in paragraph 1, constitute a fund for the total sum representing the limit of liability established in accordance with paragraph 1 with the court or other competent authority of any one of the States Parties in which action is brought under article 38 or, if no action is brought, with any court or other competent authority in any one of the States Parties in which an action can be brought under article 38. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the law of the State Party where the fund is constituted, and considered to be adequate by the court or other competent authority.
4. Subject to the provisions of article 11, the fund shall be distributed among the claimants in proportion to the amounts of their established claims.
5. If before the fund is distributed the owner or any of the servants or agents of the owner or any person providing to the owner insurance or other financial security has as a result of the incident in question, paid compensation for damage, such person shall, up to the amount that person has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.
6. The right of subrogation provided for in paragraph 5 may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for damage which such person may have paid but only to the extent that such subrogation is permitted under the applicable national law.
7. Where owners or other persons establish that they may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which the right of subrogation would have been enjoyed under paragraphs 5 or 6 had the compensation been paid before the fund was distributed, the court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce the claim against the fund.
8. Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall rank equally with other claims against the fund.
9. (a) The amounts mentioned in paragraph 1 shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in paragraph 3. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

(b) Nevertheless, a State Party which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9(a) may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9(a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five-and-a-half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

(c) The calculation mentioned in the last sentence of paragraph 9(a) and the conversion mentioned in paragraph 9(b) shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first two sentences of paragraph 9(a). States Parties shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 9(a), or the result of the conversion in paragraph 9(b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

10. For the purpose of this article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

11. The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limitation of liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

#### *Article 10*

1. Where the owner, after an incident, has constituted a fund in accordance with article 9 and is entitled to limit liability:

(a) no person having a claim for damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim; and

(b) the court or other competent authority of any State Party shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The foregoing shall, however, only apply if the claimant has access to the court administering the fund and the fund is actually available in respect of the claim.

#### DEATH AND INJURY

#### *Article 11*

Claims in respect of death or personal injury have priority over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with article 9, paragraph 1.

COMPULSORY INSURANCE OF THE OWNER

*Article 12*

1. The owner of a ship registered in a State Party and actually carrying hazardous and noxious substances shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, in the sums fixed by applying the limits of liability prescribed in article 9, paragraph 1, to cover liability for damage under this Convention.
2. A compulsory insurance certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such compulsory insurance certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in Annex I and shall contain the following particulars—
  - (a) name of the ship, distinctive number or letters and port of registry;
  - (b) name and principal place of business of the owner;
  - (c) IMO ship identification number;
  - (d) type and duration of security;
  - (e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
  - (f) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.
3. The compulsory insurance certificate shall be in the official language or languages of the issuing State. If the language used is neither English, nor French nor Spanish, the text shall include a translation into one of these languages.
4. The compulsory insurance certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.
5. An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4, unless the compulsory insurance certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.

6. The State of the ship's registry shall, subject to the provisions of this article, determine the conditions of issue and validity of the compulsory insurance certificate.

7. Compulsory insurance certificates issued or certified under the authority of a State Party in accordance with paragraph 2 shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as compulsory insurance certificates issued or certified by them even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the compulsory insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

8. Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owner's liability for damage. In such case the defendant may, even if the owner is not entitled to limitation of liability, benefit from the limit of liability prescribed in accordance with paragraph 1. The defendant may further invoke the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

9. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention.

10. A State Party shall not permit a ship under its flag to which this article applies to trade unless a certificate has been issued under paragraph 2 or 12.

11. Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security in the sums specified in paragraph 1 is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.

12. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a compulsory insurance certificate issued by the appropriate authorities of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed in accordance with paragraph 1. Such a compulsory insurance certificate shall follow as closely as possible the model prescribed by paragraph 2.

### CHAPTER III

## COMPENSATION BY THE INTERNATIONAL HAZARDOUS AND NOXIOUS SUBSTANCES FUND (HNS FUND)

### ESTABLISHMENT OF THE HNS FUND

#### *Article 13*

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1. The International Hazardous and Noxious Substances Fund (HNS Fund) is hereby established with the following aims:

(a) to provide compensation for damage in connection with the carriage of hazardous and noxious substances by sea, to the extent that the protection afforded by chapter II is inadequate or not available; and

(b) to give effect to the related tasks set out in article 15.

2. The HNS Fund shall in each State Party be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each State Party shall recognize the Director as the legal representative of the HNS Fund.

### COMPENSATION

#### *Article 14*

1. For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall pay compensation to any person suffering damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of chapter II:

(a) because no liability for the damage arises under chapter II;

(b) because the owner liable for the damage under chapter II is financially incapable of meeting the obligations under this Convention in full and any financial security that may be provided under chapter II does not cover or is insufficient to satisfy the claims for compensation for damage; an owner being treated as financially incapable of meeting these obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under chapter II after having taken all reasonable steps to pursue the available legal remedies;

(c) because the damage exceeds the owner's liability under the terms of chapter II.

2. Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall be treated as damage for the purposes of this article.

3. The HNS Fund shall incur no obligation under the preceding paragraphs if—

(a) it proves that the damage resulted from an act of war, hostilities, civil war or insurrection or was caused by hazardous and noxious substances which had escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or

(b) the claimant cannot prove that there is a reasonable probability that the damage resulted from an incident involving one or more ships.

4. If the HNS Fund proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the HNS Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The HNS Fund shall

in any event be exonerated to the extent that the owner may have been exonerated under article 7, paragraph 3. However, there shall be no such exonerated of the HNS Fund with regard to preventive measures.

5.

(a) Except as otherwise provided in subparagraph (b), the aggregate amount of compensation payable by the HNS Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount and any amount of compensation actually paid under chapter II for damage within the scope of application of this Convention as defined in article 3 shall not exceed 250 million units of account.

(b) The aggregate amount of compensation payable by the HNS Fund under this article for damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 250 million units of account.

(c) Interest accrued on a fund constituted in accordance with article 9, paragraph 3, if any, shall not be taken into account for the computation of the maximum compensation payable by the HNS Fund under this article.

(d) The amounts mentioned in this article shall be converted into national currency on the basis of the value of that currency with reference to the Special Drawing Right on the date of the decision of the Assembly of the HNS Fund as to the first date of payment of compensation.

6. Where the amount of established claims against the HNS Fund exceeds the aggregate amount of compensation payable under paragraph 5, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants. Claims in respect of death or personal injury shall have priority over other claims, however, save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with paragraph 5.

7. The Assembly of the HNS Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner has not constituted a fund in accordance with chapter II. In such cases paragraph 5(d) applies accordingly.

#### RELATED TASKS OF THE HNS FUND

##### *Article 15*

For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall have the following tasks:

(a) to consider claims made against the HNS Fund;

(b) to prepare an estimate in the form of a budget for each calendar year of:

Expenditure:

(i) costs and expenses of the administration of the HNS Fund in the relevant year and any deficit from operations in the preceding years; and

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(ii) payments to be made by the HNS Fund in the relevant year;

Income:

(iii) surplus funds from operations in preceding years, including any interest;

(iv) initial contributions to be paid in the course of the year;

(v) annual contributions if required to balance the budget; and

(vi) any other income;

(c) to use at the request of a State Party its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate damage arising from an incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention; and

(d) to provide, on conditions laid down in the internal regulations, credit facilities with a view to the taking of preventive measures against damage arising from a particular incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention.

### GENERAL PROVISIONS ON CONTRIBUTIONS

#### *Article 16*

1. The HNS Fund shall have a general account, which shall be divided into sectors.

2. The HNS Fund shall, subject to article 19, paragraphs 3 and 4, also have separate accounts in respect of:

(a) oil as defined in article 1, paragraph 5(a)(i) (oil account);

(b) liquefied natural gases of light hydrocarbons with methane as the main constituent (LNG) (LNG account); and

(c) liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents (LPG) (LPG account).

3. There shall be initial contributions and, as required, annual contributions to the HNS Fund.

4. Contributions to the HNS Fund shall be made into the general account in accordance with article 18, to separate accounts in accordance with article 19 and to either the general account or separate accounts in accordance with article 20 or article 21, paragraph 5. Subject to article 19, paragraph 6, the general account shall be available to compensate damage caused by hazardous and noxious substances covered by that account, and a separate account shall be available to compensate damage caused by a hazardous and noxious substance covered by that account.

5. For the purposes of article 18, article 19, paragraph 1(a)(i), paragraph 1(a)(ii) and paragraph 1(c), article 20 and article 21, paragraph 5, where the quantity of a given type of contributing cargo received in the territory of a State Party by any person in a calendar year when aggregated with the quantities of the same type of cargo received in the same State Party in that year by any associated person or persons exceeds the

limit specified in the respective subparagraphs, such a person shall pay contributions in respect of the actual quantity received by that person notwithstanding that quantity did not exceed the respective limit.

