

ARRANGEMENT OF SECTIONS

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I Assent

D. R. BARWICK,
Governor,
31st December, 1985

VIRGIN ISLANDS

No. 19 of 1985

An Ordinance to repeal the Harbours and Wharves Ordinance, and the Port Dues and Charges Ordinance, 1972, and make fresh provision for the administration of ports and marine services and provide for related matters.

[Gazetted 23rd January, 1986]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I

Preliminary

1. This Ordinance may be cited as the Ports and Marine Services Ordinance, 1985.

2. For the purposes of this Ordinance,

“Board” means the Ports and Marine Services Board established under section 3;

“buoy” means any moored float and includes any floating light, mark or sign used as an aid to navigation, other than a lighthouse;

“cargo” includes all kinds of movable property other than animals;

“Chairman” means the Chairman of the Board;

“charges” means any charges or rates levied by the Board under this Ordinance;

“Department” means the Ports and Marine Services Department established under section 3;

“Director” means the Director of the Ports and

Marine Services Department appointed under section 15 and includes any person acting under his general or specific direction;

“dues” means dues of every description payable under this Ordinance;

“ferry” means any vessel plying from one side of a waterway to the other or between places on the same or different islands or territories for the purpose of carrying passengers or goods;

“foreign vessel” means a vessel not registered in the Virgin Islands or the United Kingdom;

“goods” means all kind of movable property including animals;

“harbour” means all the territorial water of the Virgin Islands and a harbour or port appointed or declared to be a harbour or port in accordance with this Ordinance together with

(a) its approaches and channels of ingress and egress and the foreshore thereof; and

(b) all the wharves, jetties, slips, docks and breakwaters and the machinery, plant, tools or other property appertaining thereto and used for the purposes of the operation of the harbour;

“inland water craft” means any vessel that carries for hire or otherwise goods or persons between wharves or places in the territorial waters of the Virgin Islands;

“lighthouse” includes a light ship;

“master” includes every person having or taking charge or command of a vessel;

“Minister” except in section 18 and in Part VI, means the Minister for the time being charged with responsibility for the administration of ports and harbours and marine transport;

“owner” when used in relation to

(a) goods, includes any consignee, consignee, shipper or agent of the owner for the sale, custody, loading, handling, unloading or delivery of the goods;

(b) a vessel, sea-plane and other water-borne craft, includes any part-owner, charterer, master, operator, consignee or mortgagee in possession thereof or any duly authorised agent of such persons;

“passenger” means a person other than a stow-away being carried on a ship who is not a member of the crew of that ship;

“pilotage certificate” means a pilotage certificate issued under section 32(2);

“pleasure yacht” includes any ship, launch, houseboat, randan, ferry, skiff, dinghy, shallop, punt or canoe, however navigated, not being used for the carriage of passengers or goods or for hire or reward;

“port” includes a harbour;

“qualified pilot” means a qualified person duly appointed or licensed by the Board and not belonging to a ship but has conduct therefor;

“sea-plane” includes a flying boat and any other aircraft designed to manoeuvre on the water;

“ship” includes every description of vessel used in navigation not exclusively powered by oars and includes sea-planes and similar craft;

“vessel” includes every description or craft other than a sea-plane on the water used or capable of being used as a means of transportation on through or under water and “power-driven vessel” means any vessel propelled by machinery;

“territorial waters of the Virgin Islands” means the territorial sea and internal waters of the British Virgin Islands, including all the bays, coves, inlets, sounds, channels, passages, marinas, ports and harbours directly or indirectly opening

adjacent thereto, whether natural or artificial, within the limits of the British Virgin Islands;

“warehouse” includes any building, place, wagon, compartment, container, ship or vehicle when used for the purpose of warehousing, depositing or storage of goods;

“wharf” means a wharf, jetty, pier, mooring or quay of whatever description and includes any wharf, jetty, pier, mooring or quay erected or extending beyond the high water mark of Ordinary Spring Tides (OST) or extending into waters of any navigable channel and also includes any portion or extension moored in such waters and used as a wharf, jetty, pier, mooring or quay.

PART II

Establishment of Ports and Marine Services Department and Ports and Marine Services Board

3. (1) For the purposes of this Ordinance, there is established a department to be known as the Ports and Marine Services Department, in this Ordinance referred to as the Department, which shall be a department of the Public Services of the Territory.

Establishment of Ports and Marine Services Department and Ports and Marine Services Board.

(2) For the efficient operation of the Department there is established a Board to be known as the Ports and Marine Services Board.

(3) The functions of the Board are

(a) to advise the Minister with respect to affairs relating to ports and maritime matters in the Territory; and

(b) to perform such other functions as are conferred on it by this Ordinance.

4. The First Schedule has effect in relation to the constitution of the Board and otherwise in relation thereto.

Constitution of Board. First Schedule.

5. (1) In the performing of its functions under this Ordinance the Board may conduct such inquiries into incidents connected with maritime matters whenever it is satisfied that there is a need to do so.

Inquiries.

(2) Where the Board decides to conduct an inquiry in pursuance of subsection (1) it may, if necessary,

- (a) in writing authorise any of its members or any other person to board any vessel and inspect the vessel, any part of it or any machinery, boats, equipment or articles on board it, without unnecessarily detaining the vessel from proceeding on its voyage;
- (b) in writing authorise any of its members or any other person to enter and inspect any premises if it appears to the Board, or to the person authorised, to be necessary for the purposes of the inquiry;
- (c) by summons issued under the hand of the Chairman require the attendance of any person at a time and place specified in the summons to be examined for the purpose of the inquiry;
- (d) subject to section 8, require a person summoned under paragraph (c) to answer such questions, produce such documents, give such information or make such returns as it considers necessary;
- (e) in writing authorise any of its members or any other person to require and enforce the production of all books, papers or documents that the Board or the person authorised considers important for the purpose of the inquiry; and
- (f) in writing authorise any of its members or any other person to administer oaths or, in lieu thereof, require a person examined to make and subscribe to a declaration as to the truth of statements made by him in the course of his examination.

6. (1) A witness attending in obedience to a summons under section 5 is entitled to such expenses as would be allowed a witness attending on *subpoena* to give evidence before the High Court.

(2) Where there is a dispute as to the amount of the expenses to which a witness is entitled, the matter shall be referred to the Registrar of the High Court who, on request made of him by the Chairman, shall certify the amount of the expenses and the decision of the Registrar is final.

7. A person who
- (a) refuses to appear in answer to a summons issued under this Ordinance; or
 - (b) unreasonably refuses or neglects
 - (i) to give answer or to make a return;
 - (ii) to produce any document in his possession; or
 - (iii) to make or subscribe to any declaration that may lawfully be required of him,

Refusal to appear in answer to summons.

may, on the application of the Board, be committed to prison by a judge of the High Court for contempt of Court until the contempt is purged.

8. A person summoned under this Ordinance is not bound to answer a question that is likely to incriminate himself.
9. Any witness who wilfully gives evidence that is false in a material particular on oath at any inquiry before the Board is guilty of the offence of perjury and may be prosecuted and punished accordingly.

Incriminating questions.

False evidence to be perjury.

10. The Board, in conducting an inquiry under this Ordinance, may employ one or more assessors as the Minister approves, of such nautical engineering or other special skill or knowledge, to assist with the conduct of inquiry.

Assessors at inquiries.

11. The Board may, without derogation from its powers under this Part, delegate to any person or to any of its members authority to conduct an inquiry under this Ordinance and a person to whom a power has been so delegated has all the powers and immunities of the Board for the purposes of the inquiry.

Delegation of powers to hold inquiry.

12. (1) The Minister may direct whether or not an inquiry to be held under this Part shall be held *in camera*; but, in the absence of a direction to the contrary, every inquiry shall be held in public.

