

MERCHANT SHIPPING ACT 2002



**BERMUDA
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MERCHANT SHIPPING ACT 2002

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ARRANGEMENT OF SECTIONS

PART I		<i>Administration</i>	
PRELIMINARY			
<i>General</i>			
1	Citation and commencement	7	General functions of the Minister
2	Interpretation	8	Functions of the Minister in relation to marine pollution
<i>Application of Act to certain descriptions of ships, etc.</i>		9	General power to dispense
3	Application of Act to non-Bermuda ships	10	Chief Marine Surveyor
4	Application of Act to Government ships	11	Registrar of Shipping
5	Application of Act to ships chartered by demise to the Crown	12	Mercantile marine superintendents
6	Application of Act to certain structures, etc.	13	Transmission of documents to Registrar
PART II		14	Returns, etc. to the Minister
MARITIME ADMINISTRATION		15	Forms
		PART III	
		BRITISH SHIPS	
		16	British ships and Bermuda ships
		17	British flag

MERCHANT SHIPPING ACT 2002

18	Offences relating to British character of ship	35	Disclosure of information relating to registration by other government departments
19	Penalty for carrying improper colours	36	Interpretation
20	Duty to show British flag		
21	Duty to declare national character of ship		
22	Proceedings on forfeiture of a ship		
	<p style="text-align: center;">PART IV REGISTRATION</p>		<p style="text-align: center;">PART V MASTERS AND SEAMEN</p>
	<p style="text-align: center;"><i>General</i></p>		<p style="text-align: center;"><i>Application of Part</i></p>
23	Register of British ships	37	Application of this part
24	Registration of ships: basic provisions		<i>Engagement and discharge of crews</i>
25	Registration regulations	38	Crew agreements
26	Tonnage ascertained for registration to be tonnage of ship	39	Regulations relating to crew agreements
27	Tonnage of ships of foreign countries adopting tonnage regulations	40	Discharge of seamen
28	Status of certificate of registry	41	Seamen left behind abroad otherwise than on discharge
29	Offences relating to a ship's British ownership and Bermuda connection	42	Discharge of seamen when ship ceases to be registered in Bermuda
30	Private law provisions for registered ships and liability as owner		<p style="text-align: center;"><i>Wages etc.</i></p>
	<i>Ships on charter by demise</i>	43	Payment of seamen's wages
31	Ships chartered-in by demise by British charterers	44	Account of seaman's wages
32	Ships chartered-out by demise	45	Regulations relating to wages and accounts
	<p style="text-align: center;"><i>Supplemental</i></p>	46	Power of superintendent or proper officer to decide disputes about wages
33	Tonnage regulations	47	Restriction on assignment of and charge upon wages
34	Proceedings on forfeiture of ship	48	Power of court to award interest on wages due otherwise than under crew agreement
		49	Allotment notes
		50	Right of person named in allotment to sue in own name
		51	Right, or loss of right, to wages in certain circumstances

MERCHANT SHIPPING ACT 2002

52	Protection of certain rights and remedies	70	Conduct endangering ships, structures or individuals
53	Trade disputes involving seamen	71	Concerted disobedience and neglect of duty
54	Remedies of master for remuneration, disbursements and liabilities		<i>Disciplinary offences</i>
	<i>Safety, health and welfare</i>	72	Breaches by seamen of codes of conduct
55	Obligation of shipowners as to seaworthiness		<i>Disqualification of seamen and inquiries</i>
56	Crew accommodation	73	Inquiry into fitness or conduct of officer
57	Complaints about provisions or water	74	Disqualification of holder of certificate other than officer's
58	Expenses of medical and other treatment during voyage	75	Inquiry into fitness or conduct of seaman other than officer
	<i>Manning, qualifications, training and uniform</i>	76	Re-hearing of and appeal from inquiries
59	Manning	77	Rules as to inquiries and appeals
60	Power to exempt from manning requirements	78	Failure to deliver cancelled or suspended certificate
61	Prohibition of going to sea undermanned	79	Power to restore certificate
62	Production of certificates and other documents of qualification	80	Power to summon witness to inquiry into fitness or conduct of officer or other seaman
63	Crew's knowledge of English		<i>Civil liability of seamen for offences</i>
64	Unqualified persons going to sea as qualified officers or seamen	81	Civil liability for absence without leave
65	Medical treatment on board ship	82	Civil liability for smuggling
66	Special certificates of competence	83	Civil liability for fines imposed under immigration laws
67	Young persons		<i>Relief and repatriation and relief costs</i>
68	Financial assistance for training	84	Relief and return of seamen etc. left behind and shipwrecked
69	Uniform	85	Limit of employer's liability under section 84
	<i>Offences by seamen, etc.</i>		

MERCHANT SHIPPING ACT 2002

- 86 Recovery of expenses incurred for relief and return, etc.
- Documentation*
- 87 Official log books
- 88 Lists of crew
- 89 Bermuda seamen's cards
- 90 Discharge books
- 91 Handing over of documents by master
- Interpretation*
- 92 Interpretation
- PART VI SAFETY
Safety and Health on Ships
- 93 Safety and health on ships
- 94 Provisions supplementary to section 93: general
- 95 Provisions: supplementary to section 93: dangerous goods
- 96 Safety of submersible and supporting apparatus
- Special provisions*
- 97 Load lines
- 98 Charts and other information
- 99 Report of dangers to navigation
- Assistance at sea*
- 100 Duty of ship to assist the other in case of collision
- 101 Duty to assist ships, etc. in distress
- Unsafe ships*
- 102 Meaning of "dangerously unsafe ship"
- 103 Power to detain dangerously unsafe ship
- 104 References of detention notices to arbitration
- 105 Compensation in connection with invalid detention of ship
- 106 Owner and master liable in respect of dangerously unsafe ship
- 107 Use of unsafe lighters, etc.
- 108 Owner liable for unsafe operation of ship
- Temporary exclusion zones*
- 109 Power to establish temporary exclusion zones
- 110 Temporary exclusion zones: offences
- Power to require ships to be moved*
- 111 Power to require ships to be moved
- 112 Offences in relation to section 111
- 113 Service of directions under section 111.
- Control of, and returns as to, persons on ships*
- 114 Offences in connection with passenger ships
- 115 Power to exclude drunken passengers from certain passenger ships
- 116 Stowaways
- 117 Unauthorised presence on board ship
- 118 Master's powers of arrest
- 119 Unauthorised persons: offences relating to safety
- 120 Return to be furnished by masters of ships as to passengers

MERCHANT SHIPPING ACT 2002

121	Returns of births, marriages and deaths in ships, etc.	134	Duty to report discharge of oil into waters of harbours
	PART VII		<i>Shipping casualties</i>
	PREVENTION OF POLLUTION	135	Shipping casualties
	CHAPTER I	136	Right to recover in respect of unreasonable loss or damage
	<i>Pollution Generally</i>	137	Application of sections 135 and 136 to pollution by substances other than oil
122	Prevention of pollution from ships etc.	138	Offences in relation to section 135
123	Further provision for the prevention of pollution from ships	139	Service of directions under section 135
124	Regulation of transfers between ships in territorial waters	140	Application of sections 135 to 139 to certain foreign and other ships
	CHAPTER II		<i>Enforcement</i>
	WASTE RECEPTION FACILITIES AT HARBOURS	141	Oil records
125	General	142	Prosecutions and enforcement of fines
126	Waste management plans	143	Power to detain ships for section 130 offences
127	Charges for and use of waste reception facilities	144	Interpretation of section 143
128	Supplementary	145	Enforcement and application of fines
129	Interpretation of Chapter II.	146	Enforcement of Conventions relating to oil pollution
	CHAPTER III		<i>Miscellaneous and supplementary</i>
	OIL POLLUTION	147	Power of the Minister to grant exemptions
	<i>General provisions for preventing pollution</i>	148	Application to Government ships
130	Discharge of oil from ships into certain Bermuda waters	149	Interpretation
131	Defences of owner or master charged with offence under section 130		CHAPTER IV
132	Defences of occupier charged with offence under section 130		LIABILITY FOR OIL POLLUTION
133	Restrictions on transfer of oil at night		<i>Preliminary</i>