6. "Associated person" means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.

#### GENERAL PROVISIONS ON ANNUAL CONTRIBUTIONS

##### *Article 17*

1. Annual contributions to the general account and to each separate account shall be levied only as required to make payments by the account in question.

2. Annual contributions payable pursuant to articles 18, 19 and article 21, paragraph 5 shall be determined by the Assembly and shall be calculated in accordance with those articles on the basis of the units of contributing cargo received or, in respect of cargoes referred to in article 19, paragraph 1(b), discharged during the preceding calendar year or such other year as the Assembly may decide.

3. The Assembly shall decide the total amount of annual contributions to be levied to the general account and to each separate account. Following that decision the Director shall, in respect of each State Party, calculate for each person liable to pay contributions in accordance with article 18, article 19, paragraph 1 and article 21, paragraph 5, the amount of that person's annual contribution to each account, on the basis of a fixed sum for each unit of contributing cargo reported in respect of the person during the preceding calendar year or such other year as the Assembly may decide. For the general account, the above-mentioned fixed sum per unit of contributing cargo for each sector shall be calculated pursuant to the regulations contained in Annex II to this Convention. For each separate account, the fixed sum per unit of contributing cargo referred to above shall be calculated by dividing the total annual contribution to be levied to that account by the total quantity of cargo contributing to that account.

4. The Assembly may also levy annual contributions for administrative costs and decide on the distribution of such costs between the sectors of the general account and the separate accounts.

5. The Assembly shall also decide on the distribution between the relevant accounts and sectors of amounts paid in compensation for damage caused by two or more substances which fall within different accounts or sectors, on the basis of an estimate of the extent to which each of the substances involved contributed to the damage.

#### ANNUAL CONTRIBUTIONS TO THE GENERAL ACCOUNT

##### *Article 18*

1. Subject to article 16, paragraph 5, annual contributions to the general account shall be made in respect of each State Party by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of aggregate quantities exceeding 20,000 tonnes of contributing cargo, other than

substances referred to in article 19, paragraph 1, which fall within the following sectors:

- (a) solid bulk materials referred to in article 1, paragraph 5(a)(vii);
- (b) substances referred to in paragraph 2; and
- (c) other substances.

2. Annual contributions shall also be payable to the general account by persons who would have been liable to pay contributions to a separate account in accordance with article 19, paragraph 1 had its operation not been postponed or suspended in accordance with article 19. Each separate account the operation of which has been postponed or suspended under article 19 shall form a separate sector within the general account.

#### ANNUAL CONTRIBUTIONS TO SEPARATE ACCOUNTS

##### *Article 19*

1. Subject to article 16, paragraph 5, annual contributions to separate accounts shall be made in respect of each State Party:

- (a) in the case of the oil account,
  - (i) by any person who has received in that State in the preceding calendar year, or such other year as the Assembly may decide, total quantities exceeding 150,000 tonnes of contributing oil as defined in article 1, paragraph 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended, and who is or would be liable to pay contributions to the International Oil Pollution Compensation Fund in accordance with article 10 of that Convention; and
  - (ii) by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of total quantities exceeding 20,000 tonnes of other oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;
- (b) in the case of the LNG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State;
- (c) in the case of the LPG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of total quantities exceeding 20,000 tonnes of LPG.

2. Subject to paragraph 3, the separate accounts referred to in paragraph 1 above shall become effective at the same time as the general account.

3. The initial operation of a separate account referred to in article 16, paragraph 2 shall be postponed until such time as the quantities of contributing cargo in respect of that account during the preceding calendar year, or such other year as the Assembly may decide, exceed the following levels—

- (a) 350 million tonnes of contributing cargo in respect of the oil account;
- (b) 20 million tonnes of contributing cargo in respect of the LNG account; and
- (c) 15 million tonnes of contributing cargo in respect of the LPG account.

4. The Assembly may suspend the operation of a separate account if—

- (a) the quantities of contributing cargo in respect of that account during the preceding calendar year fall below the respective level specified in paragraph 3; or
- (b) when six months have elapsed from the date when the contributions were due, the total unpaid contributions to that account exceed ten per cent of the most recent levy to that account in accordance with paragraph 1.

5. The Assembly may reinstate the operation of a separate account which has been suspended in accordance with paragraph 4.

6. Any person who would be liable to pay contributions to a separate account the operation of which has been postponed in accordance with paragraph 3 or suspended in accordance with paragraph 4, shall pay into the general account the contributions due by that person in respect of that separate account. For the purpose of calculating future contributions, the postponed or suspended separate account shall form a new sector in the general account and shall be subject to the HNS points system defined in Annex II.

#### INITIAL CONTRIBUTIONS

##### *Article 20*

1. In respect of each State Party, initial contributions shall be made of an amount which shall for each person liable to pay contributions in accordance with article 16, paragraph 5, articles 18, 19 and article 21, paragraph 5 be calculated on the basis of a fixed sum, equal for the general account and each separate account, for each unit of contributing cargo received or, in the case of LNG, discharged in that State, during the calendar year preceding that in which this Convention enters into force for that State.

2. The fixed sum and the units for the different sectors within the general account as well as for each separate account referred to in paragraph 1 shall be determined by the Assembly.

3. Initial contributions shall be paid within three months following the date on which the HNS Fund issues invoices in respect of each State Party to persons liable to pay contributions in accordance with paragraph 1.

#### REPORTS

##### *Article 21*

1. Each State Party shall ensure that any person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article appears on a list to be established and kept up to date by the Director in accordance with the provisions of this article.

2. For the purposes set out in paragraph 1, each State Party shall communicate to the Director, at a time and in the manner to be prescribed in the internal regulations of the HNS Fund, the name and address of any person who in respect of the State is liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, as well as data on the relevant quantities of contributing cargo for which such a person is liable to contribute in respect of the preceding calendar year.
3. For the purposes of ascertaining who are, at any given time, the persons liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article and of establishing, where applicable, the quantities of cargo to be taken into account for any such person when determining the amount of the contribution, the list shall be *prima facie* evidence of the facts stated therein.
4. Where a State Party does not fulfil its obligations to communicate to the Director the information referred to in paragraph 2 and this results in a financial loss for the HNS Fund, that State Party shall be liable to compensate the HNS Fund for such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by a State Party.
5. In respect of contributing cargo carried from one port or terminal of a State Party to another port or terminal located in the same State and discharged there, States Parties shall have the option of submitting to the HNS Fund a report with an annual aggregate quantity for each account covering all receipts of contributing cargo, including any quantities in respect of which contributions are payable pursuant to article 16, paragraph 5. The State Party shall, at the time of reporting, either—
  - (a) notify the HNS Fund that that State will pay the aggregate amount for each account in respect of the relevant year in one lump sum to the HNS Fund; or
  - (b) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers or, in the case of LNG, the title holder who discharges within the jurisdiction of that State Party, for the amount payable by each of them. These persons shall be identified in accordance with the national law of the State concerned.

#### NON-PAYMENT OF CONTRIBUTIONS

##### *Article 22*

1. The amount of any contribution due under articles 18, 19, 20 or article 21, paragraph 5 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the internal regulations of the HNS Fund, provided that different rates may be fixed for different circumstances.
2. Where a person who is liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5 does not fulfil the obligations in respect of any such contribution or any part thereof and is in arrears, the Director shall take all appropriate action, including court action, against such a person on behalf of the HNS Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.

OPTIONAL LIABILITY OF STATES PARTIES FOR THE PAYMENT OF CONTRIBUTIONS

*Article 23*

1. Without prejudice to article 21, paragraph 5, a State Party may at the time when it deposits its instrument of ratification, acceptance, approval or accession or at any time thereafter declare that it assumes responsibility for obligations imposed by this Convention on any person liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5 in respect of hazardous and noxious substances received or discharged in the territory of that State. Such a declaration shall be made in writing and shall specify which obligations are assumed.
2. Where a declaration under paragraph 1 is made prior to the entry into force of this Convention in accordance with article 46, it shall be deposited with the Secretary-General who shall after the entry into force of this Convention communicate the declaration to the Director.
3. A declaration under paragraph 1 which is made after the entry into force of this Convention shall be deposited with the Director.
4. A declaration made in accordance with this article may be withdrawn by the relevant State giving notice thereof in writing to the Director. Such a notification shall take effect three months after the Director's receipt thereof.
5. Any State which is bound by a declaration made under this article shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

ORGANIZATION AND ADMINISTRATION

*Article 24*

The HNS Fund shall have an Assembly and a Secretariat headed by the Director.