(2) Without affecting the operation of subsection (1), the Board or other person authorised to conduct an inquiry may, for the preservation of order or for the proper conduct of the inquiry, exclude any person from the room or other place where the inquiry is being held.

13. (1) The Board, a person authorised by the Board or a member of the Board authorised by it, in conducting an inquiry under this Ordinance has all the privileges and immunities from process under the law as has a judge of the High Court.

(2) The privileges and immunity specified in subsection (1) extend to the Crown, the Director, the Board, members of the Board and persons authorised by the Board or by the Director in respect of anything done in good faith and in pursuance of this Ordinance.

PART III

Management of Harbour and Territorial Waters of the Virgin Islands

14. (1) Subject to subsection (2), the harbours specified in the Second Schedule are the harbours for the purposes of this Ordinance.

(2) The Minister may, by order, amend the Second Schedule by extending the limits of any harbour or by adding thereto or deleting therefrom, any harbour.

15. There shall be a Director of Ports and Marine Services who shall be a public officer and whose functions shall be

(a) to manage and supervise the daily operations of harbours and marine services;

(b) to furnish the Board with any information it requires in relation to the harbours and marine affairs;

(c) to perform such functions as may be assigned to him by the Minister or by the Board; and

(d) to perform any other functions that are required by this Ordinance to be performed by the Director,

16. (1) All vessels entering, being or remaining in any harbour in the Territory are, during their continuance therein, subject to the general direction and control of the Director.

(2) Notwithstanding anything contained in the regulations, the Director may,

(a) give directions as to where any vessel or sea plane shall be berthed, moored anchored, or parked and as to the method of berthing, mooring, anchoring or parking of the vessel or sea-plane within a harbour or the approaches thereto;

(b) order the removal of any vessel or seaplane from any berth, station or position to another berth, station or position and specify in the order the time within which removal is to be effected; and

(c) regulate the movement of vessels or sea-planes and other traffic within a harbour and the approaches thereto.

17. (1) Notwithstanding anything contained in the regulations, the Minister may order the removal of any foreign vessel, or sea-plane from the territorial waters of the Virgin Islands and may specify the time limit within which the removal is to be effected.

(2) In specifying the time limit referred to in subsection (1), the Minister may take due account of any limitations of the vessel, sea-plane and of the crew.

(3) Any owner or person in charge of any vessel or sea-plane who, without reasonable excuse, fails to comply with an order given under section 16(2) or under subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$2,000.

(4) Where a person has been convicted of an offence under subsection (1) and the order in respect of which the conviction was obtained is still not complied with, that person is guilty of a continuing offence and is liable on summary conviction to a fine of \$1,000 in respect of each day in respect of which the offence continues after the first conviction was obtained.

Vessels entering harbour under general direction of Director.

Removal of foreign vessel from territorial waters.

(5) In case of a failure to comply with any order given under subsection (1) and the Minister is satisfied that it is urgent and necessary and in the public interest or for the protection of the marine environment so to do, he may, without prejudice to any proceedings being instituted against any person, request the Board or Director to take such measures and action as may be reasonable and necessary for the purpose of having the order complied with; and any measure and action taken at the request of the Minister shall be at the risk and expense of the person against whom the order under subsection (1) was directed.

(6) This section does not apply to a vessel in distress in the territorial waters of the Virgin Islands, but beyond the internal waters, if the vessel is removed by the owner or person in charge of it within such period of time as the Minister considers reasonable.

18. Except for navigational aids placed in the territorial waters of the Virgin Islands and moorings placed in those waters for exclusive use of the department, no person shall place any buoy, mooring or other structure or obstruction within the territorial waters of the Virgin Islands except

- (a) in accordance with the manner and conditions prescribed in Part VI; and
- (b) upon the payment of such fees as the Minister responsible for Natural Resources, may, by Order, prescribe.

19. (1) No owner or person in charge of a vessel shall:

- (a) unlawfully place that vessel; or
- (b) allow that vessel to remain sunk, stranded or abandoned,

within any harbour, or other territorial waters of the Virgin Islands or in any fairway or on the seashore or on or near any rock, bank, shoal, or reef or in any part of the sea adjacent to the coast of the Virgin Islands.

(2) Where a vessel is allowed to remain sunk, stranded, abandoned or unlawfully placed in a place mentioned in subsection (1) and the Board is satisfied that the vessel is likely

- (a) to cause
 - (i) obstruction to navigation or to the lawful landing of a vessel on the beach, foreshore or bank of the harbour, bank of the inland water or of the sea; or

- (ii) obstruction to the use of the beach, harbour, inland water or sea; or

(b) to constitute

- (i) a risk of pollution; or
- (ii) a danger to the environment,

the Board may, without notice to the owner of the vessel, authorise the Director or any other officer of the Department to perform in relation to the vessel any of the acts specified in subsection (3).

(3) The acts referred to in subsection (1) that the Board may authorise the Director or other officer of the Department to perform in relation to a vessel mentioned in that a subsection, are

- (a) to take possession of or raise, remove or destroy the whole or any part of the vessel;
- (b) to light the vessel or any part of it or buoy it until it is raised, removed or destroyed, as the case may be; or
- (c) to sell, in such manner as may be convenient
 - (i) the vessel or any part thereof; or
 - (ii) its contents or any part thereof.

(4) The proceeds of a sale under this section shall be appropriated in satisfaction of the expenses incurred by the Department as a result of the raising of the vessel and of the sale and the remainder shall be held in trust for the person entitled thereto.

(5) If, after the expiration of a period of 6 months, no claim is made for the remainder of the proceeds to which subsection (4) refers, it shall be paid into the Consolidated Fund.

(6) If the proceeds of a sale under this section are less than the expenses mentioned in subsection (4), the balance may be recovered in civil proceedings as a debt due to the Crown.

(7) An order of the court is not necessary for the taking of possession and sale of a vessel under this section and no liability attaches to the Crown, to the Board or to any person acting under the authorisation of the Board for any act performed under subsection (3).

Wilfully sinking and abandoning a vessel in a harbour.

20. (1) Any person who, without the permission in writing of the Board

(a) wilfully sinks, strands or abandons a vessel in any harbour, or in any territorial water of the Virgin Islands; or

(b) does so in contravention of the terms of any such permission,

is, without affecting the operation of subsections (2) to (7) of section 19, guilty of an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of 12 months or both.

(2) A vessel that is left anchored in the territorial waters of the Virgin Islands for a period of 6 months or more and is not removed by the owner upon being requested to remove it by the Director is an abandoned vessel for the purposes of this section and section 19.

Guarding of vessel without permission.

21. Any person who

(a) goes on board a vessel in a harbour or in the territorial waters of the Virgin Islands without permission of the master, agent or owner of the vessel; or

(b) being lawfully on board any such vessel fails to leave the vessel upon being requested to do so by the master, agent or owner

is guilty of an offence and is liable on summary conviction, in the case of a first offence, to a fine of \$500 or to imprisonment for a term of 3 months and in the case of a second or subsequent offence to a fine of \$1,000 or to imprisonment for a term of 6 months or both.

Obstruction in territorial waters etc.

22. (1) No person shall unlawfully cause an obstruction or do anything that is likely to cause obstruction to

(a) navigation in the territorial waters of the Virgin Islands;

(b) the lawful use of any landing place, whether or not it has been reserved under the regulations or otherwise;

(c) the lawful use of any pier, jetty, wharf, quay, dock, or mooring; or

(d) any works connected with navigation in the Virgin Islands

(2) Any person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$500 or to imprisonment for a term of 6 months.

(3) Notwithstanding subsection (2), the court may, in addition to any punishment it imposes under that subsection make such order for the removal of the obstruction as it thinks fit and the order may contain a direction that the convicted person pay the cost of the removal.

23. Any person who, for the purpose of obtaining salvage or for any other purpose,

Setting vessel adrift.