MERCHANT SHIPPING ACT 2002

150 Meaning of "The Liabilities Convention" and related expressions

Liability

151 Liability for oil pollution in case of tankers

152 Liability for oil pollution in case of other ships

153 Exceptions from liability under sections 151 and 152

154 Restriction of liability for oil pollution

Limitation of liability

155 Limitation of liability under section 151

156 Limitation actions

157 Restriction on enforcement after establishment of limitation fund

158 Concurrent liabilities of owners and others

159 Establishment of limitation fund outside Bermuda

160 Extinguishment of claims

Compulsory insurance

161 Compulsory insurance against liability for pollution

162 Issue of certificate by Minister

163 Rights of third parties against insurers

Supplementary

164 Jurisdiction of Bermuda courts and registration of foreign judgments

165 Government ships

166 Limitation of liability under section 152

167 Saving for recourse actions

168 Interpretation

CHAPTER V

INTERNATIONAL OIL POLLUTION COMPENSATION FUND

Preliminary

169 Meaning of the "Liability Convention", "the Fund Convention" and related expressions

Contributions to Fund

170 Contributions by importers of oil and others

171 Power to obtain information

172 Liability of the Fund

173 Limitation of Fund's liability under section 172

Supplemental

174 Jurisdiction and effect of judgments

175 Extinguishment of claims

176 Subrogation

177 Supplementary provisions as to proceedings involving the Fund

178 Interpretation

PART VIII

LIABILITY OF SHIPOWNERS AND OTHERS

Carriage of passengers and luggage by sea

179 Scheduled convention to have force of law

180 Application of Schedule 5 to carriage within Bermuda

MERCHANT SHIPPING ACT 2002

<i>Limitation of liability of shipowners, etc. and salvors for maritime claims</i>	193 Apportionment of salvage under \$7,500 by the Receiver
181 Limitation of liability for maritime claims	194 Apportionment of salvage by the court
182 Exclusion of liability	195 Salvage claims against the Crown and Crown rights of salvage and regulation thereof
<i>Multiplefault; apportionment of liability and contribution</i>	CHAPTER II WRECK
183 Damage or loss: apportionment of liability	<i>Vessels in distress</i>
184 Loss of life or personal injuries: joint and several liability	196 Application of, and discharge of function under section 197, 198 and 199
185 Loss of life or personal injuries: right of contribution	197 Duty of Receiver where vessel in distress
<i>Time limit for proceedings against owners or ship</i>	198 Powers of Receiver in case of vessel in distress
186 Time limit for proceedings against owners or ship	199 Power to pass over adjoining land
<i>Limitation of liability of harbour and dock authorities</i>	<i>Dealing with wreck</i>
187 Limitation of liability	200 Duties of finder etc. of wreck
<i>Application to Crown and its ships</i>	201 Provisions as respects cargo, etc.
188 Application to Crown and its ships	202 Receiver to give notice of wreck
PART IX SALVAGE AND WRECK	203 Claims of owners to wreck
CHAPTER I SALVAGE	204 Immediate sale of wreck in certain cases
189 Salvage convention 1989 to have force of law	<i>Unclaimed wreck</i>
190 Valuation of property by Receiver	205 Right of Crown to unclaimed wreck
191 Detention of property liable for salvage by Receiver	206 Notice of unclaimed wreck to be given to persons entitled
192 Sale of detained property by Receiver	207 Disposal of unclaimed wreck
	208 Effect of delivery of wreck under this Part
	<i>Offences in respect of wreck</i>

MERCHANT SHIPPING ACT 2002

209	Taking wreck to foreign port	222	Improvement notices
210	Interfering with wrecked vessel or wreck	223	Prohibition notices
211	Powers of entry etc.	224	Provisions supplementary to sections 222 and 223
	CHAPTER III SUPPLEMENTAL	225	References of notices to arbitration
	<i>Administration</i>	226	Compensation in connection with invalid prohibition notices
212	Functions of Minister	227	Offences
213	Expenses and fees of Receiver		PART XI ACCIDENT INVESTIGATIONS AND INQUIRIES
	<i>Release from customs control</i>		<i>Marine accident investigations</i>
214	Release of goods from customs control	228	Investigation of marine accidents
	<i>Removal of wrecks</i>	229	Formal investigation into marine accidents
215	Powers of Minister in relation to wrecks	230	Re-hearing of and appeal from investigations
216	Interpretation	231	Rules as to investigations and appeals
	PART X ENFORCEMENT OFFICERS AND POWERS		<i>Inquiries into and reports on deaths and injuries</i>
	<i>Enforcement Officers</i>	232	Inquiries into deaths of crew members and others
217	Appointment of inspectors and surveyors	233	Transmission of particulars of certain deaths on ships
	<i>Inspection etc. powers</i>		PART XII LEGAL PROCEEDINGS
218	Powers to require production of ships documents		<i>Prosecution of offences</i>
219	Powers to inspect ships and their equipment, etc.	234	Time limit for summary offences
220	Powers of inspectors in relation to premises and ships	235	Time limit for summary orders
221	Provisions supplementary to section 220	236	Offences by officers of bodies corporate
	<i>Improvement notices and prohibition notices</i>		<i>Jurisdiction</i>

MERCHANT SHIPPING ACT 2002

237	Jurisdiction in relation to offences	252	Tonnage Fee
238	Jurisdiction over ships lying off coast	253	Expenses charged on money provided by Legislature
239	Jurisdiction in cases of offences on board ship		<i>Subordinate Legislation</i>
240	Offences committed by Bermuda seamen	254	Regulations, rules and orders, etc.
	<i>Return of offenders</i>		<i>Final provisions</i>
241	Return of offenders	255	Repeals, consequential amendments and transitional provisions
	<i>Detention of ship and distress on ship</i>		
242	Enforcing detention of ship		SCHEDULES:
243	Sums ordered to be paid leviable by distress on the ship	Schedule 1	Private Law Provisions for Registered Ships
	<i>Special evidential provisions</i>	Schedule 2	Regulations Relating to Submersible and Supporting Apparatus
244	Depositions of persons abroad admissible	Schedule 3	Load Lines
245	Admissibility in evidence and inspection of certain documents	Schedule 4	Overall Limit on Liability of Fund
246	Admissibility of documents in evidence	Schedule 5	Convention Relating to the Carriage of Passengers and their Luggage by Sea
247	Inspection and admissibility in evidence of copies of certain documents	Schedule 6	Convention on Limitation of Liability for Maritime Claims 1976
248	Proof, etc. of exemptions	Schedule 7	International Convention on Salvage 1989
	<i>Service of documents</i>	Schedule 8	Registration and Tonnage Fees
249	Service of documents		
	PART XIII SUPPLEMENTAL		
	<i>Financial Provisions</i>		
250	Fees		
	<i>Registration and tonnage fees</i>		
251	Registration fee		

MERCHANT SHIPPING ACT 2002

Schedule 9	Repeals
Schedule 10	Consequential amendments
Schedule 11	Saving and transitional provisions

MERCHANT SHIPPING ACT 2002

WHEREAS it is expedient to consolidate the Merchant Shipping Acts 1894 to 1988 and other enactment's 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;

MERCHANT SHIPPING ACT 2002

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

"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 shipping;

"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

MERCHANT SHIPPING ACT 2002

(c) any colony;

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

"safety regulations" means regulations under section 93(1);

"seaman" includes every person (except masters and pilots) employed or engaged in any capacity on board any 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.

MERCHANT SHIPPING ACT 2002

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 —

- (a) shall extend to non-Bermuda ships of that description and to masters and seamen 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.

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

MERCHANT SHIPPING ACT 2002

(b) the provisions of this Act (as they apply by virtue of section 4(2)) and those regulations;

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 seamen and is authorised to carry into execution the

MERCHANT SHIPPING ACT 2002

provisions of this Act and of all statutory provisions relating to merchant shipping and seamen for the time being in force, except where otherwise provided.

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

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;

MERCHANT SHIPPING ACT 2002

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

MERCHANT SHIPPING ACT 2002

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.
- (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 seamen 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 seamen 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.

MERCHANT SHIPPING ACT 2002

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

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;

MERCHANT SHIPPING ACT 2002

- (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.

MERCHANT SHIPPING ACT 2002

(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).

(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.

MERCHANT SHIPPING ACT 2002

- (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.
- (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—

MERCHANT SHIPPING ACT 2002

(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 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);

MERCHANT SHIPPING ACT 2002

(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 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;

MERCHANT SHIPPING ACT 2002

- (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

MERCHANT SHIPPING ACT 2002

- (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.

MERCHANT SHIPPING ACT 2002

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.

(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—

MERCHANT SHIPPING ACT 2002

- (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 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;

MERCHANT SHIPPING ACT 2002

(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.

(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

MERCHANT SHIPPING ACT 2002

(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.

(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.

MERCHANT SHIPPING ACT 2002

(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.

MERCHANT SHIPPING ACT 2002

- (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;

MERCHANT SHIPPING ACT 2002

- (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.

(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 SEAMEN

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 seamen employed in sea-going ships.

(2) Those exceptions are sections 56, 59 to 64, 66, 67, 70 and 73 to 80.

Engagement and discharge of crews

MERCHANT SHIPPING ACT 2002

Crew agreements

38. (1) Except as provided under subsection (5), an agreement in writing shall be made between each person employed as a seaman in a Bermuda ship and the persons employing him and shall be signed both by him and by or on behalf of them.

(2) The agreements made under this section with the several persons employed in a ship shall be contained in one document (in this Part referred to as a crew agreement) except that in such cases as the Minister may approve —

(a) the agreements to be made under this section with the persons employed in a ship may be contained in more than one crew agreement; and

(b) one crew agreement may relate to more than one ship.

(3) The provisions and form of a crew agreement must be of a kind approved by the Minister; and different provisions and forms may be so approved for different circumstances.