ASSEMBLY

*Article 25*

The Assembly shall consist of all States Parties to this Convention.

*Article 26*

The functions of the Assembly shall be—

- (a) to elect at each regular session its President and two Vice-Presidents who shall hold office until the next regular session;
- (b) to determine its own rules of procedure, subject to the provisions of this Convention;
- (c) to develop, apply and keep under review internal and financial regulations relating to the aim of the HNS Fund as described in article 13, paragraph 1(a), and the related tasks of the HNS Fund listed in article 15;

- (d) to appoint the Director and make provisions for the appointment of such other personnel as may be necessary and determine the terms and conditions of service of the Director and other personnel;
- (e) to adopt the annual budget prepared in accordance with article 15(b);
- (f) to consider and approve as necessary any recommendation of the Director regarding the scope of definition of contributing cargo;
- (g) to appoint auditors and approve the accounts of the HNS Fund;
- (h) to approve settlements of claims against the HNS Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with article 14 and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of damage are compensated as promptly as possible;
- (i) to establish a Committee on Claims for Compensation with at least 7 and not more than 15 members and any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the States Parties are appropriately represented; the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of such subsidiary body;
- (j) to determine which States not party to this Convention, which Associate Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies;
- (k) to give instructions concerning the administration of the HNS Fund to the Director and subsidiary bodies;
- (l) to supervise the proper execution of this Convention and of its own decisions;
- (m) to review every five years the implementation of this Convention with particular reference to the performance of the system for the calculation of levies and the contribution mechanism for domestic trade; and
- (n) to perform such other functions as are allocated to it under this Convention or are otherwise necessary for the proper operation of the HNS Fund.

*Article 27*

1. Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director.
2. Extraordinary sessions of the Assembly shall be convened by the Director at the request of at least one-third of the members of the Assembly and may be convened on the Director's own initiative after consultation with the President of the Assembly. The Director shall give members at least thirty days' notice of such sessions.

*Article 28*

A majority of the members of the Assembly shall constitute a quorum for its meetings.

SECRETARIAT

*Article 29*

1. The Secretariat shall comprise the Director and such staff as the administration of the HNS Fund may require.
2. The Director shall be the legal representative of the HNS Fund.

*Article 30*

1. The Director shall be the chief administrative officer of the HNS Fund.

Subject to the instructions given by the Assembly, the Director shall perform those functions which are assigned to the Director by this Convention, the internal regulations of the HNS Fund and the Assembly.

2. The Director shall in particular—

- (a) appoint the personnel required for the administration of the HNS Fund;
- (b) take all appropriate measures with a view to the proper administration of the assets of the HNS Fund;
- (c) collect the contributions due under this Convention while observing in particular the provisions of article 22, paragraph 2;
- (d) to the extent necessary to deal with claims against the HNS Fund and to carry out the other functions of the HNS Fund, employ the services of legal, financial and other experts;
- (e) take all appropriate measures for dealing with claims against the HNS Fund, within the limits and on conditions to be laid down in the internal regulations of the HNS Fund, including the final settlement of claims without the prior approval of the Assembly where these regulations so provide;
- (f) prepare and submit to the Assembly the financial statements and budget estimates for each calendar year;
- (g) prepare, in consultation with the President of the Assembly, and publish a report on the activities of the HNS Fund during the previous calendar year; and
- (h) prepare, collect and circulate the documents and information which may be required for the work of the Assembly and subsidiary bodies.

*Article 31*

In the performance of their duties the Director and the staff and experts appointed by the Director shall not seek or receive instructions from any Government or from any authority external to the HNS Fund. They shall refrain from any action which might adversely reflect on their position as international officials. Each State Party on its part undertakes to respect the exclusively international character of the responsibilities of

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the Director and the staff and experts appointed by the Director, and not to seek to influence them in the discharge of their duties.

### FINANCES

#### *Article 32*

1. Each State Party shall bear the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on subsidiary bodies.
2. Any other expenses incurred in the operation of the HNS Fund shall be borne by the HNS Fund.

### VOTING

#### *Article 33*

The following provisions shall apply to voting in the Assembly—

- (a) each member shall have one vote;
- (b) except as otherwise provided in article 34, decisions of the Assembly shall be made by a majority vote of the members present and voting;
- (c) decisions where a two-thirds majority is required shall be a two-thirds majority vote of members present; and
- (d) for the purpose of this article the phrase “members present” means “members present at the meeting at the time of the vote”, and the phrase “members present and voting” means “members present and casting an affirmative or negative vote”. Members who abstain from voting shall be considered as not voting.

#### *Article 34*

The following decisions of the Assembly shall require a two-thirds majority—

- (a) a decision under article 19, paragraphs 4 or 5 to suspend or reinstate the operation of a separate account;
- (b) a decision under article 22, paragraph 2, not to take or continue action against a contributor;
- (c) the appointment of the Director under article 26(d);
- (d) the establishment of subsidiary bodies, under article 26(i), and matters relating to such establishment; and
- (e) a decision under article 51, paragraph 1, that this Convention shall continue to be in force.

### TAX EXEMPTIONS AND CURRENCY REGULATIONS

#### *Article 35*

1. The HNS Fund, its assets, income, including contributions, and other property necessary for the exercise of its functions as described in article 13, paragraph 1, shall enjoy in all States Parties exemption from all direct taxation.

2. When the HNS Fund makes substantial purchases of movable or immovable property, or of services which are necessary for the exercise of its official activities in order to achieve its aims as set out in article 13, paragraph 1, the cost of which include indirect taxes or sales taxes, the Governments of the States Parties shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes. Goods thus acquired shall not be sold against payment or given away free of charge unless it is done according to conditions approved by the Government of the State having granted or supported the remission or refund.

3. No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.

4. The HNS Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use. Articles thus imported shall not be transferred either for consideration or gratis on the territory of the country into which they have been imported except on conditions agreed by the Government of that country.

5. Persons contributing to the HNS Fund as well as victims and owners receiving compensation from the HNS Fund shall be subject to the fiscal legislation of the State where they are taxable, no special exemption or other benefit being conferred on them in this respect.

6. Notwithstanding existing or future regulations concerning currency or transfers, States Parties shall authorize the transfer and payment of any contribution to the HNS Fund and of any compensation paid by the HNS Fund without any restriction.

#### CONFIDENTIALITY OF INFORMATION

##### *Article 36*

Information relating to individual contributors supplied for the purpose of this Convention shall not be divulged outside the HNS Fund except in so far as it may be strictly necessary to enable the HNS Fund to carry out its functions including the bringing and defending of legal proceedings.

#### CHAPTER IV

##### CLAIMS AND ACTIONS

##### LIMITATION OF ACTIONS

##### *Article 37*

1. Rights to compensation under chapter II shall be extinguished unless an action is brought thereunder within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage and of the identity of the owner.

2. Rights to compensation under chapter III shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to article 39, paragraph 7, within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage.

3. In no case, however, shall an action be brought later than ten years from the date of the incident which caused the damage.

4. Where the incident consists of a series of occurrences, the ten-year period mentioned in paragraph 3 shall run from the date of the last of such occurrences.

JURISDICTION IN RESPECT OF ACTION AGAINST THE OWNER

*Article 38*

1. Where an incident has caused damage in the territory, including the territorial sea or in an area referred to in article 3(b), of one or more States Parties, or preventive measures have been taken to prevent or minimize damage in such territory including the territorial sea or in such area, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of any such States Parties.

2. Where an incident has caused damage exclusively outside the territory, including the territorial sea, of any State and either the conditions for application of this Convention set out in article 3(c) have been fulfilled or preventive measures to prevent or minimize such damage have been taken, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of—

(a) the State Party where the ship is registered or, in the case of an unregistered ship, the State Party whose flag the ship is entitled to fly; or

(b) the State Party where the owner has habitual residence or where the principal place of business of the owner is established; or

(c) the State Party where a fund has been constituted in accordance with article 9, paragraph 3.

3. Reasonable notice of any action taken under paragraph 1 or 2 shall be given to the defendant.

4. Each State Party shall ensure that its courts have jurisdiction to entertain actions for compensation under this Convention.

5. After a fund under article 9 has been constituted by the owner or by the insurer or other person providing financial security in accordance with article 12, the courts of the State in which such fund is constituted shall have exclusive jurisdiction to determine all matters relating to the apportionment and distribution of the fund.

JURISDICTION IN RESPECT OF ACTION AGAINST THE HNS FUND OR TAKEN BY THE HNS FUND

*Article 39*

1. Subject to the subsequent provisions of this article, any action against the HNS Fund for compensation under article 14 shall be brought only before a court having jurisdiction under article 38 in respect of actions against the owner who is liable for damage caused by the relevant incident or before a court in a State Party which would have been competent if an owner had been liable.