(a) wilfully sets any vessel adrift; or

(b) cuts, breaks or unfastens the moorings of any vessel with intent to set the vessel adrift,

is guilty of an offence and is liable on summary conviction to a fine of \$1,000 or to imprisonment for a term of 6 months or both.

PART IV

Pilotage

24. (1) There shall be prescribed such harbours and other areas in respect of which there shall be in operation a system for compulsory pilotage.

Compulsory pilotage and licensing of pilots.

(2) The Board may, with the approval of the Minister,

(a) on receipt of the prescribed fee, license as pilots such persons as the Board is satisfied are competent to conduct cargo vessels and passenger vessels into and out of a harbour; and

(b) cancel or suspends the licence of any pilot.

(3) Every qualified pilot on his appointment shall be issued with a licence, to be known as a "pilot licence", in such form as the Minister approves and the licence shall, in addition to any other particulars, contain in respect of the person to whom it is issued, the following particulars:

(a) his name and address;

(b) his photograph; and

(c) the limits within which he must operate as a pilot.

(4) Every pilot licence must be signed by the holder thereof and also by the Chairman of the Board.

(5) A pilot licence is valid for a period of one year unless a shorter period is specified in the pilot licence for its validity; but it is renewable for a further period of one year upon payment of the prescribed fee.

Production of pilot licence.

25. Every qualified pilot shall, when acting as such, produce his pilot licence to any person by whom he is employed or to whom he offers his services as pilot.

Delivery up of pilot licence.

26. (1) Every qualified pilot shall, when required to do so by the Board, produce or deliver up his pilot licence to the Board or to such persons as the Board authorises to take possession of the licence.

(2) On the death of a pilot, any person who has possession of his pilot licence shall transmit it to the Board without delay.

(3) Any pilot who contravenes subsection (1) and any person who contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$250 or to imprisonment for a term of one month.

Pilot licence not transferable.

27. A pilot licence is not transferable.

Fraudulent use of licence

28. Any person who

(a) uses or attempts to use a pilot licence that he is not entitled to use; or

(b) uses or attempts to use a pilot licence for a purpose that is not within the limits specified in the licence in pursuance of paragraph (c) of section 24(3),

is guilty of an offence and is liable on summary conviction to a fine of \$500 or imprisonment for a term of 3 months.

Recovery of pilotage fees.

29. (1) Pilotage fees due to any qualified pilot, in respect of services rendered in respect of a vessel may be recovered by the pilot in civil proceedings from

(a) the master or owner of the vessel; or

(b) the consignee, or an agent who has paid or made them liable to any charge or account of the vessel at port of arrival, discharge, loading or departure,

except that no action for recovery of pilotage fees shall be entertained by the Court unless a request for payment had been made in writing by the pilot.

30. A consignee, or agent, not being the master or owner of a vessel who is liable for payment of pilotage fees or from whom payment of pilotage fees have been recovered may, out of any moneys received by him on account thereof or belonging to the owner of the vessel, retain any reasonable expenses he has incurred by reason of payment of the fees or of his liability to pay the fees.

Indemnity of consignee or agent for fee claimed.

31. (1) A qualified pilot who,

(a) lends his pilot licence to any person;

(b) within or outside the limits of his licence acts as a pilot during a period that he is suspended;

(c) within or outside the limits of his licence acts as a pilot while he is under the influence of alcohol or drugs;

(d) refuses to take charge or wilfully delays in taking charge, of any vessel within the limits of his licence;

(i) when not prevented from doing so by reason of illness or other reasonable cause; and

(ii) upon being requested to do so by the master of the vessel, its owner, agent or consignee or by any member of the Board or by the Director;

(e) unnecessarily cuts, slips or causes to be cut or slipped, any cable or line belonging to any vessel;

(f) refuses when requested by the master to conduct a vessel of which he is in charge into any harbour, port or place into which he is qualified to conduct that vessel, except on reasonable grounds of the likelihood of danger to the vessel; or

Offences in relation to pilots.

- (g) without the consent of the master, quits a vessel of which he has charge before the service for which he has been hired has been performed,

is guilty of an offence and is liable on summary conviction to a fine of \$500 or to imprisonment for a term of 3 months and, in addition thereto, is personally liable for any damage to the vessel that is the result of his action.

(2) Any person who aids, abets, counsels or procures the commission of any offence under this section is liable in like manner and to the same extent as specified in subsection (1).

(3) If the person referred to in subsection (1) is a pilot, he is, in addition to the liability he incurs, liable at the discretion of the Board to suspension or dismissal.

(4) If any qualified pilot while he is in charge of a vessel wilfully, negligently or by reason of his being under the influence of drugs or alcoholic drink,

(a) does any thing that

- (i) causes or is likely to cause the loss or destruction of, or serious damage to, the vessel, or
- (ii) is likely to be a source of danger to the life or limb of any person on board thereof; or

(b) fails to do any lawful act that is necessary to be done by him for

- (i) preserving the vessel from loss, destruction or serious damage, or
- (ii) preserving any person belonging thereto or on board thereof from danger to life or limb.

is guilty of an offence.

(5) A pilot guilty of an offence under subsection (4) is liable

- (a) on conviction on indictment to a fine of \$5,000 or to imprisonment for a term of 2 years or both; or
- (b) on summary conviction to a fine of \$2,000 or to imprisonment for a term of 12 months or both;

and, in addition thereto, the Board may revoke his pilot licence.

32. (1) The Board may, if it thinks fit

(a) on the application of the master or mate of any vessel; and

(b) on payment by him of the prescribed fee,

examine him as to his competence to pilot the vessel of which he is master or mate within any harbour in respect of which there is compulsory pilotage.

(2) If the Board, after an examination of a master or mate, is satisfied that the master or mate is competent to pilot the vessel of which he is the master or mate, it may issue to him on payment by him of the prescribed fee a certificate to be known as a pilotage certificate specifying

- (a) the name of the person to whom it is issued;
- (b) the vessel in respect of which it is issued;
- (c) the limits within which the master or mate is entitled to pilot the vessel; and
- (d) the period for which it is valid.

(3) A person to whom a pilotage certificate is granted is, while he is acting as master or mate of the vessel specified in the certificate entitled to pilot that vessel within the limits specified in the certificate.

(4) A pilotage certificate is not transferable and is valid for a period of one year unless a shorter period is specified in the pilotage certificate for its validity; but it is renewable for a further period of one year upon payment of the prescribed fee.

(5) A person to whom a pilotage certificate has been issued who

- (a) lends his pilotage certificate to any person;
- (b) acts as a pilot after his pilotage certificate has been cancelled under section 35;
- (c) acts as a pilot without having obtained a pilotage certificate; or
- (d) acts as a pilot while he is under the influence of alcohol or drugs,

Pilotage certificates to master and mates.

is guilty of an offence and is liable on summary conviction to a fine of \$500 or to imprisonment for a term of months; and, in addition, is personally liable for any damage that results from his actions.

Cancellation of pilotage certificate.

33. The Board may cancel any pilotage certificate it has issued if it is satisfied that the person to whom it was issued has been guilty of misconduct or has shown himself incompetent to pilot the vessel.

Liability of master of vessel.

34. Notwithstanding this Ordinance or any law in force in the Territory, the owner or master navigating in circumstances in which pilotage is compulsory is answerable for any loss or damage caused by the vessel or by any fault arising from the navigation of the vessel as he would be if pilotage were not compulsory.

Liability in case of grant or renewal of pilot licence or pilotage certificate.

35. The grant of renewal of a pilot licence or pilotage certificate by the Board under the powers given to it by this Ordinance does not operate to attach liability to the Crown, the Board or to any member of the Board for any loss or damage that arises as a result of any act or default of a person to whom a pilot licence or a pilotage certificate has been issued.

Pilot to be servant of owner or master.