(4) Subject to the following provisions of this section, a crew agreement shall be carried in the ship to which it relates whenever the ship goes to sea.

(5) The Minister may make regulations providing for exemptions from the requirements of this section—

(a) with respect to such descriptions of ship as may be specified in the regulations or with respect to voyages in such areas or such description of voyages as may be so specified; or

(b) with respect to such descriptions of seamen as may be specified in the regulations;

and the Minister may grant other exemptions from those requirements (whether with respect to particular seamen or with respect to seamen employed by a specified person or in a specified ship or in the ships of a specified person) in cases where the Minister is satisfied that the seamen to be employed otherwise than under a crew agreement will be adequately protected.

(6) Where, but for an exemption granted by the Minister, a crew agreement would be required to be carried in a ship or a crew agreement carried in the ship would be required to contain an agreement with a person employed in a ship, the ship shall carry such document evidencing the exemption as the Minister may direct.

(7) Regulations under this section may enable ships required under this section to carry a crew agreement to comply with the requirement by carrying a copy thereof, certified in such manner as may be provided by the regulations.

(8) If a ship goes to sea or attempts to go to sea in contravention of the requirements of this section the master or the person employing the crew shall be guilty of an offence and liable on summary conviction to a fine of \$5,000 and the ship, if in Bermuda, may be detained.

Regulations relating to crew agreements

39. (1) The Minister may make regulations—

MERCHANT SHIPPING ACT 2002

- (a) requiring such notice as may be specified in the regulations to be given to a superintendent or proper officer, except in such circumstances as may be so specified, before a crew agreement is made or an agreement with any person is added to those contained in a crew agreement;
- (b) providing for the delivery to a superintendent or proper officer or the Registrar of crew agreements and agreements added to those contained in a crew agreement and of copies of crew agreements and of agreements so added;
- (c) requiring the posting in ships of copies of or extracts from crew agreements;
- (d) requiring copies of or extracts from crew agreements to be supplied to members of the crew demanding them and requiring copies of or extracts from documents referred to in crew agreements to be made available, in such circumstances as may be specified in the regulations, for inspection by members of the crew; and
- (e) requiring any documents carried in a ship in pursuance of section 38 to be produced on demand to a proper officer .

(2) Regulations under this section may make a contravention of any provision thereof an offence punishable, on summary conviction, with a fine of \$2,000 or such less amount as may be specified in the regulations.

Discharge of seamen

40. (1) The Minister may make regulations prescribing the procedure to be followed in connection with the discharge of seamen from Bermuda ships.

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

- (a) requiring notice of such a discharge to be given at such time as may be specified in the regulations to the superintendent or proper officer at a place specified in or determined under the regulations;
- (b) requiring such a discharge to be recorded, whether by entries in the crew agreement and discharge book or otherwise, and requiring copies of any such entry to be given to a superintendent or proper officer or the Registrar.

(3) Regulations under this section may provide that in such cases as may be specified in the regulations, or except in such cases as may be specified in or determined under the regulations, a seaman shall not be discharged outside Bermuda from a Bermuda ship without the consent of the proper officer.

(4) 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 such less amount as may be specified in the regulations.

MERCHANT SHIPPING ACT 2002

Seamen left behind abroad otherwise than on discharge

41. Regulations made under section 40 may apply any provision thereof, with such modifications as appear to the Minister to be appropriate, to cases where a seaman employed in a Bermuda ship is left behind outside Bermuda otherwise than on being discharged from the ship.

Discharge of seamen when ship ceases to be registered in Bermuda

42. Where a Bermuda ship ceases to be registered, any seaman employed in the ship shall be discharged from the ship unless he consents in writing to continue his employment in the ship; and sections 43 to 46 shall apply in relation to his wages as if the ship had remained a Bermuda ship.

Wages etc.

Payment of seamen's wages

43. (1) Where a seaman employed under a crew agreement relating to a Bermuda ship leaves the ship on being discharged from it, then, except as provided by or under this Part or any other enactment, the wages due to the seaman under the agreement shall either—

- (a) be paid to him in full at the time when he so leaves the ship (in this section and in section 44 referred to as the time of discharge); or
- (b) be paid to him in accordance with subsections (4) and (5).

(2) If the amount shown in the account delivered to a seaman under section 44 (1) as being the amount payable to him under subsection (1)(a) is replaced by an increased amount shown in a further account delivered to him under section 44(3), the balance shall be paid to him within seven days of the time of discharge; and if the amount so shown in the account delivered to him under section 44 (1) exceeds \$100 and it is not practicable to pay the whole of it at the time of discharge, not less than \$100 nor less than one-quarter of the amount so shown shall be paid to him at that time and the balance within seven days of that time.

(3) If any amount which, under subsection (1)(a) or (2), is payable to a seaman is not paid at the time at which it is so payable the seaman shall be entitled to wages at the rate last payable under the crew agreement for every day on which it remains unpaid during the period of 56 days following the time of discharge; and if any such amount or any amount payable by virtue of this subsection remains unpaid after the end of that period it shall, notwithstanding any other provision of law, carry interest at the rate of 20 per cent. per annum.

(4) Where the crew agreement referred to in subsection (1) provides for the seaman's basic wages to be payable up-to-date at specified intervals not exceeding one month, and for any additional amounts of wages to be payable within the pay cycle following that to which they relate, any amount of wages due to the seaman under the agreement shall (subject to subsection (5)) be paid to him not later than the date on which the next payment of his basic wages following the time of discharge would have fallen due if his employment under the agreement had continued.

MERCHANT SHIPPING ACT 2002

(5) If it is not practicable, in the case of any amount due to the seaman by way of wages additional to his basic wages, to pay that amount by the date mentioned in subsection (4) , that amount shall be paid to him not later than what would have been the last day of the pay cycle immediately following that date if his employment under the crew agreement had continued.

(6) If any amount which, under subsection (4) or (5), is payable to a seaman is not paid at the time at which it is so payable, it shall, notwithstanding any other provision of law, carry interest at the rate of 20 per cent. per annum.

(7) The provisions of subsection (3) or (6) shall not apply if the failure to pay was due to—

- (a) a mistake;
- (b) a reasonable dispute as to liability;
- (c) the act or default of the seaman; or
- (d) any other cause, not being the wrongful act or default of the persons liable to pay his wages or of their servants or agents;

and so much of those provisions as relates to interest on the amount due shall not apply if a court in proceedings for its recovery so directs.

(8) Where a seaman is employed under a crew agreement relating to more than one ship the preceding provisions of this section shall have effect, in relation to wages due to him under the agreement, as if for any reference to the time of discharge there were substituted a reference to the termination of his employment under the crew agreement.

(9) Where a seaman, in pursuance of section 42, is discharged from a ship outside the country from which he was recruited but returns to such country under arrangements made by the persons who employed him, the preceding provisions of this section shall have effect, in relation to the wages due to him under a crew agreement relating to the ship, as if for the references in subsections (1) to (4) to the time of discharge there were substituted references to the time of his return to such country, and subsection (8) were omitted.

(10) For the purposes of this section any amount of wages shall, if not paid to him in cash, be taken to have been paid to a seaman—

- (a) on the date when a cheque, or a money or postal order issued by the Post Office, for that amount was despatched by the recorded delivery service to the seaman's last known address; or
- (b) on the date when any account kept by the seaman with a bank or other institution was credited with that amount.

Account of seaman's wages

44. (1) Subject to subsections (4) and (5) and to regulations made under section 45 or 84, the master of every Bermuda ship shall deliver to every seaman employed in the ship under a crew agreement an account of the wages due to him under that crew agreement and of the deductions subject to which the wages are payable.

MERCHANT SHIPPING ACT 2002

(2) The account shall indicate that the amounts stated therein are subject to any later adjustment that may be found necessary and shall be delivered not later than 24 hours before the time of discharge or, if the seaman is discharged without notice or at less than 24 hours notice, at the time of discharge.

(3) If the amounts stated in the account require adjustment the persons who employed the seaman shall deliver to him a further account stating the adjusted amounts; and that account shall be delivered not later than the time at which the balance of his wages is payable to the seaman.

(4) Where section 43(4) or (5) applies to the payment of any amount of wages due to a seaman under a crew agreement—

(a) the persons who employed the seaman shall deliver to him an account of the wages payable to him under that subsection and of the deductions subject to which the wages are payable; and

(b) any such account shall be so delivered at the time when the wages are paid to him; and

(c) subsections (1) to (3) shall not apply;

and section 43(10) shall apply for the purposes of this subsection as it applies for the purposes of that section.

(5) Where a seaman is employed under a crew agreement relating to more than one ship any account which under the preceding provisions of this section would be required to be delivered to him by the master shall instead be delivered to him by the persons employing him and shall be so delivered on or before the termination of his employment under the crew agreement.

(6) If a person fails without reasonable excuse to comply with the preceding provisions of this section he shall be liable, on summary conviction, to a fine of \$1,000.