2. In the event that the ship carrying the hazardous or noxious substances which caused the damage has not been identified, the provisions of article 38, paragraph 1, shall apply *mutatis mutandis* to actions against the HNS Fund.

3. Each State Party shall ensure that its courts have jurisdiction to entertain such actions against the HNS Fund as are referred to in paragraph 1.

4. Where an action for compensation for damage has been brought before a court against the owner or the owner's guarantor, such court shall have exclusive jurisdiction over any action against the HNS Fund for compensation under the provisions of article 14 in respect of the same damage.

5. Each State Party shall ensure that the HNS Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with this Convention before a competent court of that State against the owner or the owner's guarantor.

6. Except as otherwise provided in paragraph 7, the HNS Fund shall not be bound by any judgement or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.

7. Without prejudice to the provisions of paragraph 5, where an action under this Convention for compensation for damage has been brought against an owner or the owner's guarantor before a competent court in a State Party, each party to the proceedings shall be entitled under the national law of that State to notify the HNS Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the HNS Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgement rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgement was given, become binding upon the HNS Fund in the sense that the facts and findings in that judgement may not be disputed by the HNS Fund even if the HNS Fund has not actually intervened in the proceedings.

#### RECOGNITION AND ENFORCEMENT

##### *Article 40*

1. Any judgement given by a court with jurisdiction in accordance with article 38, which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any State Party, except—

- (a) where the judgement was obtained by fraud; or
- (b) where the defendant was not given reasonable notice and a fair opportunity to present the case.

2. A judgement recognized under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

3. Subject to any decision concerning the distribution referred to in article 14, paragraph 6, any judgement given against the HNS Fund by a court having jurisdiction in accordance with article 39, paragraphs 1 and 3 shall, when it has become enforceable

in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each State Party.

SUBROGATION AND RECOURSE

*Article 41*

1. The HNS Fund shall, in respect of any amount of compensation for damage paid by the HNS Fund in accordance with article 14, paragraph 1, acquire by subrogation the rights that the person so compensated may enjoy against the owner or the owner's guarantor.

2. Nothing in this Convention shall prejudice any rights of recourse or subrogation of the HNS Fund against any person, including persons referred to in article 7, paragraph 2(d), other than those referred to in the previous paragraph, in so far as they can limit their liability. In any event the right of the HNS Fund to subrogation against such persons shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

3. Without prejudice to any other rights of subrogation or recourse against the HNS Fund which may exist, a State Party or agency thereof which has paid compensation for damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

SUPERSESION CLAUSE

*Article 42*

This Convention shall supersede any convention in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that such convention would be in conflict with it; however, nothing in this article shall affect the obligations of States Parties to States not party to this Convention arising under such convention.

CHAPTER V

TRANSITIONAL PROVISIONS

INFORMATION ON CONTRIBUTING CARGO

*Article 43*

When depositing an instrument referred to in article 45, paragraph 3, and annually thereafter until this Convention enters into force for a State, that State shall submit to the Secretary-General data on the relevant quantities of contributing cargo received or, in the case of LNG, discharged in that State during the preceding calendar year in respect of the general account and each separate account.

FIRST SESSION OF THE ASSEMBLY

*Article 44*

The Secretary-General shall convene the first session of the Assembly. This session shall take place as soon as possible after the entry into force of this Convention and, in any case, not more than thirty days after such entry into force.

CHAPTER VI

FINAL CLAUSES

SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

*Article 45*

1. This Convention shall be open for signature at the Headquarters of the Organization from 1 October 1996 to 30 September 1997 and shall thereafter remain open for accession.
2. States may express their consent to be bound by this Convention by:
  - (a) signature without reservation as to ratification, acceptance or approval; or
  - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
  - (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

ENTRY INTO FORCE

*Article 46*

1. This Convention shall enter into force eighteen months after the date on which the following conditions are fulfilled:
  - (a) at least twelve States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it, and
  - (b) the Secretary-General has received information in accordance with article 43 that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c) have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.
2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force have been met, such consent shall take effect three months after the date of expression of such consent, or on the date on which this Convention enters into force in accordance with paragraph 1, whichever is the later.

REVISION AND AMENDMENT

*Article 47*

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.

2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of six States Parties or one-third of the States Parties, whichever is the higher figure.

3. Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

#### AMENDMENT OF LIMITS

##### *Article 48*

1. Without prejudice to the provisions of article 47, the special procedure in this article shall apply solely for the purposes of amending the limits set out in article 9, paragraph 1 and article 14, paragraph 5.

2. Upon the request of at least one half, but in no case less than six, of the States Parties, any proposal to amend the limits specified in article 9, paragraph 1, and article 14, paragraph 5, shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

3. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.

4. All Contracting States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

5. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided in paragraph 4, on condition that at least one half of the Contracting States shall be present at the time of voting.

6. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits established in article 9, paragraph 1, and those in article 14, paragraph 5.

7. (a) No amendment of the limits under this article may be considered less than five years from the date this Convention was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.

(b) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Convention increased by six per cent per year calculated on a compound basis from the date on which this Convention was opened for signature.

(c) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Convention multiplied by three.

8. Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all Contracting States

The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period no less than one-fourth of the States which were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

9. An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.

10. All Contracting States shall be bound by the amendment, unless they denounce this Convention in accordance with article 49, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

11. When an amendment has been adopted but the eighteen month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Convention enters into force for that State, if later.

#### DENUNCIATION

##### *Article 49*

1. This Convention may be denounced by any State Party at any time after the date on which it enters into force for that State Party.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.

3. Denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

4. Notwithstanding a denunciation by a State Party pursuant to this article, any provisions of this Convention relating to obligations to make contributions under articles 18, 19 or article 21, paragraph 5 in respect of such payments of compensation as the Assembly may decide relating to an incident which occurs before the denunciation takes effect shall continue to apply.

#### EXTRAORDINARY SESSIONS OF THE ASSEMBLY

##### *Article 50*

1. Any State Party may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions from the remaining States Parties, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not less than sixty days after receipt of the request.

2. The Director may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if the Director considers that such denunciation will result in a significant increase in the level of contributions from the remaining States Parties.

3. If the Assembly, at an extraordinary session, convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions from the remaining States Parties, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Convention with effect from the same date.

#### CESSATION

##### *Article 51*

1. This Convention shall cease to be in force—

(a) on the date when the number of States Parties falls below 6; or

(b) twelve months after the date on which data concerning a previous calendar year were to be communicated to the Director in accordance with article 21, if the data shows that the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c) received in the States Parties in that preceding calendar year was less than 30 million tonnes.

Notwithstanding (b), if the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c) received in the States Parties in the preceding calendar year was less than 30 million tonnes but more than 25 million tonnes, the Assembly may, if it considers that this was due to exceptional circumstances and is not likely to be repeated, decide before the expiry of the above-mentioned twelve month period that the Convention shall continue to be in force. The Assembly may not, however, take such a decision in more than two subsequent years.

2. States which are bound by this Convention on the day before the date it ceases to be in force shall enable the HNS Fund to exercise its functions as described under article 52 and shall, for that purpose only, remain bound by this Convention.

#### WINDING UP OF THE HNS FUND

##### *Article 52*

1. If this Convention ceases to be in force, the HNS Fund shall nevertheless—

(a) meet its obligations in respect of any incident occurring before this Convention ceased to be in force; and

(b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under (a), including expenses for the administration of the HNS Fund necessary for this purpose.

2. The Assembly shall take all appropriate measures to complete the winding up of the HNS Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the HNS Fund.

3. For the purposes of this article the HNS Fund shall remain a legal person.

DEPOSITARY

*Article 53*

1. This Convention and any amendment adopted under article 48 shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

(ii) the date of entry into force of this Convention;

(iii) any proposal to amend the limits on the amounts of compensation which has been made in accordance with article 48, paragraph 2;

(iv) any amendment which has been adopted in accordance with article 48, paragraph 5;

(v) any amendment deemed to have been accepted under article 48, paragraph 8, together with the date on which that amendment shall enter into force in accordance with paragraphs 9 and 10 of that article;

(vi) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect; and

(vii) any communication called for by any article in this Convention; and

(b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

LANGUAGES

*Article 54*

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

*[Schedule 4A inserted by 2004:16 s.8 effective 18 June 2004]*

SCHEDULE 5

(Section 179)

CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR  
LUGGAGE BY SEA

PART I

TEXT OF CONVENTION

ARTICLE I

*Definitions*

In this Convention the following expressions have the meaning hereby assigned to them—

1 (a) “carrier” means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier;

(b) “performing carrier” means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage.

2 “contract of carriage” means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be.

3 “ship” means only a seagoing vessel, excluding an air-cushion vehicle.