36. Any qualified pilot is, while he is engaged in any act of pilotage, the servant of the owner, master or person in charge of the vessel under pilotage, and neither the Crown nor the Board nor any member of the Board is liable for any loss or damage that arises as a result of the act, omissions default of any pilot, whether or not the pilot is normally employed in the service of the Crown.

Navigating in compulsory pilotage harbour without pilot.

37. (1) No vessel other than a vessel exempted under subsection (2) shall be navigated in a harbour or other area in which pilotage is compulsory unless the vessel is under the control of a qualified pilot or a master or mate holding a valid pilotage certificate issued under this Ordinance.

(2) The vessels exempted from the provisions of subsection (1) are as follows:

- (a) vessels belonging to Her Majesty;
- (b) vessels belonging to the Crown by virtue of its Government of the Territory;
- (c) pleasure yachts not plying for hire or reward;
- (d) vessels of less than 200 tons gross registered tonnage;
- (e) vessels trading exclusively between places within the territorial waters of the Virgin Islands; and

(f) tugs, dredges, barges, or similar vessels, ordinary course of navigation of which do not extend beyond limits of the Territory.

(3) Where a vessel, other than a vessel exempted under subsection (2) is operated in contravention of subsection (1), the master of it is guilty of an offence and is liable on summary conviction to a fine of \$500.

38. (1) The Board may, and shall when so directed by the Minister, inquire into the conduct of a qualified pilot whenever

Inquiries by Board into conduct of pilots.

- (a) there is reason to suspect that the pilot has been guilty of misconduct affecting his capability as a pilot;
- (b) has failed to perform his duty or has been negligent in the performance of his duty as a pilot;
- (c) appears to be no longer competent to act as a qualified pilot; or
- (d) has had an allegation of negligence or incompetence made against him.

(2) If the Board, after the inquiry under subsection (1), is satisfied as to

- (a) the misconduct, failure, neglect or incompetence of a pilot; or
- (b) the truth of the allegation made against a pilot,

it may, with the approval of the Minister, suspend or cancel the pilot licence of the pilot.

39. (1) The Board, in its discretion, may suspend the pilot licence of any pilot pending an inquiry under section 38 but any such suspension shall be reported forthwith to the Minister by the Board.

Suspension of pilot licence pending inquiry.

(2) A pilot who is aggrieved by the suspension of his licence under subsection (1) may appeal to the Minister.

(3) The Minister may, after hearing an appeal, either himself or by some person assigned by him for the purpose, affirm, vary or reverse the decision of the Board; but, before varying any decision of the Board in such a way as to be detrimental to the pilot, the Minister shall give the pilot an opportunity to be heard.

(4) The decision of the Minister under this section is final.

PART V

Collisions and Related Incidents

vention of
collisions.

40. (1) The rules contained in the convention on the International Regulations for Preventing Collisions at Sea, 1972 (as amended by Resolution of the Intergovernmental Maritime Consultative Organization of 19th November, 1981), shall be followed in respect of all vessels, sea-planes and other craft navigating all territorial waters of the Virgin Islands; and shall be followed in respect of all British Vessels registered in the Virgin Islands, upon the high seas and in all waters connected therewith navigable by seagoing vessels; except in any case as may be prescribed by the Board or by any regulations under the Merchant shipping Act, 1894, of the United Kingdom Parliament or any act replacing that Act.

(2) Any master or owner of a vessel who operates a vessel in contravention of the regulations referred to in subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$5,000.

(3) If any damage to person or property arises as a result of non-compliance with any of the regulations referred to in subsection (1), the damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck or the person for the time being having immediate control or direction of the vessel, unless the Court is satisfied that the circumstances of the case made a departure from the regulations necessary.

ability for
pollution,
damage to
own
property and
marine
environment.

41. (1) The owner of a vessel is liable to the Crown for

- (a) any damage, however caused, by the vessel or by any person employed on or about the vessel to any harbour works, installation, plant or machinery or other property of the Crown;
- (b) the cost of clearing from the territorial waters of the Virgin Islands or from any part of the foreshore any pollution caused by the vessel or by any person employed on or about the vessel; and
- (c) any damage or injury to the marine environment or marine life of the Virgin Islands, arising from or connected with the pollution or any other damage done by the vessel or by any person employed in or about the vessel.

(2) Any amount in respect of which the owner of a vessel is liable under subsection (1) is recoverable from the owner of the vessel in civil proceedings as a debt due to the Crown.

(3) Subsection (2) shall be construed as not affecting any other remedy available to the Crown under any other law for the time being in force in the territory.

(4) Notwithstanding subsections (2) and (3), a vessel referred to in subsection (1) and any other vessel belonging to the owner of that vessel may be seized and detained until the estimated cost of making good such damage or injury or of clearing of the pollution has been fully paid or security therefor given to the Crown.

42. (1) Where damage or injury referred to in paragraph (a) or (c) of section 41(1) has been caused by a vessel; or where any vessel in the territorial waters of the Virgin Islands has

Accident an
pollution.

- (a) sustained damage;
- (b) been the cause of an accident resulting in the loss of life or in serious injury to any person; or
- (c) sustained any material damage affecting its seaworthiness or efficiency either in its hull or in any part of its machinery, gear or tackle,

its owner or master shall within the period of 24 hours immediately following the accident or as soon as possible thereafter submit to the Director, a written report of the accident or damage and the probable occasion thereof signed by the owner or master.

(2) A master or owner of a vessel who fails without reasonable cause to comply with this section is guilty of an offence and is liable to a fine of \$500.

43. (1) Where 2 or more vessels are involved in a collision, the master or person in charge of each vessel, shall, in so far as he can without damage to his vessel, crew and passengers (if any),

Assistance to
damaged
vessel a duty

- (a) render to the other vessel involved in the collision, its master, crew and passengers, such assistance as may be practical and necessary to save them from danger and to stay by the other vessel until he has ascertained that it has no need for further assistance; and
- (b) give to the master or person in charge of the other vessel involved in the collision,

- (i) his own name and address,
- (ii) the name of his vessel, and

- (iii) the name and address of its owner and its port of registration.

(2) A master or person in charge of a vessel who fails without reasonable cause to comply with this section is guilty of an offence and is liable on summary conviction to a fine of \$2,000.

44. (1) The Director may provisionally detain a vessel that is in a harbour and direct the master not to put it to sea if the Director is satisfied, that the vessel is an unseaworthy vessel

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

and it cannot be put to sea without serious danger to human life, having regard to the nature of the service for which the vessel is being used.

(2) Where a vessel has been provisionally detained under subsection (1), the Director shall serve notice thereof on its owner or master directing him not to put the vessel to sea until the Director has cleared the vessel as safe for being put to sea.

(3) If any ship

- (a) has been provisionally detained under subsection (1); and
- (b) a notice has been served on the owner or master under subsection (2),

and the ship is put to sea in contravention of that notice, the owner or master, as the case may be, is guilty of an offence and is liable on summary conviction to a fine of \$1,000.

(4) Every notice served under subsection (2) must contain particulars of the alleged unseaworthiness of the vessel and a statement to the effect that an order for the final detention of the vessel will be issued unless steps are taken within such period as may be specified in the notice for the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, or the manning of the vessel, as the Director may require.

(5) The Director may vary a notice given under this section and may extend the period required by the notice within which any act is to be performed.

6) If the owner, master or charterer of any vessel on whom notice has been served under this section complies with the notice within the period specified therein or within any extended period granted, the Director shall release the vessel; but if he fails to comply with the notice the Director shall order the vessel to be finally detained.

(7) An order for final detention of a vessel shall be served on the owner or master of the vessel affected thereby and shall indicate the date from which it is effective.

45. (1) No vessel in respect of which an order for final detention has been made shall be put to sea or remain in any harbour for a longer period than 10 days after the date of order for its final detention, except in accordance with the written permission of the Director.

(2) The Director may direct that a vessel in respect of which an order for final detention has been made be beached or moored in any part of a harbour where its presence will neither constitute a hazard to navigation nor injuriously affect the interests of other users of the harbour.