Regulations relating to wages and accounts

45. The Minister may make regulations—

(a) authorising deductions to be made from the wages due to a seaman under a crew agreement (in addition to any authorised by any provision of this Part or of any other enactment for the time being in force) in cases where a breach of his obligations under the agreement is alleged against him and such conditions, if any, as may be specified in the regulations are complied with, or in such other cases as may be specified in the regulations;

(b) regulating the manner in which any amounts deducted under the regulations are to be dealt with;

(c) prescribing the manner in which wages due to a seaman under a crew agreement are to be or may be paid;

MERCHANT SHIPPING ACT 2002

- (d) regulating the manner in which such wages are to be dealt with and accounted for in circumstances where a seaman leaves his ship otherwise than on being discharged therefrom;
- (e) prescribing the form and manner in which any account required to be delivered by section 44 is to be prepared and the particulars to be contained therein (which may include estimated amounts).

Power of superintendent or proper officer to decide disputes about wages

46. (1) Any dispute relating to the amount payable to a seaman employed under a crew agreement may be submitted by the parties to a superintendent or proper officer for decision; but the superintendent or proper officer shall not be bound to accept the submission or, if he has accepted it, to decide the dispute, if he is of the opinion that the dispute, whether by reason of the amount involved or for any other reason, ought not to be decided by him.

(2) The decision of a superintendent or proper officer on a dispute submitted to him under this section shall be final.

Restriction on assignment of and charge upon wages

47. (1) As respects the wages due or accruing to a seaman 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 seaman and the payment of the wages to the seaman 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 effect to such a disposition.

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;

MERCHANT SHIPPING ACT 2002

- (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.

Allotment notes

49. (1) Subject to the following provisions of this section, a seaman 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 seaman'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 seaman 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 seamen and different circumstances.

Right of person named in allotment to sue in own name

50. (1) A person to whom any part of a seaman'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 seaman 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 seaman's wages has been allotted it shall be presumed, unless the

MERCHANT SHIPPING ACT 2002

contrary is shown, that the seaman is entitled to the wages specified in the note and that the allotment has not been varied or cancelled.

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

51. (1) Where a Bermuda ship is wrecked or lost a seaman 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.

(2) Where a Bermuda ship is sold while outside Bermuda or ceases to be a Bermuda ship and a seaman'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 seaman 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 seaman 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 seaman.

Protection of certain rights and remedies

52. (1) A seaman'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 seamen 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.

Trade disputes involving seamen

53. Notwithstanding anything in any agreement, a seaman 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.

MERCHANT SHIPPING ACT 2002

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 seaman has for his wages.

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 the master of or any seaman 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.

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 seamen 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;

MERCHANT SHIPPING ACT 2002

- (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
- (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 seamen 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 seamen but does not include any accommodation which is also used by or provided for the use of passengers.

Complaints about provisions or water

57. (1) If three or more seamen employed in a Bermuda ship consider that the provisions or water provided for the seamen employed in that ship are not in accordance with safety regulations containing requirements as to the provisions and water to be provided on ships (whether because of bad quality, unfitness for use or deficiency in quantity) they may complain to the master, who shall investigate the complaint.

(2) If the seamen are dissatisfied with the action taken by the master as a result of his investigation or by his failure to take any action they may state their dissatisfaction to him and may claim to complain to a superintendent or proper officer; and thereupon the master shall make adequate arrangements to enable the seamen to do so as soon as the service of the ship permits.

(3) The superintendent or proper officer to whom a complaint has been made under this section shall investigate the complaint and may examine the provisions or water or cause them to be examined.

MERCHANT SHIPPING ACT 2002

(4) If the master fails without reasonable excuse to comply with the provisions of subsection (2) he shall be guilty of an offence and liable on summary conviction to a fine of \$1,000 and if he has been notified in writing by the person making an examination under subsection (3) that any provisions or water are found to be unfit for use or not of the quality required by the regulations, then—

- (a) if they are not replaced within a reasonable time the master or owner shall be guilty of an offence and liable on summary conviction to a fine of \$5,000 unless he proves that the failure to replace them was not due to his neglect or default; or
- (b) if the master, without reasonable excuse, permits them to be used he shall be guilty of an offence and liable on summary conviction to a fine of \$5,000.

Expenses of medical and other treatment during voyage

58. (1) If a person, while employed in a Bermuda ship, receives outside Bermuda any surgical or medical treatment or such dental or optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency, the reasonable expenses thereof shall be borne by the persons employing him.

(2) If a person dies while employed in a Bermuda ship and is buried or cremated outside Bermuda, the expenses of his burial or cremation shall also be borne by those persons.

(3) The reference in subsection (2) to dying in a ship includes a reference to dying in a ship's boat.

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 other seamen or qualified seamen of any description as may be specified in the regulations; and
- (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 seamen of any description in order to be qualified for the purposes of this section.

(2) The Minister shall not exercise his power to make regulations requiring ships to carry seamen 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.

MERCHANT SHIPPING ACT 2002

(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.

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.

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 seamen 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.

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.

MERCHANT SHIPPING ACT 2002

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 seamen

64. (1) If a person goes to sea as a qualified officer or seaman of any description without being such a qualified officer or seaman 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.

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

Medical treatment on board ship

65. Where a Bermuda ship does not carry a doctor among the seamen employed in it the master shall make arrangements for securing that any medical attention on board the ship is given either by him or under his supervision by a person appointed by him for the purpose.

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) A person under school-leaving age shall not be employed in any Bermuda ship except as permitted by regulations under this section.

(2) The Minister may make regulations—

MERCHANT SHIPPING ACT 2002

- (a) prescribing circumstances in which and conditions subject to which persons under school-leaving age who have attained such age as may be specified in the regulations may be employed in a ship in such capacities as may be so specified;
- (b) prescribing circumstances and capacities in which persons over school leaving-age but under the age of 18 or under such lower age as may be specified in the regulations must not be employed in a Bermuda ship or may be so employed only subject to such conditions as may be specified in the regulations.

(3) Regulations made for the purposes of this section may make different provision for different employment's and different descriptions of ship and any other different circumstances.

(4) If any person is employed in a ship in contravention of this section or if any condition subject to which a person may be employed under regulations made for the purposes of this section is not complied with, the owner or master shall be guilty of an offence and liable on summary conviction to a fine of \$2,000.

(5) For the purposes of this section a person employed in a ship shall be deemed to be over school-leaving age if he has, and under school leaving age if he has not, attained the age which is the upper limit of compulsory school age in Bermuda.

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).

Uniform

69. (1) Subject to subsection (3), if any person, not being entitled to wear the merchant navy uniform, wears that uniform or any part thereof, or any dress having the appearance or bearing any of the distinctive marks of that uniform, he shall be guilty of an offence.

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

- (a) except in a case falling within paragraph (b), to a fine of \$500.
- (b) if he wears it in such a manner or under such circumstances as to be likely to bring contempt on the uniform, to a fine of \$ 500 or to imprisonment for a term of one month or both.

MERCHANT SHIPPING ACT 2002

(3) Subsection (1) shall not prevent any person from wearing any uniform or dress in the course or for the purposes of a stage play or representation, or a music-hall or circus performance if the uniform is not worn in such a manner or under such circumstances as to bring it into contempt.

(4) If any person entitled to wear the merchant navy uniform when aboard a ship in port or on shore appears dressed partly in uniform and partly not in uniform under such circumstances as to be likely to bring contempt on the uniform, or, being entitled to wear the uniform appropriate to a particular rank or position, wears the uniform appropriate to some higher rank or position, he shall be guilty of an offence and liable on summary conviction to a fine of \$500.

Offences by seamen, etc.

Conduct endangering ships, structures or individuals

70. (1) This section applies—

(a) to the master of, or any seaman employed in, a Bermuda ship; and

(b) to the master of, or any seaman 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.

MERCHANT SHIPPING ACT 2002

- (3) Those conditions are—
 - (a) that the act or omission was deliberate or amounted to a breach or neglect of duty;
 - (b) that the master or seaman in question was under the influence of drink or a drug at the time of the act or omission.
- (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.

MERCHANT SHIPPING ACT 2002

(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—

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

"duty"—

- (a) in relation to a master or seaman, 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.

Concerted disobedience and neglect of duty

71. (1) If a seaman employed in a Bermuda ship combines with other seamen 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.

Disciplinary offences

Breaches by seamen of codes of conduct

72. (1) The Minister may make regulations under the following provisions of this section for the purpose of maintaining discipline on board Bermuda ships; and in this section "disciplinary body" means a body established or approved by the Minister under subsection (6).

MERCHANT SHIPPING ACT 2002

(2) Regulations may provide for the hearing on shore in Bermuda, by a disciplinary body, of a complaint by the master or owner of a Bermuda ship against a seaman alleging that during his employment on board the ship the seaman contravened a provision of a code of conduct approved by the Minister for the purposes of this section.

The alleged contravention may be one on or off the ship and in Bermuda or elsewhere.