4 “passenger” means any person carried in a ship—

(a) under a contract of carriage; or

(b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention.

5 “luggage” means any article or vehicle carried by the carrier under a contract of carriage, excluding—

(a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods; and

(b) live animals.

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6 “cabin luggage” means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control. Except for the application of paragraph 8 of this Article and Article 8, cabin luggage includes luggage which the passenger has in or on his vehicle.

7 “loss of or damage to luggage” includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour dispute.

8 “carriage” covers the following periods—

- (a) with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice versa, if the cost of such transport is included in the fare or if the vessel used for the purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in a marine terminal or station or on a quay or in or on any other port installation;
- (b) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been re-delivered to the passenger;
- (c) with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent onshore or on board until the time of its re-delivery by the carrier or his servant or agent;

9 “international carriage” means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State.

### ARTICLE 2

#### *Application*

1 This Convention shall apply to any international carriage if—

- (a) the ship is flying the flag of or is registered in a State Party to this Convention; or
- (b) the contract of carriage has been made in a State Party to this Convention; or

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- (c) the place of departure or destination, according to the contract of carriage, is in a State Party to this Convention.

2 Notwithstanding paragraph I of this Article, this Convention shall not apply when the carriage is subject, under any other international convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such convention, in so far as those provisions have mandatory application to carriage by sea.

### ARTICLE 3

#### *Liability of the carrier*

1 The carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage if the incident which caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.

2 The burden of proving that the incident which caused the loss or damage occurred in the course of the carriage, and the extent of the loss or damage, shall lie with the claimant.

3 Fault or neglect of the carrier or of his servants or agents acting within the scope of their employment shall be presumed, unless the contrary is proved, if the death of or personal injury to the passenger or the loss of or damage to cabin luggage arose from or in connection with the shipwreck, collision, stranding, explosion or fire, or defect in the ship. In respect of loss of or damage to other luggage, such fault or neglect shall be presumed, unless the contrary is proved, irrespective of the nature of the incident which caused the loss or damage. In all other cases the burden of proving fault or neglect shall lie with the claimant.

### ARTICLE 4

#### *Performing carrier*

1 If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of this Convention for the part of the carriage performed by him.

2 The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.

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3 Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.

4 Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.

5 Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

### ARTICLE 5

#### *Valuables*

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping in which case the carrier shall be liable up to the limit provided for in paragraph 3 of Article 8 unless a higher limit is agreed upon in accordance with paragraph I of Article 10.

### ARTICLE 6

#### *Contributory fault*

If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court.

### ARTICLE 7

#### *Limit of liability for personal injury*

1 The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 46,666 units of account per carriage. Where in accordance with the law of the court seized of the case damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

2 Notwithstanding paragraph I of this Article, the national law of any State Party to this Convention may fix, as far as carriers who are nationals of such State are concerned, a higher *per capita* limit of liability.

ARTICLE 8

*Limit of liability for loss of or damage to luggage*

- 1 The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 833 units of account per passenger per carriage.
- 2 The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 3,333 units of account per vehicle, per carriage.
- 3 The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 of this Article shall in no case exceed 1,200 units of account per passenger, per carriage.
- 4 The carrier and the passenger may agree that the liability of the carrier shall be subject to a deduction not exceeding 117 units of account in the case of damage to a vehicle and not exceeding 13 units of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

ARTICLE 9

*Unit of account and conversion*

The Unit of Account mentioned in this Convention is the special drawing right as defined by the International Monetary Fund. The amounts mentioned in Articles 7 and 8 shall be converted into the national currency of the State of the court seized of the case on the basis of the value of that currency on the date of the judgment or the date agreed upon by the Parties.

ARTICLE 10

*Supplementary provisions on limits of liability*

- 1 The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in Articles 7 and 8.
- 2 Interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 7 and 8.

ARTICLE 11

*Defences and limits for carriers' servants*

If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by this Convention, such servant or agent, if he proves

that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier or the performing carrier is entitled to invoke under this Convention.

ARTICLE 12

*Aggregation of claims*

1 Where the limits of liability prescribed in Articles 7 and 8 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.

2 In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

3 In any case where a servant or agent of the carrier or of the performing carrier is entitled under Article I I of this Convention to avail himself of the limits of liability prescribed in Articles 7 and 8, the aggregate of the amounts recoverable from the carrier, or the performing carrier as the case may be, and from that servant or agent shall not exceed those limits.

ARTICLE 13

*Loss of right to limit liability*

1 The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 7 and 8 and paragraph I of Article 10, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

2 The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

ARTICLE 14

*Basis for claims*

No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with this Convention.

ARTICLE 15

*Notice of loss or damage to luggage*

- 1 The passenger shall give written notice to the carrier or his agent—
  - (a) in the case of apparent damage to luggage—
    - (i) for cabin luggage, before or at the time of disembarkation of the passenger;
    - (ii) for all other luggage, before or at the time of its re-delivery;
  - (b) in the case of damage to luggage which is not apparent, or loss of luggage, within 15 days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.
- 2 If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.
- 3 The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

ARTICLE 16

*Time-bar for actions*

- 1 Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.
- 2 The limitation period shall be calculated as follows—
  - (a) in the case of personal injury, from the date of disembarkation of the passenger;
  - (b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation;
  - (c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.
- 3 The law of the court seized of the case shall govern the grounds of suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later.

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4 Notwithstanding paragraphs 1, 2 and 3 of this Article, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing.

### ARTICLE 17

#### *Competent jurisdiction*

1 An action arising under this Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State Party to this Convention—

- (a) the court of the place of permanent residence or principal place of business of the defendant; or
- (b) the court of the place of departure or that of the destination according to the contract of carriage; or
- (c) a court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State; or
- (d) a court of the State where the contract of carriage was made, if the defendant has a place of business and is subject to jurisdiction in that State.

2 After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.

### ARTICLE 18

#### *Invalidity of contractual provisions*

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to his luggage, purporting to relieve the carrier of his liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Convention except as provided in paragraph 4 of Article 8, and any such provision purporting to shift the burden of proof which rests on the carrier, or having the effect of restricting the option specified in paragraph 1 of Article 17, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of this Convention.

ARTICLE 19

*Other conventions on limitation of liability*

This Convention shall not modify the rights or duties of the carrier, the performing carrier, and their servants or agents provided for in international conventions relating to the limitation of liability of owners of seagoing ships.

ARTICLE 20

*Nuclear damage*

No liability shall arise under this Convention for damage caused by a nuclear incident—

- (a) if the operator of a nuclear installation is liable to such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage; or
- (b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Conventions.

ARTICLE 21

*Commercial carriage by public authorities*

This Convention shall apply to commercial carriage undertaken by States or Public Authorities under contracts of carriage within the meaning of Article 1.

PART II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

*Interpretation*

1 In this Part of this Schedule any reference to a numbered article is a reference to the article of the Convention which is so numbered and any expression to which a meaning is assigned by article 1 of the Convention has that meaning.

*Provisions adapting or supplementing specified articles of the Convention*

2 For the purposes of paragraph 2 of article 2, provisions of such an international convention as is mentioned in that paragraph which apart from this paragraph do not have

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mandatory application to carriage by sea shall be treated as having mandatory application to carriage by sea if it is stated in the contract of carriage for the carriage in question that those provisions are to apply in connection with the carriage.

3 The reference to the law of the court in article 6 shall be construed as a reference to the Law Reform (Liability in Tort) Act 1951.

4 The Minister may by order provide that, in relation to a carrier whose principal place of business is in Bermuda, paragraph I of article 7 shall have effect with the substitution for the limit for the time being specified in that paragraph of a different limit specified in the order (which shall not be lower than 46,666 units of account).

5 (1) For the purpose of converting from special drawing rights into United States dollars the amounts mentioned in articles 7 and 8 of the Convention in respect of which a judgment is given, one special drawing right shall be treated as equal to such a sum in United States dollars as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—

- (a) the day on which the judgment is given; or
- (b) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed.

(2) A certificate given by or on behalf of the Minister responsible for finance stating—

- (a) that a particular sum in United States dollars has been fixed as mentioned in subparagraph (1) for a particular day; or
- (b) that no sum has been so fixed for that day and a particular sum in United States dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the particular day, shall be conclusive evidence of those matters for the purposes of articles 7 to 9 of the Convention; and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

6 It is hereby declared that by virtue of article 12 the limitations on liability there mentioned in respect of a passenger or his luggage apply to the aggregate liabilities of the persons in question in all proceedings for enforcing the liabilities or any of them which may be brought whether in Bermuda or elsewhere.

7 Article 16 shall apply to an arbitration as it applies to an action; and section 35(3) and (4) of the Limitation Act 1984 (which determine when an arbitration is deemed to commence) shall apply for the purposes of article 16 as they apply for the purposes of that Act.