(3) The owner or master of a vessel in respect of which an order for final detention has been made who

- (a) puts the vessel to sea; or
- (b) allows the vessel to remain in any harbour in contravention of any direction given under subsection (2)

is guilty of an offence and is liable on summary conviction to a fine of \$2,000 if the offence is a contravention of paragraph (a) and \$1,000 if the offence is a contravention of paragraph (b).

(4) If any vessel in respect of which an order for final detention has been given remains in any harbour contrary to any direction given under subsection (2), the Director may cause the vessel to be removed and disposed of.

(5) Subsections (3) to (7) of section 19 apply *mutatis mutandis* with respect to the disposal of a vessel that is in contravention of subsection (4) as they do in respect of vessels that are in contravention of that section.

46. If at any time after an order for final detention has been made in respect of any vessel but before it has been disposed of under section 45(5), the owner or master thereof satisfied the Director that the vessel is no longer unseaworthy within the meaning of subsection (1) of section 44, the Director shall cancel the order for its final detention.

Detention of
unsafe
vessels.

Provisions i
relation to
finally
detained
vessel.

Cancellation
of order for
final
detention

appeal
against order
of final
determination.

47. The owner, of any vessel in respect of which an order for final detention has been made may, within 3 days of being notified of the order, appeal to the Minister whose decision shall be final.

relating to sea
inclement
rather.

48. Where the Director is satisfied that, by reason of any impending hurricane or other threatening signs of turbulent weather, it would be unsafe to allow any vessel in a harbour to put to sea, he may direct the owner of that vessel not to put it to sea and an owner who puts a vessel to sea contrary to such a direction is guilty of an offence and is liable on summary conviction to a fine of \$500.

PART VI

Wharves

instruction
and
ensuing of
wharves.

49. (1) No person shall construct, alter, extend or operate a wharf in the territorial waters of the Virgin Islands except under and in accordance with a licence granted by the Minister responsible for Natural Resources.

(2) A licence is obtainable by making application therefor to the Board in such form as the Minister responsible for Natural Resources approves.

(3) The Board shall, upon receiving an application under subsection (2),

- (a) interview the applicant; and
- (b) carry out such investigations of the site and of the specifications and proposals as may be necessary to enable it to ascertain whether the licence may be granted.

(4) The Board shall, upon completion of its investigations, report its findings to the Minister responsible for Natural Resources who may authorise the Board to grant or refuse the application.

(5) Where an application has been granted under this section, the applicant is entitled to be issued with a licence in such form as the Minister responsible for Natural Resources approves upon payment by the applicant of the appropriate fee prescribed.

(6) A licence is valid for a period of one year from the date on which it is issued but is renewable for a like period upon payment of the prescribed fee.

50. The Minister responsible for Natural Resources may, by order published in the *Gazette*, exempt any wharf or class of wharf from the provisions of this Part.

provisions
of the
VI.

51. Without affecting section 50, a person who at the date of the commencement of this Ordinance, is operating a wharf in the Territory has a period of one month from that date within which to comply with the provisions of this Part.

Existing
wharves.

52. The use of every wharf in the Territory shall be made available to the Crown if required.

Crown right

53. The Board may, with the approval of the Minister responsible for Natural Resources, cancel a licence issued to any person in respect of a particular wharf.

Cancellation
of licences.

54. (1) A person who

- (a) constructs, alters or extends a wharf in contravention of this Part;
- (b) operates a wharf without a licence after the expiration of the period specified in section 51 for complying with this Part; or
- (c) operates a wharf without having a valid licence for the purpose,

Effect of
cancellation
or failure to
obtain etc.
licence.

is guilty of an offence and is liable on summary conviction to a fine of \$1,000 or to imprisonment for a term of 6 months.

(2) Where a person has been convicted of an offence under subsection (1) and continues the offence he is guilty of a continuing offence and is liable on summary conviction to a fine of \$200 in respect of each day or part thereof on which the offence continues after the date of the first conviction.

(3) Where a licence is cancelled under section 53, the owner of the wharf shall, before the expiration of 14 days immediately following the cancellation of the licence, dismantle and remove the wharf; and if he fails to do so, the Director or any person authorised by the Board may without having recourse to the Court dismantle and remove the wharf and the cost of the dismantlement is recoverable as a debt due to the Crown in civil proceedings.

PART VII

Ferries

55. (1) No person shall operate a ferry within the territorial waters of the Virgin Islands unless he has obtained a licence from the Board for the purpose.

Ferry
licences.

(2) A licence to operate a ferry is obtainable by making

application therefor to the Board in such form as the Board approves.

(3) The Board shall upon receiving an application under subsection (2),

(a) interview the applicant; and

(b) carry out such investigations in respect of the application as may be necessary.

(4) The Board shall, upon completion of its investigation, grant the application with the approval of the Minister or refuse the application.

(5) Where an application has been granted under this section, the applicant is entitled to be issued with a licence in a form approved by the Board and known as a Ferry Licence upon payment by him of the prescribed fee.

(6) A Ferry Licence is valid for a period of one year but is renewable for a like period upon payment of the prescribed fee and may only be used in respect of the ferry in relation to which it is issued.

56. Where the Board issues a Ferry Licence, that licence shall be displayed in a conspicuous place on the ferry in respect of which the Ferry Licence is issued.

57. Notwithstanding section 55(1), a person who at the date of the commencement of this Ordinance is operating a ferry in the territorial waters of the Virgin Islands has a period of one month from that date within which to comply with the provisions of this Part.

58. The Board may, with the approval of the Minister, suspend a Ferry Licence granted under this Part if the ferry or the mode of its operation is, in the opinion of the Board, unsafe or, as the case may be, contrary to good seamanship; and where a Ferry Licence is suspended, the suspension remains until the Board is satisfied that the cause of the suspension has been remedied.

59. Every vessel in respect of which a Ferry Licence has been issued shall be licensed in accordance with the regulations relating to inland water craft and if the vessel ceases at any time to be so registered the Ferry Licence granted under this Part lapses.

60. (1) Any person who

(a) contravenes section 55(1) or 56;

(b) makes an application for a Ferry Licence wilfully makes a statement that he knows to be false; or

(c) operates a ferry while the Ferry Licence is suspended under section 58,

is guilty of an offence and is liable on summary conviction to a fine of \$500 or to imprisonment for a term of 3 months or both.

(2) A person who is convicted of an offence under paragraph (a) or (c) of subsection (1) and continues the offence is guilty of a continuing offence and is liable on summary conviction to a fine of \$200 in respect of each day or part thereof on which the offence continues after the first conviction.

PART VIII

Ports Dues and Charges

61. (1) There is payable in respect of every vessel entering any harbour or port in the Territory such port dues as shall be prescribed.

Port dues.

(2) All port dues are payable to the Comptroller of Customs or to such other person as the Board, with the approval of the Minister, authorises to collect port dues.

62. (1) Cargo vessels registered in the Virgin Islands under the Merchant Shipping Act of the United Kingdom Parliament and vessels licensed and registered under the provisions of this Ordinance are, in any case, not liable in any one year to payment of port dues in excess of 26 payments according to the rate prescribed in accordance with section 87.

Exemptions for port dues 57 & 58 Vic c.60

(2) For the purposes of subsection (1) "year" means the calendar year commencing 1st January and ending 31st December.

(3) Notwithstanding subsections (1) and (2), port dues are not payable by

(a) Her Majesty's ships of war and other fleet auxiliaries belonging to Her Majesty's Government;

(b) vessels belonging to a foreign Government, not plying for freight or fares; or

(c) any vessel exempted by the Governor in Council in writing from payment of port dues.

(4) For the purposes of this section the Governor in Council may grant exemptions from payment of port dues in respect of such vessels as he thinks fit.

ships dues.