(3) Regulations may enable a disciplinary body—

(a) to dismiss the complaint if it finds the allegation not proved;

(b) if it finds the allegation proved—

(i) to warn the seaman;

(ii) to reprimand the seaman; or

(iii) to recommend to the Minister that the seaman shall, either for a period specified in the recommendation or permanently, cease to be entitled to a discharge book in pursuance of section 90 and shall be required to surrender any such book which has been issued to him.

(4) Regulations may—

(a) enable the seaman to appeal against such a recommendation to another disciplinary body (an "appellate body");

(b) enable an appellate body—

(i) to confirm the recommendation;

(ii) to cancel the recommendation; or

(iii) in the case of a recommendation that the seaman shall cease to be entitled to a discharge book permanently or for a particular period, to substitute for it a recommendation that he shall cease to be so entitled, instead of permanently, for a period specified in the substituted recommendation or, instead of for the particular period, for a shorter period so specified.

(5) Regulations may provide for securing that a recommendation that the seaman shall permanently cease to be entitled to a discharge book is not submitted to the Minister unless it has been confirmed, either on appeal or otherwise, by an appellate body.

(6) Regulations may provide for the establishment or approval for the purposes of this section of such number of bodies as the Minister thinks fit and with respect to the composition, jurisdiction and procedure of any such body.

(7) Regulations may provide for the payment, out of money provided by the Legislature, of such remuneration and allowances as the Minister may, with the consent of the Minister responsible for finance, determine to any member of such a body.

MERCHANT SHIPPING ACT 2002

(8) Regulations may make different provision for different circumstances and may contain such incidental and supplemental provisions as the Minister considers appropriate.

(9) Without prejudice to the generality of the preceding provisions, regulations may include provision for any proceedings to take place notwithstanding the absence of the seaman to whom they relate.

(10) Nothing in the 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 other enactment or at common law.

Disqualification of seamen and inquiries

Inquiry into fitness or conduct of officer

73. (1) If it appears to the Minister that an officer—

- (a) is unfit to discharge his duties, whether by reason of incompetence or misconduct or for any other reason; or
- (b) has been seriously negligent in the discharge of his duties; or
- (c) has failed to comply with the provisions of section 100;

the Minister may cause an inquiry to be held by one or more persons appointed by him and, if he does so, may, if he thinks fit, suspend, pending the outcome of the inquiry, any certificate issued to the officer in pursuance of section 59 and require the officer to deliver it to him.

(2) Where a certificate issued to an officer has been suspended under subsection (1) the suspension may, on the application of the officer, be terminated by the Supreme Court and the decision of the court on such an application shall be final.

(3) An inquiry under this section shall be conducted in accordance with rules made under section 77(l) and those rules shall require the persons holding the inquiry to hold it with the assistance of one or more assessors.

(4) The persons holding an inquiry under this section into the fitness or conduct of an officer—

- (a) may, if satisfied of any of the matters mentioned in paragraphs (a) to (c) of subsection (1), cancel or suspend any certificate issued to him under section 59 or censure him;
- (b) may make such order with regard to the costs of the inquiry as they think just; and
- (c) shall make a report on the case to the Minister;

and if the certificate is cancelled or suspended the officer (unless he has delivered it to the Minister in pursuance of subsection (1), shall deliver it forthwith to the persons holding the inquiry or to the Minister.

MERCHANT SHIPPING ACT 2002

(5) Any costs which a person is ordered to pay under subsection (4)(b) may be recovered from him by the Minister.

Disqualification of holder of certificate other than officer's

74. (1) Where it appears to the Minister that a person who is the holder of a certificate to which this section applies is unfit to be the holder of such a certificate, whether by reason of incompetence or misconduct or for any other reason, the Minister may give him notice in writing that he is considering the suspension or cancellation of the certificate.

(2) The notice must state the reasons why it appears to the Minister that that person is unfit to be the holder of such a certificate and must state that within a period specified in the notice, or such longer period as the Minister may allow, he may make written representations to the Minister.

(3) After considering any representations made in pursuance of subsection (2) the Minister shall decide whether or not to suspend or cancel the certificate and shall give the holder of it written notice of his decision.

(4) Where the decision is to suspend or cancel the certificate the notice shall state the date from which the cancellation is to take effect, or the date from which and the period for which the suspension is to take effect, and shall require the holder to deliver the certificate to the Minister not later than the date so specified unless before that date the holder has required the case to be dealt with by an inquiry under section 75.

(5) Where, before the date specified in the notice, he requires the case to be dealt with by such an inquiry, then, unless he withdraws the requirement, the suspension or cancellation shall not take effect except as ordered in pursuance of the inquiry.

(6) The Minister may make regulations prescribing the procedure to be followed with respect to the making and consideration of representations in pursuance of this section, the form of any notice to be given under this section and the period to be specified in any such notice as the period within which any steps are to be taken.

(7) This section applies to every certificate issued under section 66 and to any certificate issued under section 59 other than one certifying that a person is qualified as an officer.

Inquiry into fitness or conduct of seaman other than officer

75. (1) Where a person has, before the date mentioned in section 74(4), required his case to be dealt with by an inquiry under this section the Minister shall cause an inquiry to be held by one or more persons appointed by him.

(2) An inquiry under this section shall be conducted in accordance with rules made under section 77(l) and those rules shall require the persons holding the inquiry to hold it with the assistance of one or more assessors.

(3) The persons holding an inquiry under this section—

(a) may confirm the decision of the Minister and cancel or suspend the certificate accordingly;

MERCHANT SHIPPING ACT 2002

- (b) may, where the decision was to cancel the certificate, suspend it instead;
- (c) may, where the decision was to suspend the certificate, suspend it for a different period;
- (d) may, instead of confirming the decision of the minister, censure the holder of the certificate or take no further action;
- (e) may make such order with regard to the costs of the inquiry as they think just; and
- (f) shall make a report on the case to the Minister;

and if the certificate is cancelled or suspended it shall be delivered forthwith to the persons holding the inquiry or to the Minister.

(4) Any costs which a person is ordered to pay under subsection (3)(e) may be recovered from him by the Minister.

Re-hearing of and appeal from inquiries

76. (1) Where an inquiry has been held under section 73 or 75 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 inquiry 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 heard by the persons who held it, or by 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 77(l).

(4) Where the persons holding the inquiry have decided to cancel or suspend the certificate of any person or have 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 inquiry, has appeared at the hearing and is affected by the decision or finding, may appeal to the Supreme Court.

Rules as to inquiries and appeals

77. (1) The Minister may make rules for the conduct of inquiries under sections 73 and 75 and for the conduct of any re-hearing under section 76 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 76 which are held by the Supreme Court, or of appeals to the Supreme Court, may require the court, subject to

MERCHANT SHIPPING ACT 2002

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.

Failure to deliver cancelled or suspended certificate

78. If a person fails to deliver a certificate as required under section 73, 74 or 75 he shall be guilty of an offence and liable on summary conviction to a fine of \$2,000.

Power to restore certificate

79. Where a certificate has been cancelled or suspended under section 73, 74, 75 or 76, 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.

Power to summon witness to inquiry into fitness or conduct of officer or other seaman

80. (1) The persons holding an inquiry under section 73 or 75 may—
- (a) by summons require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry; and
 - (b) take evidence on oath (and for that purpose administer oaths) or, instead of administering an oath, require the person examined to make a solemn affirmation.
- (2) If on the failure of a person to attend such an inquiry in answer to a summons under this section—
- (a) the persons holding the inquiry are satisfied by evidence on oath—
 - (i) that the person in question is likely to be able to give material evidence or produce any document which relates to any matter in question at the inquiry;
 - (ii) that he has been duly served with the summons; and
 - (iii) that a reasonable sum has been paid or tendered to him for costs and expenses; and
 - (b) it appears to them that there is no just excuse for the failure;
- they may issue a warrant to arrest him and bring him before the inquiry at a time and place specified in the warrant.
- (3) If any person attending or brought before such an inquiry refuses without just excuse to be sworn or give evidence, or to produce any document, the persons holding the inquiry may—
- (a) commit him to custody until the end of such period not exceeding one month as may be specified in the warrant or until he gives evidence or produces the document (whichever occurs first); or

MERCHANT SHIPPING ACT 2002

(b) impose on him a fine of \$2,000;

or both.

(4) A fine imposed under subsection (3)(b) shall be treated for the purposes of its collection, enforcement and remission as having been imposed by the magistrate's court, and the persons holding the inquiry shall, as soon as practicable after imposing the fine, give particulars of it to the clerk of that court.

Civil liability of seamen for offences

Civil liability for absence without leave

81. (1) The following provisions of this section shall apply with respect to the liability of a seaman employed in a Bermuda ship to damages for being absent from his ship at a time when he is required under his contract of employment to be on board.

(2) If he proves that his absence was due to an accident or mistake or some other cause beyond his control and that he took all reasonable precautions to avoid being absent his absence shall not be treated as a breach of contract.

(3) Where subsection (2) does not apply, then—

(a) if no special damages are claimed his liability shall be \$20;

(b) if special damages are claimed his liability shall not be more than \$200.