8 The court before which proceedings are brought in pursuance of article 17 to enforce a liability which is limited by virtue of article 12 may at any stage of the proceedings

make such orders as appear to the court to be just and equitable in view of the provisions of article 12 and of any other proceedings which have been or are likely to be begun in Bermuda or elsewhere to enforce the liability in whole or in part; and without prejudice to the generality of the preceding provisions of this paragraph such a court shall, where the liability is or may be partly enforceable in other proceedings in Bermuda or elsewhere, have jurisdiction to award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court or to make any part of its award conditional on the results of any other proceedings.

*Other provisions adapting or supplementing the Convention*

9 Any reference in the Convention to a contract of carriage excludes a contract of carriage which is not for reward.

10 If the Minister by order declares that any State specified in the order is a party to the Convention in respect of a particular country the order shall, subject to the provisions of any subsequent order made by virtue of this paragraph, be conclusive evidence that the State is a party to the Convention in respect of that country.

11 The Minister may by order provide—

- (a) for requiring a person who is the carrier in relation to a passenger to give to the passenger, in a manner specified in the order, notice of such of the provisions of Part I of this Schedule as are so specified;
- (b) for a person who fails to comply with a requirement imposed on him by the order to be guilty of an offence and liable on summary conviction to a fine of an amount not exceeding \$5,000 or not exceeding a lesser amount.

*Application of sections. 181 and 182 of this Act*

12 It is hereby declared that nothing in the Convention affects the operation of section 181 of this Act (which limits a shipowner's liability in certain cases of loss of life, injury or damage).

13 Nothing in section 182 of this Act (which among other things limits a shipowner's liability for the loss or damage of goods in certain cases) shall relieve a person of any liability imposed on him by the Convention.

SCHEDULE 6

(Section 181)

CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976

PART I

TEXT OF CONVENTION

CHAPTER 1. THE RIGHT OF LIMITATION

*ARTICLE 1*

*Persons entitled to limit liability*

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.
2. The term "shipowner" shall mean the owner, charterer, manager or operator of a seagoing ship.
3. Salvor shall mean any person rendering services in direct connection with salvage operations. Salvage operations shall also include operations referred to in Article 2, paragraph 1 (d), (e) and (f).
4. If any claims set out in Article 2 are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.
5. In this Convention the liability of a shipowner shall include liability in an action brought against the vessel herself.
6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.
7. The act of invoking limitation of liability shall not constitute an admission of liability.

*ARTICLE 2*

*Claims subject to limitation*

1. Subject to Articles 3 and 4 the following claims, whatever the basis of liability may be, shall be subject to limitation of liability—
  - (a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct

connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;

(b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;

(c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;

(d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;

(e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;

(f) claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

2. Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraph 1 (d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

### ARTICLE 3

#### *Claims excepted from limitation*

The rules of this Convention shall not apply to—

(a) claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;

(b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage dated 29th November 1969 or of any amendment or Protocol thereto which is in force;

(c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;

(d) claims against the shipowner of a nuclear ship for nuclear damage;

(e) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependents or other persons entitled to make such claims,

if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6.

*ARTICLE 4*

*Conduct barring limitation*

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge, that such loss would probably result.

*ARTICLE 5*

*Counter claims*

Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

CHAPTER II. LIMITS OF LIABILITY

*ARTICLE 6*

*The general limits*

1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows—

(a) in respect of claims for loss of life or personal injury—

(i) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons;

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i)—

for each ton from 2,001 to 30,000 tons, 800 Units of Account;

for each ton from 30,001 to 70,000 tons, 600 Units of Account;

for each ton in excess of 70,000 tons, 400 Units of Account;

(b) in respect of any other claims—

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- (i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons;
- (ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in (i)—

for each ton from 2,001 to 30,000 tons, 400 Units of Account;

for each ton from 30,001 to 70,000, 300 Units of Account; and

for each ton in excess of 70,000 tons, 200 Units of Account.

2. Where the amount calculated in accordance with paragraph l(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph l(b) shall be available for payment of the unpaid balance of claims under paragraph l(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph I (b).

4. The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

### ARTICLE 7

#### *The limit for passenger claims*

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate.

2. For the purpose of this Article "claims for loss of life or personal injury to passengers of a ship" shall mean any such claims brought by or on behalf of any person carried in that ship—

- (a) under a contract of passenger carriage; or
- (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

### ARTICLE 8

#### *Unit of Account*

The Unit of Account referred to in Articles 6 and 7 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles 6 and 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment.

*ARTICLE 9*

*Aggregation of claims*

1. The limits of liability determined in accordance with Article 6 shall apply to the aggregate of all claims which arise on any distinct occasion—
  - (a) against the person or persons mentioned in paragraph 2 of Article 1 and any person for whose act, neglect or default he or they are responsible; or
  - (b) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible; or
  - (c) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.
2. The limits of liability determined in accordance with Article 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in paragraph 2 of Article 1 in respect of the ship referred to in Article 7 and any person for whose act, neglect or default he or they are responsible.

*ARTICLE 10*

*Limitation of liability without constitution of a limitation fund*

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article 11 has not been constituted.
2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article 12 shall apply correspondingly.
3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

CHAPTER III. THE LIMITATION FUND

*ARTICLE 11*

*Constitution of the Fund*

1. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence

giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the Court or other competent authority.

3. A fund constituted by one of the persons mentioned in paragraph 1 (a), (b) or (c) or paragraph 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1 (a), (b) or (c) or paragraph 2, respectively.

#### ARTICLE 12

##### *Distribution of the fund*

1 Subject to the provisions of paragraphs 1 and 2 of Article 6 and of Article 7, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.

4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

#### ARTICLE 13

##### *Bar to other actions*

1. Where a limitation fund has been constituted in accordance with Article 11 any person having made a claim against the fund shall be barred from exercising any right in respect of such a claim against any other assets of a person by or on behalf of whom the fund has been constituted.

2. After a limitation fund has been constituted in accordance with Article 11 any ship or other property, belonging to a person on behalf of whom the fund has been

constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, may be released by order of the Court or other competent authority of such State. However, such release shall always be ordered if the limitation fund has been constituted—

- (a) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter; or
- (b) at the port of disembarkation in respect of claims for loss of life or personal injury; or
- (c) at the port of discharge in respect of damage to cargo; or
- (d) in the State where the arrest is made.

3. The rules of paragraphs 1 and 2 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

#### ARTICLE 14

##### *Governing law*

Subject to the provisions of this Chapter the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connection therewith, shall be governed by the law of the State Party in which the fund is constituted.

#### CHAPTER IV. SCOPE OF APPLICATION

#### ARTICLE 15

1. This Convention shall apply whenever any person referred to in Article I seeks to limit his liability before the Court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State.

2. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to vessels which are—

- (a) according to the law of that State, ships intended for navigation on inland waterways;
- (b) ships of less than 300 tons.

A State Party which makes use of the option provided for in this paragraph shall inform the depositary of the limits of liability adopted in its national legislation or of the fact that there are none.

*3bis* Notwithstanding the limit of liability prescribed in paragraph 1 of article 7, a State Party may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided that

the limit of liability is not lower than that prescribed in paragraph 1 of article 7. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary-General of the limits of liability adopted or of the fact that there are none.

*ARTICLE 18*

*Reservations*

1 Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right—

- (a) to exclude the application of article 2, paragraphs 1(d) and (e);
- (b) to exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or Protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention.

PART II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

*Interpretation*

1. In this Part of this Schedule any reference to a numbered article is a reference to the article of the Convention which is so numbered.

*Right to limit liability*

2. Subject to paragraph 5, the right to limit liability under the Convention shall apply in relation to any ship whether seagoing or not, and the definition of “shipowner” in paragraph 2 of article 1 shall be construed accordingly.

*Claims subject to limitation*

3. (1) Paragraph 1(d) of article 2 shall not apply unless provision has been made by an order of the Minister for the setting up and management of a fund to be used for the making to a harbour authority of payments needed to compensate it for the reduction, in consequence of the said paragraph 1(d), of amounts recoverable by it in claims of the kind there mentioned, and to be maintained by contributions from such authority raised and collected by it in respect of vessels in like manner as other sums so raised by it.

(2) Any order under subparagraph (1) may contain such incidental and supplemental provisions as appear to the Minister to be necessary or expedient.

*Claims excluded from limitation*

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4. (1) Claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, or any amendment of or Protocol to that Convention, which arise from occurrences which take place after the coming into force of section 178A of this Act shall be excluded from the Convention.