63. Subject to this Ordinance, the Board may with the approval of the Minister, levy and there shall be payable

- (a) on all vessels entering inwards into any harbour or port in the Territory from foreign waters, such light and buoyage dues; and
- (b) in relation to any harbour or to any area in the Virgin Islands Waters that the Board designates, anchorage dues, mooring dues, buoyage dues, berthing dues and other ship's dues

as may be prescribed.

Miscellaneous charges.

64. (1) Subject to this Ordinance, the Board may with the approval of the Minister, levy such charges as may be prescribed

- (a) for the use of any works or appliances provided at any harbour or port in the Territory;
- (b) for any service rendered in respect of any vessel; or
- (c) for goods supplied by the Crown or by the Board in pursuance of the power and responsibilities conferred by this Ordinance.

(2) Without limiting or affecting the operation of subsection (1), the Board may, with the approval of the Minister, charge such fees as may be prescribed for

- (a) the landing, shipping, wharfage, craning, storage, warehousing, carriage or demurrage of goods;
- (b) the use by any vessel or by a person of any wharf under the control of the Board;
- (c) the use of any gear, tackle, tools, trucks, trailers and any other plant or equipment for the purpose of any vessel or for any goods handled, upon any wharf controlled by the Board;
- (d) the rendering of assistance to any vessel whether leaving or entering any of the wharves controlled by the Board or not, being within or outside any harbour;

(e) the supply of water;

(f) the use of vessels, equipment and staff or contractors, for clearing and disposal of refuse or any pollution by vessels in the territorial waters of the Virgin Islands or in any harbour or port or on any wharf controlled by the Board; and

(g) any other service rendered but not specified in paragraphs (a) to (f).

65. The following persons are liable to pay dues and charges prescribed pursuant to this Part:

Persons liable for dues and charges.

- (a) the master or owner of the vessel;
- (b) every consignee or agent of the vessel who has held himself out as liable or has performed any act such as would cause any reasonable person to regard him as the person liable to pay any dues and charges payable in respect of the vessel; or
- (c) the consignee, agent or other person by whom application has been made for the use of any specific facility, warehouse, storage, equipment, tool or service.

66. Any person who, by any means whatsoever, neglects to make or evades or attempts to evade any payment of dues and charges payable under or pursuant to this Ordinance or the regulations is guilty of an offence and is liable on summary conviction to a fine of \$500 or to imprisonment for a term of 3 months or both.

Evasion of dues and charges.

67. (1) The master of any vessel that arrives in any harbour or port shall, when required by the Board, produce to the Board or to any person authorised by the Board

Information to be supplied on arrival of vessel.

- (a) the ship's register and ship's papers;
- (b) a list containing the names of all the crew;
- (c) a list of all passengers and animals to be disembarked and the names of the consignees of all the cargo to be unshipped;
- (d) the bill of lading or a manifest relating to the cargo to be unshipped or the best account in writing thereof;
- (e) the draught of the vessel; and

(f) any other information in relation to the vessel, crew, passengers, animals and cargo thereof the Board or the person authorised by the Board may require.

(2) Any master of a vessel who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$500 or to imprisonment for a term of 3 months.

Information to be supplied on departure of vessel.

68. (1) The master of a vessel shall, when applying for clearance thereof from any harbour or port, produce to the Board or to any person duly authorised by the Board

(a) a list of all the embarking passengers and animals; and

(b) the best account in writing of all cargo being shipped on board the vessel in the harbour or port;

and in addition thereto shall also supply to the Board or to the person authorised by the Board such other information in relation to the vessel, crew, passengers, animals and cargo thereof as the Board or that person requires.

(2) A master of a vessel who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$500 or to imprisonment for a term of 3 months.

Time for payment of dues and charges.

69. (1) All dues and charges payable under this part

(a) shall be paid at the time prescribed; or

(b) on demand where no such time for payment is prescribed.

(2) For the purposes of subsection (1), all dues and charges shall be deemed to have been demanded when they become due.

(3) Dues and charges are due from the moment when payment thereof may be lawfully demanded as being a debt.

Power to board vessels.

70. The Board or any person authorised by it may, either alone or with any other person, board any vessel within the territorial Waters of the Virgin Islands in order to ascertain whether dues and charges are payable in respect of the vessel.

Guarantee of payment of dues and charges.

71. The Board may require any person who incurs or is about to incur liability for payment of dues and charges to deposit with the Board or with any person authorised by the Board such guarantee for payment of the dues and charges as the Board or the person authorised by the Board considers sufficient.

72. If dues and charges are not paid on demand or at the prescribed time, the Director or any other person authorised by the Board may, unless a sufficient guarantee is deposited with the Board in accordance with section 71

Failure to pay dues and charges.

(a) in the case of dues and charges due and payable on goods on premises under the control of the Board or of the Crown, detain the goods;

(b) in the case of dues and charges due and payable on goods on a vessel, within a harbour or port in the Territory, seize the goods and detain them; and

(c) in the case of dues or charges due and payable in respect of a vessel, seize and detain the vessel and its appurtenances if the vessel is then or at any time within the territorial waters of the Virgin Islands.

(2) If goods subject to dues and charges are removed from the premises under the control of the Board before the duty has been paid, the Director or any other person authorised by the Board may seize, and detain any goods that appear to belong to or stand in the name of the person liable for payment of the unpaid dues and charges whether those goods are on premises under the control of the Board or in a vessel in the territorial waters of the Virgin Islands.

(3) If a vessel departs the territorial waters of the Virgin Islands leaving unpaid dues and charges payable in respect of that vessel, the Board or any person authorised by the Board may seize, and detain any other vessel belonging to the owner of the vessel that so departed.

(4) The Board may, after giving not less than 10 days notice to the owner, master or agent of a vessel seized and detained or to the owner or consignee of goods seized and detained sell any of the goods or, as the case may be, the vessel and its appurtenances and, if any of the goods or the vessel are unsaleable dispose of the goods as it sees fit and recover as debt due to the Crown in civil proceedings the dues and charges in question, the expense of seizure, detention, at attempted sale and disposal of the property seized and detained.

(5) Where

(a) goods seized and detained are of a perishable nature and the Director is of the opinion that it is impractical to give the notice required in this section; or

- (b) the goods are likely to deteriorate in value during the delay occasioned by giving the notice,

the Director may cause the goods to be sold without any notice being given under subsection (4) but, shall as soon thereafter as is practicable inform the person to whom the notice would have been given of the action that has been taken.

(6) The proceeds of any sale under this section shall be applied as follows in the following order:

- (a) towards payment of any customs duty or any charges payable in respect thereof;
- (b) towards payment of the expenses of the sale;
- (c) towards payment of the dues and charges due to the Board and the Crown in respect of the goods;
- (d) towards payment of freight and other claims of which notice has been given to the Board;

and the surplus, if any, shall be paid to the owner of the goods on demand.

(7) If no demand is made for the surplus within 12 months from the date of sale on the goods, the surplus shall be paid into the Consolidated Fund, whereupon all rights of the owner thereto shall be extinguished.

(8) Subsection (7) of section 19 applies in respect of a sale under this section as it does in respect of a sale under subsection (3) of that section.

power of
ward to sue
for dues and
charges.

73. Notwithstanding anything contained in section 72, the Board or the Crown may in civil proceedings, recover any dues, charges, rates, expenses due to them as if the same were a debt.

power to
withhold
clearance.

74. (1) Before any discharge or outward clearance is given to any vessel, the Comptroller of Customs or any customs officer shall require the master, owner, or person in charge of the vessel to submit to him a certificate from the Director stating that

- (a) all dues and charges payable under this Ordinance or the regulations and any costs against the vessel or master or owner or person in charge of such vessel have been paid; or
- (b) security to the satisfaction of the Director has been given for the payment of the dues and charges.