Civil liability for smuggling

82. If a seaman 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.

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 seaman employed in the ship is absent without leave and present in that country in contravention of that country's laws.

(2) If, by reason of the contravention, a penalty is incurred under those laws by the persons employing the seaman the penalty shall be treated as being attributable to his absence without leave and may, subject to the provisions of section 81, be recovered from him as special damages for breach of contract.

(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 \$200, \$200 may be recovered by him from the seaman.

MERCHANT SHIPPING ACT 2002

Relief and repatriation and relief costs

Relief and return of seamen etc. left behind and shipwrecked

84. (1) Where—

- (a) a person employed as a seaman in a Bermuda ship is left behind in any country outside Bermuda or is taken to such a country on being shipwrecked; or
- (b) a person who became so employed under an agreement entered into outside Bermuda is left behind in Bermuda or is taken to Bermuda on being shipwrecked;

the persons who last employed him as a seaman shall make such provision for his return and for his relief and maintenance until his return and such other provisions as may be required by regulations made by the Minister.

(2) The provisions to be so made may include the repayment of expenses incurred in bringing a shipwrecked seaman ashore and maintaining him until he is brought ashore and the payment of the expenses of the burial or cremation of a seaman who dies before he can be returned.

(3) The Minister may also make regulations providing for the manner in which any wages due to any person left behind or taken to any country as mentioned in subsection (1), and any property of his left on board ship, are to be dealt with.

(4) The Minister may make regulations requiring a superintendent or proper officer—

- (a) to make such provision as may be prescribed by the regulations with respect to any matter for which provision may be required to be made by regulations under the preceding provisions of this section; and
- (b) to make the like provision with respect to persons who are British citizens, British overseas territories citizens or British overseas citizens and are found in distress in any country outside Bermuda after being employed in ships registered in, or belonging to the government of, such a country.

(5) Without prejudice to the generality of the preceding provisions, regulations made under this section may provide—

- (a) for determining the place to which a person is to be returned;
- (b) for requiring the master of any Bermuda ship to convey a person to a place determined in accordance with the regulations and for enabling a superintendent or proper officer to give the master directions for that purpose;
- (c) for the making of payments in respect of the conveyance of a person in accordance with the regulations; and
- (d) for the keeping of records and the rendering of accounts.

MERCHANT SHIPPING ACT 2002

(6) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine of \$2,000 or such less amount as may be specified in the regulations.

(7) This section applies to a person left behind on being discharged in pursuance of section 42, whether or not at the time he is left behind the ship is still a Bermuda ship.

(8) This section applies to the master of a ship as it applies to a seaman and sections 85 and 86 shall have effect accordingly.

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 seaman 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.

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 seaman 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 seaman 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) Where, in the case of any seaman, 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—

- (a) in respect of any matter for which, but for section 85, the seaman's last employers would have been required to provide under section 84; or
- (b) in respect of any matter for which provision is required to be made under section 84(4)(b);

the Minister may recover them from the seaman (or, if he has died, from his personal representatives).

Documentation

Official log books

87. (1) Except as provided by regulations under this section an official log book in a form approved by the Minister shall be kept in every Bermuda ship.

MERCHANT SHIPPING ACT 2002

(2) The Minister may make regulations prescribing the particulars to be entered in official log books, the persons by whom such entries are to be made, signed or witnessed, and the procedure to be followed in the making of such entries and in their amendment or cancellation.

(3) The regulations may require the production or delivery of official log books to such persons, in such circumstances and within such times as may be specified therein.

(4) Regulations under this section may exempt ships of any description from any requirements thereof, either generally or in such circumstances as may be specified in the regulations.

(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.

(6) If a person intentionally destroys or mutilates or renders illegible any entry in an official log book he shall be guilty of an offence and liable on summary conviction to a fine of \$5,000.

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;
- (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) Regulations under this section may enable a list of the crew to be contained in the same document as a crew agreement and may treat any particulars entered in the crew agreement as forming part of the particulars entered in the list.

(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.

MERCHANT SHIPPING ACT 2002

(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.

Bermuda seamen's cards

89. (1) The Minister may make regulations providing—

- (a) for the issue to Bermuda seamen of cards (in this section referred to as "Bermuda seamen'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 seamen to apply for such cards;
- (b) for requiring the holders of Bermuda seamen'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 seamen'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 seamen 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 seamen" 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 seamen.

(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 seaman's card he shall be guilty of an offence and liable on summary conviction to a fine of \$3,000.

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;

MERCHANT SHIPPING ACT 2002

- (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 seaman 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 seaman a person who he knows or has reason to suspect is disentitled as aforesaid;

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.

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” has the meaning given to it by section 38(2);

MERCHANT SHIPPING ACT 2002

“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 seaman is discharged from a ship when his employment in that ship is terminated.

(4) For the purposes of this Part a seaman 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.

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

MERCHANT SHIPPING ACT 2002

- (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;

MERCHANT SHIPPING ACT 2002

- (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 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;

MERCHANT SHIPPING ACT 2002

- (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(1).

(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;

MERCHANT SHIPPING ACT 2002

- (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
- (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—

MERCHANT SHIPPING ACT 2002

"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) The master of any Bermuda ship, on meeting with any of the dangers to navigation specified in subsection (2), shall send information accordingly, by all means of communication at his disposal and in accordance with rules to be made for the purposes of this section, to ships in the vicinity and to such authorities on shore as may be prescribed by those rules.

(2) The dangers to navigation referred to in subsection (1) are—

- (a) dangerous ice;
- (b) a dangerous derelict;
- (c) a tropical storm;
- (d) air temperatures below freezing point associated with gale force winds causing severe ice accretion on the superstructure of ships;
- (e) winds of force 10 or above on the Beaufort Scale for which no storm warning has been received; or any other direct danger to navigation.

MERCHANT SHIPPING ACT 2002

(3) Rules for the purposes of this section shall be made by the Minister.

(4) If the master of a ship fails to comply with the provisions of this section, he shall be guilty of an offence and liable to a fine of \$5,000.

(5) Every person in charge of a ship station for radio communication shall, on receiving the signal prescribed by the said rules for indicating that a message is about to be sent under this section, 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;

"tropical storm" means a hurricane, typhoon, cyclone, or other storm of a similar nature;

"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;

and the master of a ship shall be deemed to have met with a tropical storm if he has reason to believe that there is such a storm in his vicinity.

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

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.

MERCHANT SHIPPING ACT 2002

(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).

(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—

MERCHANT SHIPPING ACT 2002

- (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;
 - (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;

MERCHANT SHIPPING ACT 2002

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 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

MERCHANT SHIPPING ACT 2002

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;

MERCHANT SHIPPING ACT 2002

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);

MERCHANT SHIPPING ACT 2002

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.

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.

MERCHANT SHIPPING ACT 2002

(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.

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

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—

MERCHANT SHIPPING ACT 2002

- (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
 - (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);

MERCHANT SHIPPING ACT 2002

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;

MERCHANT SHIPPING ACT 2002

- (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.

(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.

MERCHANT SHIPPING ACT 2002

(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.

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 seaman 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".

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

MERCHANT SHIPPING ACT 2002

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.

(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;

MERCHANT SHIPPING ACT 2002

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 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;

MERCHANT SHIPPING ACT 2002

- (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.

MERCHANT SHIPPING ACT 2002

(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—

MERCHANT SHIPPING ACT 2002

- (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.

MERCHANT SHIPPING ACT 2002

(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.

MERCHANT SHIPPING ACT 2002

(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
 - (b) provision authorising the imposition by such persons of such charges subject to such restrictions as may be prescribed.

MERCHANT SHIPPING ACT 2002

- (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.

MERCHANT SHIPPING ACT 2002

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—

- (a) securing the safety of any ship;

MERCHANT SHIPPING ACT 2002

- (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.

MERCHANT SHIPPING ACT 2002

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—

MERCHANT SHIPPING ACT 2002

- (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;

MERCHANT SHIPPING ACT 2002

"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 —

(a) acting on behalf of the Minister in connection with the giving or service of a direction under section 135;

MERCHANT SHIPPING ACT 2002

- (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.

MERCHANT SHIPPING ACT 2002

(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.

MERCHANT SHIPPING ACT 2002

(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

MERCHANT SHIPPING ACT 2002

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—

- (a) in subsection (2), the reference to competent authority were a reference to the harbour authority; and

MERCHANT SHIPPING ACT 2002

(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.

(8) In subsection (3) "Bermuda ship" has the same meaning as in section 93(4).

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

(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.

MERCHANT SHIPPING ACT 2002

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—

MERCHANT SHIPPING ACT 2002

- (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 "The Liabilities Convention" and related expressions

150. (1) In this chapter—

"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 Convention.

(2) If the Minister by order declares that any State specified in the order is a party to the Liability Convention in respect of any country so specified the order shall, while in force, be conclusive evidence that that State is a party to the Liability Convention in respect of that country.