(2) The claims excluded from the Convention by paragraph (b) of article 3 are claims in respect of any liability incurred under section 151 of this Act.

### *The general limits*

5. (1) In the application of article 6 to a ship with a tonnage less than 300 tons that article shall have effect as if—

- (a) paragraph 1(a)(i) referred to 1,000,000 Units of Account; and
- (b) paragraph 1(b)(i) referred to 500,000 Units of Account.

(2) For the purposes of article 6 and this paragraph a ship's tonnage shall be its gross tonnage calculated in such manner as may be prescribed by an order made by the Minister.

(3) Any order under this paragraph shall, so far as appears to the Minister to be practicable give effect to the regulations in Annex I of the International Convention on Tonnage Measurement of Ships 1969.

### *Limit for passenger claims*

6. (1) Article 7 shall not apply in respect of any seagoing ship; and shall have effect in respect of any ship which is not seagoing as if, in paragraph 1 of that article—

- (a) after "thereof" there were inserted "in respect of each passenger,";
- (b) the words from "multiplied" onwards were omitted.

(2) In paragraph 2 of article 7 the reference to claims brought on behalf of a person includes a reference to any claim in respect of the death of a person under the Fatal Injuries (Action for Damages) Act 1949.

### *Units of Account*

7. (1) For the purpose of converting the amounts mentioned in articles 6 and 7 from special drawing rights into United States dollars one special drawing right shall be treated as equal to such a sum in United States dollars as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—

- (a) the relevant date under paragraph 1 of article 8; or
- (b) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.

(2) A certificate given by or on behalf of the Minister responsible for finance stating—

- (a) that a particular sum in United States dollars has been fixed as mentioned in subparagraph (1) for a particular date; or

- (b) that no sum has been so fixed for that date and that a particular sum in United States dollars has been so fixed for a date which is the last preceding date for which a sum has been so fixed,

shall be conclusive evidence of those matters for the purposes of those articles; and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

*Constitution of fund*

8. (1) The Minister may, with the concurrence of the Minister responsible for finance, by order prescribe the rate of interest to be applied for the purposes of paragraph 1 of article 11.

(2) Where a fund is constituted with the court in accordance with article 11 for the payment of claims arising out of any occurrence, the court may stay any proceedings relating to any claim arising out of that occurrence which are pending against the person by whom the fund has been constituted.

*Distribution of fund*

9 . No lien or other right in respect of any ship or property shall affect the proportions in which under article 12 the fund is distributed among several claimants.

*Bar to other actions*

10 . Where the release of a ship or other property is ordered under paragraph 2 of article 13 the person on whose application it is ordered to be released shall be deemed to have submitted to the jurisdiction of the court to adjudicate on the claim for which the ship or property was arrested or attached.

*Meaning of "court"*

11 . References in the Convention and the preceding provisions of this Part of this Schedule to the court are references to the Supreme Court.

*Meaning of "ship"*

12 . References in the Convention and in the preceding provisions of this Part of this Schedule to a ship include references to any structure (whether completed or in course of completion) launched and intended for use in navigation as a ship or part of a ship.

*Meaning of "State Party"*

13 . An order made for the purpose of this paragraph and declaring that any State specified in the order is a party to the Convention as amended by the 1996 Protocol shall, subject to the provisions of any subsequent order made for those purposes, be conclusive evidence that the State is a party to the Convention as amended by the 1996 Protocol.

*[Schedule 6 repealed and replaced by 2004:16 s.9 effective 18 June 2004]*

SCHEDULE 7

(Section 189)

INTERNATIONAL CONVENTION ON SALVAGE 1989

PART I

TEXT OF CONVENTION

CHAPTER I - GENERAL PROVISIONS

*ARTICLE 1*

*Definitions*

For the purpose of this Convention—

- (a) Salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.
- (b) Vessel means any ship or craft, or any structure capable of navigation.
- (c) Property means any property not permanently and intentionally attached to the shoreline and includes freight at risk.
- (d) Damage to the environment means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.
- (e) Payment means any reward, remuneration or compensation due under this Convention.
- (f) Organisation means the International Maritime Organisation.
- (g) Secretary-General means the Secretary-General of the Organisation.

*ARTICLE 2*

*Application of the Convention*

This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party.

*ARTICLE 3*

*Platforms and drilling units*

This Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

*ARTICLE 4*

*State-owned vessels*

1. Without prejudice to article 5, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognised principles of international law unless that State decides otherwise.

2. Where a State Party decides to apply the Convention to its warships or other vessels described in paragraph 1, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

*ARTICLE 5*

*Salvage operations controlled by public authorities*

1. This Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.

2. Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.

3. The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated.

*ARTICLE 6*

*Salvage contracts*

1. This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.

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2. The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.

3. Nothing in this article shall affect the application of article 7 nor duties to prevent or minimise damage to the environment.

### ARTICLE 7

#### *Annulment and modification of contracts*

A contract or any terms thereof may be annulled or modified if—

- (a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
- (b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

## CHAPTER II - PERFORMANCE OF SALVAGE OPERATIONS

### ARTICLE 8

#### *Duties of the salvor and of the owner and master*

1. The salvor shall owe a duty to the owner of the vessel or other property in danger—

- (a) to carry out the salvage operations with due care;
- (b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimise damage to the environment;
- (c) whenever circumstances reasonably require, to seek assistance from other salvors; and
- (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.

2. The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor—

- (a) to co-operate fully with him during the course of the salvage operations;

- (b) in so doing, to exercise due care to prevent or minimise damage to the environment; and
- (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

*ARTICLE 9*

*Rights of coastal States*

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognised principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

*ARTICLE 10*

*Duty to render assistance*

1. Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.
2. The States Parties shall adopt the measures necessary to enforce the duty set out in paragraph 1.
3. The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph 1.

*ARTICLE 11*

*Co-operation*

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

CHAPTER III - RIGHTS OF SALVORS

*ARTICLE 12*

*Conditions for reward*

1. Salvage operations which have had a useful result give right to a reward.
2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
3. This chapter shall apply, notwithstanding that the salvaged vessel and the vessel undertaking the salvage operations belong to the same owner.

*ARTICLE 13*

*Criteria for fixing the reward*

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below—
  - (a) the salvaged value of the vessel and other property;
  - (b) the skill and efforts of the salvors in preventing or minimising damage to the environment;
  - (c) the measure of success obtained by the salvor;
  - (d) the nature and degree of the danger;
  - (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
  - (f) the time used and expenses and losses incurred by the salvors;
  - (g) the risk of liability and other risks run by the salvors or their equipment;
  - (h) the promptness of the services rendered;
  - (i) the availability and use of vessels or other equipment intended for salvage operations;
  - (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.
2. Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other

interests for their respective shares. Nothing in this article shall prevent any right of defence.

3. The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the vessel and other property.

*ARTICLE 14*

*Special compensation*

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.

2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimised damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30 per cent. of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100 per cent. of the expenses incurred by the salvor.

3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).

4. The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.

5. If the salvor has been negligent and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.

6. Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

*ARTICLE 15*

*Apportionment between salvors*

1. The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.
2. The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

*ARTICLE 16*

*Salvage of persons*

1. No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject.
2. A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salving the vessel or other property or preventing or minimising damage to the environment.

*ARTICLE 17*

*Services rendered under existing contracts*

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

*ARTICLE 18*

*The effect of salvor's misconduct*

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that the salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

*ARTICLE 19*

*Prohibition of salvage operations*

Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or the owner of any other property in danger which is not and has not been on board the vessel shall not give rise to payment under this Convention.

CHAPTER IV - CLAIMS AND ACTIONS

*ARTICLE 20*

*Maritime lien*

1. Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.
2. The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided.

*ARTICLE 21*

*Duty to provide security*

1. Upon the request of the salvor a person liable for a payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.
2. Without prejudice to paragraph 1, the owner of the salvaged vessel shall use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.
3. The salvaged vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.

*ARTICLE 22*

*Interim payment*

1. The tribunal having jurisdiction over the claim of the salvor may, by interim decision, order that the salvor shall be paid on account such amount as seems fair and just,

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and on such terms including terms as to security where appropriate, as may be fair and just according to the circumstances of the case.

2. In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.

### ARTICLE 23

#### *Limitation of actions*

1. Any action relating to payment under this Convention shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of two years. The limitation period commences on the day on which the salvage operations are terminated.

2. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration to the claimant. This period may in the like manner be further extended.

3. An action for indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted.

### ARTICLE 24

#### *Interest*

The right of the salvor to interest on any payment due under this Convention shall be determined according to the law of the State in which the tribunal seized of the case is situated.

### ARTICLE 25

#### *State-owned cargoes*

Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention by any legal process of, nor for any proceedings in rem against, non-commercial cargoes owned by a State and entitled, at the time of the salvage operations, to sovereign immunity under generally recognised principles of international law.