PART IX

Responsibility of Board as Warehouseman

75. (1) Subject to the provisions of this Ordinance or the regulations or any contract, neither the Board nor the Crown is liable for the loss, misdelivery or detention of, or damage to, goods

Liability as
warehouse-
man.

- (a) delivered to or in the custody of the Board or any person authorised by the Board or appointed by the Crown for that purpose, except where the loss, misdelivery, detention or damage is caused by the want of reasonable foresight and care on the part of the Board, its agents or servants; or
- (b) accepted by the Board for carriage, storage or warehousing where the loss, misdelivery, detention or damage occurs otherwise than while the goods are being carried, stored or warehoused and is not caused by the want of reasonable foresight and care on the part of any person employed in the service of the Board or of the Crown.

(2) Neither the Board nor the Crown is in any case liable for loss, misdelivery, detention or damage as the case may be, arising from:

- (a) act of God;
- (b) act of war or the Queen's enemies;
- (c) arrest or restraint of seizure under any legal process;
- (d) act or order of the Crown;
- (e) act of the consignor, consignee or depositor or the agent or servant of any such person;
- (f) fire, flood, tempest, explosion, riot, civil disorder, strike, lockout, stoppage or restraint of labour from whatever cause whether partial or general;
- (g) wastage in bulk or weight, latent or inherent defect, natural deterioration or vermin;
- (h) deficiency in the content of packages;
- (i) unprotected cargo, insufficient or improper packing or leakage from defective drums, containers or packages; or

- (j) any other cause beyond the control of the Director, his agents, staff, servants or workmen, and which by the exercise of diligence he and each of them was unable to prevent.

PART X

Miscellaneous

sums ordered to be paid payable by distress on vessel.

76. Where a court has power to make an order directing payment to be made of any crew wages, fines, penalties or other sums of money, then if the party directed to make payment is the master or owner of a vessel and payment is not made at the time and in the manner specified in the order, the court that made the order may, in addition to any other powers it may have for the purpose of compelling payment, direct the amount remaining to be levied by distress and sale of the vessel, her tackle furniture and apparel.

Obstruction etc. of staff.

77. Any person who wilfully hinders or obstructs any member, staff or agent of the Board, or any servant of the Crown in the execution of his duty under this Ordinance is guilty of an offence and is liable on summary conviction to a fine of \$1,000 or to imprisonment for a term not exceeding 6 months or both.

Maintenance order on public wharves.

78. (1) Where, in the opinion of the Director, it is desirable that a public wharf or a private wharf while it is being used by the Government, should be cleared or kept clear of persons, he may request the assistance of a member of the Police Force to require all persons, on the wharf, other than officials necessarily present for the purpose of performing their duties and other persons authorised by the Director, to leave the wharf and may forbid any person going thereon.

(2) Any person who persistently remains or insists on going on a wharf specified in subsection (1) after being required to leave or forbidden to go thereon may, by a member of the Police Force or Customs Officer or other person authorised by the Director or by a person assisting them, be forcibly removed or forcibly prevented from going thereon.

(3) Without affecting the operation of subsections (1) and (2), the Director may give such orders and directions as he considers necessary for the maintenance of good order on a wharf specified in subsection (1).

(4) Any person who

- (a) persistently remains or insists on going on a wharf in contravention of subsection (2);

- (b) assaults, resists, obstructs or uses abusive or insulting language to a member of the Police Force, or to a Customs Officer or to any person assisting either of them, while lawfully executing their duty under subsection (2); or

- (c) disobeys an order of the Director given under subsection (3),

is guilty of an offence and is liable on summary conviction to a fine of \$500 or to imprisonment for a term of 6 months.

79. In any proceedings for any offence, it is sufficient to allege that the offence was committed within the limit of a harbour or the territorial waters of the Virgin Islands without proof of such limits, unless the contrary is proved.

Jurisdiction.

80. Any person who makes, either knowingly or recklessly, any statement that is false in any material particular in any return, claim or other document, required or authorised to be made under this Ordinance or the regulations is guilty of an offence and is liable on summary conviction to a fine of \$1,000 or to imprisonment for a term of 6 months or both.

False returns

81. (1) Where a court imposes a fine under this Ordinance that court may direct the whole or any part of the fine to be applied,

Application of penalties.

- (a) in compensating any person for any loss or damage that he may have sustained by act or default in respect of which the fine is imposed; or

- (b) in or towards paying the expenses of the proceedings.

(2) Subject to any directions given under subsection (1), all fines under this Ordinance shall be paid in to the Consolidated Fund.

82. (1) Notwithstanding anything contained in this Ordinance, where

Compounding Offences.

- (a) an offence has been committed under this Ordinance; and

- (b) the Director is satisfied that the departure of a vessel may be unduly delayed by reason of the time that is likely to elapse before the trial of the Offence is concluded,

he may, if the accused person admits to committing the offence, offer him the opportunity of paying to the Director an amount equal

to three-quarters of the maximum penalty that the court may impose for the offence as well as the total cost of repairing any damage or replacing any loss sustained by the Crown as a result of the offence having been committed.

(2) Where an amount is paid under subsection (1), the Director shall give a receipt for the amount paid and the effect of the receipt given is to discharge the accused person from all liability in respect of the offence.

(3) Any amount collected by the Director under this section shall be paid into the Consolidated Fund.

83. (1) Subject to the provisions of this Ordinance and to the regulations and to any other law in force in the Virgin Islands

- (a) all foreign vessels may navigate territorial waters of the Virgin Islands and every vessel navigating the territorial waters of the Virgin Islands is subject in all respects to the same laws to which British vessels are subject and
- (b) foreign vessels, or any goods, wares or merchandise carried therein, shall not be subject to higher or other rate of port or other dues, duties, tolls, rates or other charges, or any other rules or restrictions than British vessels.

(2) Paragraph (b) of subsection (1) does not affect the charging of fees under the Cruising Permits Ordinance, 1976 or any enactment replacing that Ordinance.

84. All boats and vessels belonging to persons belonging to or resident in the Virgin Islands and all goods, wares, merchandise and produce, or other property whatsoever belonging to such persons may be carried in such vessels for all lawful purposes, subject to the provisions of this Ordinance relative to the registration and licensing of boats and other craft.

85. (1) All vessels arriving and calling at any place within the Virgin Islands shall enter at and depart from a port specified in the Second Schedule and there shall be paid at the port all dues and charges required to be paid by virtue of this Ordinance.

(2) A master of a vessel that is in contravention of subsection (1) is guilty of an offence and is liable to be arrested without a warrant by any member of the Police Force or by a Customs Officer and in addition thereto is liable on summary conviction to a fine of \$2,000 or imprisonment for a term of 6 months or both.

(3) A Customs Officer who arrests any person under subsection (2) shall deliver him into police custody as soon as possible after the arrest.

(4) In addition to any penalty imposed under subsection (2) the master of a vessel in contravention of that section is liable to be declared *persona non grata* and the vessel may be seized and disposed of and section 19(7) applies in respect of such a seizure and disposal.

86. (1) No member of the Board or any other person who is charged with responsibility for the conduct of any inquiry or the performance of any function under this Ordinance shall directly or indirectly take part in the conduct of the inquiry or in the performance of the function, as the case may be, if he has an interest, financial or otherwise, in the matter, but his presence shall be disregarded for the purpose of determining whether or not there is a quorum for a meeting in the subject of which he has an interest.

(2) If a person to whom subsection (1) refers is the Director he shall, in writing, notify the Minister of the interest and the Minister shall assign a person who has no interest in the matter to perform the function.