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 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 owner of the ship shall be liable—

MERCHANT SHIPPING ACT 2002

- (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;

and in this Chapter any such threat is referred to 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 owner of each of two or more ships; but
- (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) 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;
- (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, but any measures taken after the first of them shall be deemed to have been taken after the discharge or escape; and
- (c) where a relevant threat of contamination results from a series of occurrences having the same origin, they shall be treated as a single occurrence.

MERCHANT SHIPPING ACT 2002

(8) 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.

Liability for oil pollution in case of other ships

152. (1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship other than a ship to which section 151 applies, then (except as otherwise provided by this Chapter) the 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) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship other than a ship to which section 151 applies 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 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;

and in the subsequent provisions of this Chapter any such threat is referred to as a relevant threat of contamination.

(3) Where—

- (a) as a result of any occurrence, a liability is incurred under this section by the owner of each of two or more ships; but
- (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.

(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 "ship" includes a vessel which is not seagoing.

MERCHANT SHIPPING ACT 2002

Exceptions from liability under sections 151 and 152

153. No liability shall be incurred by the owner of a ship under section 151 or 152 by reason of any discharge or escape of oil from the ship, or by reason of any relevant threat of contamination, if he proves that the discharge or escape, or (as the case may be) the threat of contamination—

- (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or
- (b) 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
- (c) 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.

Restriction of liability for oil pollution

154. (1) Where, as a result of any occurrence —

- (a) any oil is discharged or escapes from a ship (whether one to which section 151 or one to which section 152 applies); or
- (b) there arises a relevant threat of contamination;

then, whether or not the 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 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 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).

MERCHANT SHIPPING ACT 2002

(3) The liability of the owner of a ship under section 151 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.

Limitation of liability

Limitation of liability under section 151

155. (1) Where, as a result of any occurrence, the 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, 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, three million special drawing rights;
 - (b) in relation to a ship exceeding 5,000 tons, three million special drawing rights together with an additional 420 special drawing rights for each ton of its tonnage in excess of 5,000 tons up to a maximum amount of 59.7 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 anything done or omitted to be done by the 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.

MERCHANT SHIPPING ACT 2002

Limitation actions

156. (1) Where the 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;

MERCHANT SHIPPING ACT 2002

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 owner or the persons referred to in section 163 as "the insurer"; 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.

(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).

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.

MERCHANT SHIPPING ACT 2002

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 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 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 owner paid the sum into court, no further steps shall be taken in the proceedings except in relation to costs.

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.

Extinguishment of claims

160. No action to enforce a claim in respect of a liability incurred under section 151 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.

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—

MERCHANT SHIPPING ACT 2002

- (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 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.

(7) If a ship attempts to leave a port in Bermuda in contravention of this section the ship may be detained.

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 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 owner.

(2) If the Minister is of opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under section 151 in all circumstances, he may refuse the certificate.

(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.

(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.

MERCHANT SHIPPING ACT 2002

(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.

Rights of third parties against insurers

163. (1) Where it is alleged that the 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 related, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security (in the following provisions of this section referred to as "the insurer").

(2) In any proceedings brought against the insurer by virtue of this section 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 willful misconduct of the owner himself.

(3) The insurer may limit his liability in respect of claims made against him by virtue of this section in like manner and to the same extent as the owner may limit his liability 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 owner as mentioned in section 155(3).

(4) Where the owner and the insurer each apply to the court for the limitation of his liability 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 relates.

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) any oil is discharged or escapes from a ship but does not result in any damage caused by contamination in the territory of Bermuda and no measures are reasonably taken to prevent or minimise such damage in that territory; or
- (b) any relevant threat of contamination arises but no measures are reasonably taken to prevent or minimise such damage in Bermuda;

MERCHANT SHIPPING ACT 2002

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(l)(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 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).

(4) The Judgments (Reciprocal Enforcement) Act 1958 shall apply, whether or not it would so apply apart from this section, to any judgment given by a court in a Liability Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to section 151; and in its application to such a judgment that Act shall have effect with the omission of sections 4(2) and (3) of that Act.

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 it shall be a 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 the Convention.

(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 and carried on; but nothing in this subsection shall authorise the issue of execution against the property of any State.

MERCHANT SHIPPING ACT 2002

Limitation of liability under section 152

166. For the purposes of section 181 any liability incurred under section 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.

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—

"the court" means the Supreme Court;

"damage" includes loss;

"oil" 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;

"relevant threat of contamination" shall be construed in accordance with section 151(2) or 152(2); and

"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 from a ship, or from a relevant threat of contamination, references in this Chapter to the owner of the ship are references to the owner 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, 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.

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)—

MERCHANT SHIPPING ACT 2002

- (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.

(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;

MERCHANT SHIPPING ACT 2002

- (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.

(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—

MERCHANT SHIPPING ACT 2002

- (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

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

(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.

(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.

MERCHANT SHIPPING ACT 2002

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.

(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.

MERCHANT SHIPPING ACT 2002

(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.

(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

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

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 in—

- (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

MERCHANT SHIPPING ACT 2002

(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 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

MERCHANT SHIPPING ACT 2002

(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.

Multiplefault; 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 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.

MERCHANT SHIPPING ACT 2002

(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.

MERCHANT SHIPPING ACT 2002

- (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.

MERCHANT SHIPPING ACT 2002

(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.

MERCHANT SHIPPING ACT 2002

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—

MERCHANT SHIPPING ACT 2002

- (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.

(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.

MERCHANT SHIPPING ACT 2002

(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.

(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;

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

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.

(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

MERCHANT SHIPPING ACT 2002

- (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.

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.

MERCHANT SHIPPING ACT 2002

(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.

(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

MERCHANT SHIPPING ACT 2002

(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.

(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.

MERCHANT SHIPPING ACT 2002

(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.

(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—

MERCHANT SHIPPING ACT 2002

- (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.

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

(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

MERCHANT SHIPPING ACT 2002

- (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.

(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);

MERCHANT SHIPPING ACT 2002

- (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 seamen 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;
- (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

MERCHANT SHIPPING ACT 2002

- (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.

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

MERCHANT SHIPPING ACT 2002

- (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;

MERCHANT SHIPPING ACT 2002

- (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,

MERCHANT SHIPPING ACT 2002

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

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

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 contravention's 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;

MERCHANT SHIPPING ACT 2002

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

MERCHANT SHIPPING ACT 2002

(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 —

MERCHANT SHIPPING ACT 2002

- (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.

MERCHANT SHIPPING ACT 2002

(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;

MERCHANT SHIPPING ACT 2002

- (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

MERCHANT SHIPPING ACT 2002

(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 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 —

MERCHANT SHIPPING ACT 2002

- (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 seaman employed in such a ship dies in a country outside Bermuda;

MERCHANT SHIPPING ACT 2002

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 seaman 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.

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

MERCHANT SHIPPING ACT 2002

- (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 —

MERCHANT SHIPPING ACT 2002

- (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.

(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

MERCHANT SHIPPING ACT 2002

- (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 seamen

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 seaman 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.

(3) Subsections (1) and (2) apply to omissions as they apply to acts.

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 seaman 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 seaman belonging to any Bermuda ship.

(2) Those powers are —

MERCHANT SHIPPING ACT 2002

- (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.

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;

MERCHANT SHIPPING ACT 2002

- (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.

(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.

MERCHANT SHIPPING ACT 2002

(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 seaman'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.

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.

MERCHANT SHIPPING ACT 2002

(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;

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

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;

MERCHANT SHIPPING ACT 2002

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 —

- (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.

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 Schedule 8.

(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.

MERCHANT SHIPPING ACT 2002

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 Schedule 8.

(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.

(6) The Minister may, by order amend the fees set out in Schedule 8.

(7) An order made under this section is subject to affirmative resolution procedure.

(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.

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.

MERCHANT SHIPPING ACT 2002

(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.

SCHEDULES

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 —

MERCHANT SHIPPING ACT 2002

- (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.

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

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;

MERCHANT SHIPPING ACT 2002

- (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.

MERCHANT SHIPPING ACT 2002

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;

MERCHANT SHIPPING ACT 2002

- (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.

MERCHANT SHIPPING ACT 2002

(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.

(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.

MERCHANT SHIPPING ACT 2002

(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

MERCHANT SHIPPING ACT 2002

- (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

MERCHANT SHIPPING ACT 2002

- (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 .

MERCHANT SHIPPING ACT 2002

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

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

(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

MERCHANT SHIPPING ACT 2002

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;

MERCHANT SHIPPING ACT 2002

- (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.

MERCHANT SHIPPING ACT 2002

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".

MERCHANT SHIPPING ACT 2002

(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

MERCHANT SHIPPING ACT 2002

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

MERCHANT SHIPPING ACT 2002

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

MERCHANT SHIPPING ACT 2002

- (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

MERCHANT SHIPPING ACT 2002

(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 135 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 135 million units of account.

(c) The maximum amount of compensation referred to in subparagraphs (a) and (b) shall be 200 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

MERCHANT SHIPPING ACT 2002

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 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.

MERCHANT SHIPPING ACT 2002

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.