ARTICLE 26

*Humanitarian cargoes*

No provision of this Convention shall be used as a basis for the seizure, arrest or detention of humanitarian cargoes donated by a State, if such State has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

ARTICLE 27

*Publication of arbitral awards*

States Parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases.

PART II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

*Interpretation*

1. In this Part of this Schedule “the Convention” means the Convention as set out in Part I of this Schedule and any reference to a numbered article is a reference to the article of the Convention which is so numbered.

*Assistance to persons in danger at sea*

2. (1) The master of a vessel who fails to comply with the duty imposed on him by article 10, paragraph 1 commits an offence and shall be liable—

- (a) on summary conviction, to a fine of \$10,000 or to imprisonment for a term of six months or both;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term of two years, or both.

(2) Compliance by the master of a vessel with that duty shall not affect his right or the right of any other person to a payment under the Convention or under any contract.

*The reward and special compensation: the common understanding*

3. In fixing a reward under article 13 and assessing special compensation under article 14 the court or arbitrator is under no duty to fix a reward under article 13 up to the maximum salvaged value of the vessel and other property before assessing the special compensation to be paid under article 14.

*Recourse for life salvage payment*

4. (1) This paragraph applies where—

- (a) services are rendered wholly or in part in Bermuda waters in saving life from a vessel of any nationality or elsewhere in saving life from any Bermuda ship; and
- (b) either—
  - (i) the vessel and other property are destroyed, or
  - (ii) the sum to which the salvor is entitled under article 16, paragraph 2 is less than a reasonable amount for the services rendered in saving life.

(2) Where this paragraph applies, the Minister may, if he thinks fit, pay to the salvor such sum or, as the case may be, such additional sum as he thinks fit in respect of the services rendered in saving life.

*Meaning of "judicial proceedings"*

5. References in the Convention to judicial proceedings are references to proceedings in the Supreme Court; and any reference to the tribunal having jurisdiction (so far as it refers to judicial proceedings) shall be construed accordingly.

*Meaning of "State Party"*

6. An order made by the Minister for the purposes of this paragraph and declaring that any State specified in the order is a party to the Convention in respect of a specified country shall, subject to the Provisions of any subsequent order made for those purposes, be conclusive evidence that the State is a party to the Convention in respect of that country.

SCHEDULE 8

*[Schedule 8 repealed by 2007:17 s.5 effective 1 June 2007]*

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SCHEDULE 9

(Section 255(1))

REPEALS

| Short title   | Extent of repeal   |
|---|--|
| Merchant Shipping Act 1894 ( 57 & 58 Vict. c.60) as applied in Bermuda        | Those provisions of the Act that apply in Bermuda shall cease to have effect |
| Wreck Removal Act 1935  | The whole Act  |
| Wreck and Salvage Act 1959  | Part I (sections 1 to 27)  |
| Merchant Shipping Act 1973  | The whole Act  |
| Merchant Shipping Act 1979  | The whole Act  |
| Merchant Shipping and Demise Charter Act 1994                                 | The whole Act  |
| Merchant Shipping and Demise Charter (Registration and Tonnage Fees) Act 1994 | The whole Act  |

SCHEDULE 10

(Section 255(2))

CONSEQUENTIAL AMENDMENTS

*EVIDENCE ACT 1905*

1 In section 50 (1), for “any Act of the Parliament of the United Kingdom relating to the registry of British ships” where it occurs there is substituted “Part IV of the Merchant Shipping Act 2002”.

*BERMUDA IMMIGRATION AND PROTECTION ACT 1956*

2 For section 52 there is substituted the following—

“Restriction on signing on and off seafarers

52 (1) The master of a ship shall not in Bermuda sign a seafarer on or off the ship without the previous permission in writing of the Minister.

(2) Subsection (1) shall not apply in relation to any person who possesses Bermudian status.

(3) In this section “master”, “seafarer” and “ship” shall have the same meaning as in the Merchant Shipping Act 2002.”.

*MARINE BOARD ACT 1962*

3 In section 41(1), for “Acts of the Parliament of the United Kingdom entitled the Imperial Merchant Shipping Acts” substitute “Merchant Shipping Act 2002”.

*CROWN PROCEEDINGS ACT 1966*

4 In section 1 there is omitted the definition of “the Imperial Merchant Shipping Acts”.

5 In section 7, for “Imperial Merchant Shipping Acts” there is substituted “the Merchant Shipping Act 2002”.

6 For section 5, there is substituted the following—

“Crown ships: sections 181 and 182 of Merchant Shipping Act 2002 apply

5 (1) Sections 181 and 182 of the Merchant Shipping Act 2002 and Schedule 6 shall apply in relation to Her Majesty’s ships as they apply in relation to other ships.

(2) In this section “ships” has the same meaning as in the Merchant Shipping Act 2002.”.

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*MARITIME SECURITY ACT 1997*

7 In section 24—

- (a) for “registered under the Merchant Shipping Act 1988” in subsection (7)(a), there is substituted “appointed”;
- (b) for “1988” in subsection (9), there is substituted “2002”.

*[Schedule 10 amended by 2012 : 30 s. 3 effective 30 June 2014]*

SCHEDULE 11

(Section 255(3))

SAVING AND TRANSITIONAL PROVISIONS

*References to registration in other legislation*

1. Any reference in a provision of any Act other than this Act (not being an Act amended by Schedule 10), or in any instrument made under any such other Act to the registration of a ship under Part I of the Merchant Shipping Act 1894 of the United Kingdom as applied in Bermuda shall be construed, unless the context otherwise requires, as, or as including, a reference to registration under Part IV of this Act; and connected phrases shall be construed accordingly.

*References to repealed legislation re-enacted by this Act*

2. Any reference in a provision of any Act other than this Act (not being an Act amended by Schedule 10), or in any instrument made under any such other Act to an enactment repealed by section 255 and Schedule 9 or revoked by the Merchant Shipping (Revocation) (Bermuda) Order 2002, shall be construed, unless the context otherwise requires, as, or as including, a reference to the provisions re-enacted by this Act; and connected phrases shall be construed accordingly.

*Saving of subsidiary legislation made under repealed legislation*

3. Where this Act has re-enacted with or without modification an enactment repealed by section 255 and Schedule 9 then, unless the contrary intention appears, in so far as any subsidiary legislation made or other thing done under the repealed enactment, or having effect as if so made or done, could have been made or done under the provision re-enacted, it shall have effect as if made or done under that provision.

4. Notwithstanding the revocation, by the Merchant Shipping (Revocation) (Bermuda) Order 2002, of the United Kingdom statutory instruments listed in the table below, insofar as any subsidiary legislation made or other thing done under the revoked instruments, or having effect as if so made or done, could have been made or done under a provision of this Act then, unless the contrary intention appears, it shall have effect as if made or done under that provision.

*Table of revoked United Kingdom statutory instruments*

- (a) The Prevention of Oil Pollution Act 1971 (Bermuda) Order 1980 (S.I. 1980/1520);
- (b) The Merchant Shipping (Safety Convention) (Bermuda) Order 1973 (S.I. 1973/1315);
- (c) The Merchant Shipping (Safety Convention) (Bermuda) (No 2) Order 1973 (S.I. 1973/1316);

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- (d) The Merchant Shipping (Load Lines) (Bermuda) Order 1975 (S.I. 1975/412);
- (e) The Merchant Shipping Act 1979 (Bermuda) Order 1980 (S.I. 1980/1510);
- (f) The Prevention of Oil Pollution (Enforcement of Convention) Bermuda Order 1980 (S.I. 1980/1521);
- (g) The Prevention of Oil Pollution (Shipping Casualties) (Bermuda) Order 1980 (S.I. 1980/1522);
- (h) The Carriage of Goods by Sea (Bermuda) (Order) 1982 (S.I. 1982/1662);
- (i) The Merchant Shipping (Tonnage) (Bermuda) Order 1982 (S.I. 1982/1667);
- (j) The Merchant Shipping (Prevention of Oil Pollution) (Bermuda) Order 1988 (S.I. 1988/788);
- (k) The Merchant Shipping Act 1988 (Bermuda) Order 1991 (S.I. 1991/1703);
- (l) The Merchant Shipping (Prevention and Control of Pollution) (Bermuda) Order 1992 (S.I. 1992/2668); and
- (m) The Merchant Shipping (Oil Pollution) (Bermuda) Order 1997 (S.I. 1997/2581).

[Assent Date: 18 December 2002]

[Operative Date: 7 April 2003]

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*[Amended by:*

2004 : 16  
2007 : 17  
2008 : 41  
BR 11 / 2009  
2009 : 24  
2012 : 30]