87. The Minister may make regulations generally for the effective operation of this Ordinance and specifically respecting the following:

- (a) the navigation of territorial waters of the Virgin Islands and the operation of ports and harbours therein;
- (b) the registration and licensing of inland water craft and the fees to be paid in respect of the licensing and registration thereof;
- (c) the issue of certificates of competency to masters of inland water craft;
- (d) the transportation of passengers on inland water craft;
- (e) the carrying out of surveys of motor, steam or sailing vessels and the nature, quantity and quality of the equipment to be carried on inland water craft;
- (f) the licensing, appointment and duties of surveyors and the fees to be paid for surveyor's licences as well as for surveys carried out in respect of inland water craft;

Conflicts of interest.

Regulation

- (g) the classification of inland water craft and the exemption of any class of inland water craft from the application of the regulations;
- (h) the placing of buoys in the territorial waters of the Virgin Islands;
- (i) the admission of persons and vessels to any harbour or wharf and the orderly conduct of persons whether employees or not and vessels in or near any harbour or wharf;
- (j) the hours during which the entrances or outlets landwards to and from a harbour or wharf shall be open and cargo received or delivered;
- (k) the embarkation or landing of passengers, crew and other persons at a harbour or wharf;
- (l) the use of fires and lights at or near a harbour or wharf or any vessel at or near a harbour or wharf;
- (m) damage to any vessel or goods or injury to any person sustained within the precincts of a harbour or wharf;
- (n) the use of vehicles, cranes, forklifts and other mobile plant and equipment within the precincts of a wharf;
- (o) the maintaining of clear channels of navigation in or near harbours and the marking of fishpots, buoys and other obstacles to navigation;
- (p) the prescribing of rates and dues to be charged for the use of harbours and wharves;
- (q) the licensing and regulation of stevedores, master porters, ship chandlers, pilots, divers, shipping agents, customs brokers, landing agents, forwarding agents, weighers, measurers of goods and other persons concerned or engaged in the performance of any work or business in connection with harbours;
- (r) the prevention of marine pollution and the protection of marine environment;
- (s) the use in territorial waters of the Virgin Islands of transport and communication systems and navigational aids;

- (t) the restriction of the use of any beach for any particular purpose other than in cases of emergency;
- (u) the prescribing of anything that is by this Ordinance authorised or required to be prescribed; and
- (v) the creation of offences for breaches of the regulations and provisions of penalties not exceeding \$1,000 for the commission of any of those offences.

88. (1) There shall be prepared by the Board and submitted to the Minister not later than the 31st March of each year a report of the operation of the ports and marine services in the Territory.

Annual Report.

(2) A copy of every report mentioned in subsection (1) shall be laid on the table of the Legislative Council as soon as possible after the receipt thereof by the Minister.

89. Any regulation made under this Ordinance which levies a fee for any purpose shall not take effect until the same has been approved by the Legislative Council.

Approval of certain regulations.

90. The establishment of the Ports and Marine Services Department under section 3 of this Ordinance shall not be construed as affecting anything done by the Interim Port Authority and all

Transitional provisions.

(a) liabilities incurred by;

(b) contracts entered into; and

(c) legal proceedings pending in the name of or against,

the Interim Port Authority shall be treated as incurred by, entered into or pending in the name of or, as the case may be, against the Crown.

91. The enactments specified in the first column of the Third Schedule are affected in the respects specified in the second column thereof opposite the particular enactment.

Enactments affected. Third Schedule.

92. (1) The Harbours and Wharves Ordinance and the Port Dues and Charges Ordinance, 1972 are repealed,

Repeal of Cap. 122 and Ordinance No. 20 of 1972, and Saving.

(2) Notwithstanding subsection (1), the Schedule to the Port Dues And Charges Ordinance, 1972 remains in force until Port Dues and Charges are prescribed under this Ordinance.

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93. This Ordinance comes into operation on such day as the Governor appoints by proclamation.

Passed the Legislative Council this 17th day of December, 1985.

K. L. FLAX,
Speaker.

M. G. BORDE,
Clerk of the Legislative Council.

FIRST SCHEDULE

(Section 4)

Constitution of Port and Marine Services Board Matters related thereto

1. The Board shall consist of no less than 7 members, 2 of whom shall be *ex officio* members and 4 of whom shall be appointed by the Minister.
2. The *ex officio* members shall be the Director of Ports and Marine Services and the Comptroller of Customs.
3. The appointed members shall consist of
 - (a) a person experienced in matters related to shipping;
 - (b) a person experienced in the importation and exportation of goods;
 - (c) a person experienced in tourism; and
 - (d) one other person appointed at the discretion of the Minister.
4. Persons referred to in paragraph 3 shall be appointed after consultation with the organisations connected with business at the ports and with marine activities in the Territory.
5. The Minister shall, from among the appointed members, designate one member Chairman.
6. The Board shall meet at such times and places as the Chairman appoints but meetings shall be held not less frequently than once every three months.
7. A majority of the members of the Board constitutes a quorum.
8. If the Chairman is absent from a meeting the members present and constituting a quorum shall elect one of their members other than an *ex officio* member to be chairman for that meeting.
9. The Chairman shall call a meeting of the Board if at any time he is directed to do so by the Minister and shall also do so within 7 days of this being requested in writing by 3 members to call a meeting.

THIRD SCHEDULE

(Section 90)

ENACTMENTS AFFECTED

FIRST COLUMN	SECOND COLUMN
Foreign Shipping (Agreements) Act (Cap. 120)	Substitute "the Director of Ports and Marine Service" for "a Harbour Master" and "the Harbour Master" respectively wherever they appear therein.
Harbours and Wharves Ordinance (Cap. 122)	Whole Ordinance repealed.
Receivers of Wreck Act (Cap. 126)	Substitute "Director of Ports and Marine Services" for "Financial Secretary" wherever it appears therein.
Port Dues and Charges Ordinance, 1972	Whole Ordinance except Schedules repealed.
Power Craft Ordinance, 1972	In section 5, substitute "office of the Director of Ports and Marine Services" for "Harbour Master's office".
Explosives Ordinance, 1977	Substitute "Director of Ports and Marine Services" for "Ports Manager" wherever it appears in subsections (2), (3) and (4) of section 9.
Harbours and Wharves Regulations made under Cap. 122.	The Harbours and Wharves Regulations shall, until revoked and replaced be read and construed as if the title 'Director of Ports and Marine Services' and its variations were used therein instead of the title "Harbour master" and its variations.

10. A member of the Board other than an *ex-officio* member may resign his post by letter addressed to the Minister and from the date of the receipt of the letter by the Minister, the member ceases to be a member of the Board unless a date is specified in the letter in which case the member ceases to be a member from that date so specified.

11. Decisions of the Board shall be by consensus; but where this is not possible decisions shall be by the majority of votes cast except that where the voting is equal the Chairman has a casting vote in addition to his original vote.

12. Minutes of meetings of the Board shall be recorded by a person assigned by the Director from among his staff to be Secretary of the Board.

13. Decisions of the Board shall be signified under the hand of the Chairman for that meeting.

14. Members of the Board shall be paid such remuneration as the Governor in Council determines.

15. Subject to this Schedule, the Board may regulate its own procedure.

SECOND SCHEDULE

(Section 14(1) and 85)

List of Ports in the Virgin Islands

1. *Road Harbour* which includes all that area of water and foreshore lying to the north of an imaginary line drawn from Burt Point to Hog Point, in the island of Tortola.

2. *West End Harbour* which includes all that area of water and foreshore lying between the islands of Tortola and Frenchman's Cay bounded on the west by an imaginary line joining the westernmost point of Frenchman's Cay to the westernmost point of Tortola at Steele Point, West End, and on the east by the causeway connecting Frenchman's Cay with the island of Tortola.

3. *Great Harbour* (Jost Van Dyke) which includes all that area of water lying generally to the north of, and enclosed by, an imaginary line joining Dog Hole Point and Betty Brown Rock in Thomas George Bay, in the island of Jost Van Dyke.

4. *St. Thomas Bay* which includes all that area of water lying generally to the east of, and enclosed by, an imaginary line drawn from Collision Point to Fort Point, on the island of Virgin Gorda.