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

MERCHANT SHIPPING ACT 2002

- (b) the contract of carriage has been made in a State Party to this Convention; or
- (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.
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.

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

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 —

MERCHANT SHIPPING ACT 2002

- (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.
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 —

MERCHANT SHIPPING ACT 2002

- (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 I 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

MERCHANT SHIPPING ACT 2002

- (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 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 1 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.

MERCHANT SHIPPING ACT 2002

- (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.

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

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 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;

MERCHANT SHIPPING ACT 2002

- (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) 333,000 Units of Account for a ship with a tonnage not exceeding 500 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 501 to 3,000 tons, 500 Units of Account;
 - for each ton from 3,001 to 30,000 tons, 333 Units of Account;
 - for each ton from 30,001 to 70,000 tons, 250 Units of Account; and
 - for each ton in excess of 70,000 tons, 167 Units of Account;

MERCHANT SHIPPING ACT 2002

- (b) in respect of any other claims —
 - (i) 167,000 Units of Account for a ship with a tonnage not exceeding 500 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 501 to 30,000 tons, 167 Units of Account;
 - for each ton from 30,001 to 70,000 tons, 125 Units of Account; and
 - for each ton in excess of 70,000 tons, 83 Units of Account.

2. Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1 (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 46,666 Units of Account multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate, but not exceeding 25 million Units of Account.

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.

MERCHANT SHIPPING ACT 2002

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

MERCHANT SHIPPING ACT 2002

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

MERCHANT SHIPPING ACT 2002

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

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.

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. 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.

MERCHANT SHIPPING ACT 2002

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

4. (1) The claims excluded from the Convention by paragraph (a) of article 3 include claims under article 14 of the International Convention on Salvage, 1989 as set out in Part I of Schedule 7 and corresponding claims under a contract.

(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 166,667 Units of Account; and

(b) paragraph 1(b)(i) referred to 83,333 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) In the case of 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, the ship's certificate mentioned in paragraph 1 of article 7 shall be that certificate.

(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.

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

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 by the Minister for the purposes of this paragraph and declaring that any State specified in the order is a party to the Convention 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.

SCHEDULE 7

(Section 189)

INTERNATIONAL CONVENTION ON SALVAGE 1989

PART I

TEXT OF CONVENTION

CHAPTER I - GENERAL PROVISIONS

ARTICLE I

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

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

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.
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

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

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.

MERCHANT SHIPPING ACT 2002

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, 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.

MERCHANT SHIPPING ACT 2002

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 —

MERCHANT SHIPPING ACT 2002

- (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.

MERCHANT SHIPPING ACT 2002

SCHEDULE 8

(Sections 251, 252)

PART I

REGISTRATION AND TONNAGE FEES

(Ships other than ships chartered-in by demise)

CARGO SHIPS

1. In respect of one ship —

(a) not exceeding 10,000 tons:

registration fee \$ 3,000.00

tonnage fee \$ 3,000.00

(b) exceeding 10,000 tons but not exceeding 50,000 tons:

registration fee \$ 3,000.00 plus an additional fee of 30 cents for each ton in excess of 10,000 tons

tonnage fee \$ 3,000.00 plus an additional fee of 22 cents for each ton in excess of 10,000 tons

(c) exceeding 50,000 tons:

registration fee \$15,000.00

tonnage fee \$11,800.00 plus an additional fee of 17 cents per ton for each ton in excess of 50,000 tons subject to a

MERCHANT SHIPPING ACT 2002

maximum of
\$30,000.00

2. In respect of a second ship, being in the same ownership or management, registered at the time of registration of the first ship or within 12 months of such registration —

(a) not exceeding 10,000 tons:

registration fee	\$ 2,000.00
tonnage fee	\$ 3,000.00

(b) exceeding 10,000 tons but not exceeding 50,000 tons:

registration fee	\$ 2,000.00 plus an additional fee of 20 cents per ton in excess of 10,000 tons
tonnage fee	\$ 3,000.00 plus an additional fee of 22 cents per ton for each ton in excess of 10,000 tons

(c) exceeding 50,000 tons:

registration fee	\$10,000.00
tonnage fee	\$11,800.00 plus an addi- tional fee of 17 cents per ton for each ton in excess of 50,000 tons subject to a maximum of \$30,000.00

3. In respect of a third or subsequent ship being in the same ownership or management, registered at the time of registration of the first ship or within 36 months of such registration —

(a) not exceeding 10,000 tons:

registration fee	\$ 1,000.00
tonnage fee	\$ 3,000.00

MERCHANT SHIPPING ACT 2002

(b) exceeding 10,000 tons but not exceeding 50,000 tons:	
registration fee	\$ 1,000.00
tonnage fee	\$ 3,000.00 plus an additional fee of 22 cents per ton for each ton in excess of 10,000 tons
(c) exceeding 50,000 tons:	
registration fee	\$ 1,000.00
tonnage fee	\$11,800.00 plus an addi- tional fee of 17 cents per ton for each ton in excess of 50,000 tons
	subject to a maximum of \$30,000.00

PASSENGER SHIPS

1. Passenger ships engaged in long international voyages and issued with Class I passenger ship safety certificates —

(a) not exceeding 10,000 tons:	
registration fee	\$ 6,000.00
tonnage fee	\$ 7,000.00
(b) exceeding 10,000 tons:	
registration fee	\$ 6,000.00 plus an additional fee of 35 cents for each ton in excess of 10,000 tons
tonnage fee	\$ 7,000.00 plus an additional fee of 30 cents for each

MERCHANT SHIPPING ACT 2002

		ton in excess of 10,000 tons.
2.	Passenger ships engaged in short international voyages and issued with Class II passenger ship safety certificates —	
	(a) not exceeding 10,000 tons:	
	registration fee	\$ 4,000.00
	tonnage fee	\$ 4,000.00
	(b) exceeding 10,000 tons:	
	registration fee	\$ 4,000.00 plus an additional fee of 40 cents for each ton in excess of 10,000 tons
	tonnage fee	\$ 4,000.00 plus an additional fee of 35 cents for each ton in excess of 10,000 tons.

YACHTS

1.	Pleasure yachts —	
	(a) if owned by a body corporate —	
	(i) not exceeding 15 tons:	
	registration fee	\$ 825.00
	tonnage fee	\$ 550.00
	(ii) exceeding 15 tons but not exceeding 100 tons:	
	registration fee	\$ 1,650.00
	tonnage fee	\$ 1,375.00
	(iii) exceeding 100 tons:	
	registration fee	\$ 3,300.00
	tonnage fee	\$ 2,750.00
	(b) if owned by a person other than a body corporate —	

MERCHANT SHIPPING ACT 2002

(i) not exceeding 15 tons:		
registration fee	\$	165.00
tonnage fee		Nil
(ii) exceeding 15 tons but not exceeding 100 tons:		
registration fee	\$	330.00
tonnage fee		Nil
(iii) exceeding 100 tons:		
registration fee	\$	660.00
tonnage fee		Nil.
2. Yachts of 24 metres or over in registered length engaged in commercial activity —		
registration fee	\$	5,000.00
tonnage fee	\$	3,750.00

PART II

REGISTRATION AND TONNAGE FEES

(Ships chartered-in by demise)

CARGO SHIPS

1. In respect of one ship —		
(a) not exceeding 10,000 tons:		
registration fee	\$	2,000.00
tonnage fee		
(i) in respect of ships registered before 1 April 1999	\$	2,875.00
(ii) in respect of ships registered on or after 1 April 1999	\$	3,000.00
(b) exceeding 10,000 tons but not exceeding 50,000 tons:		
registration fee	\$	2,000.00 plus an additional

MERCHANT SHIPPING ACT 2002

		fee of 20 cents for each ton in excess of 10,000 tons
	tonnage fee	
	(i) in respect of ships registered before 1 April 1999	\$ 6,750.00
	(ii) in respect of ships registered on or after 1 April 1999	\$ 3,000.00 plus an additional fee of 22 cents for each ton in excess of 10,000 tons
(c)	exceeding 50,000 tons:	
	registration fee	\$10,000.00
	tonnage fee	
	(i) in respect of ships registered before 1 April 1999	\$10,500.00
	(ii) in respect of ships registered on or after 1 April 1999	\$11,800.00 plus an addi- tional fee of 17 cents per ton for each ton in excess of 50,000 tons subject to a maximum of \$30,000.00

2. In respect of a second ship, being in the same ownership or management, registered at the time of registration of the first ship or within 12 months of such registration —

(a)	not exceeding 10,000 tons:	
	registration fee	\$ 1,500.00
	tonnage fee	
	(i) in respect of ships registered	

MERCHANT SHIPPING ACT 2002

	before 1 April 1999	\$ 2,875.00	
(ii)	in respect of ships registered		
	on or after 1 April 1999	\$ 3,000.00	
(b) exceeding 10,000 tons but not exceeding 50,000 tons:			
	registration fee	\$ 1,500.00	plus additional cents in of
		an fee of 15 per ton excess 10,000 tons	tonnage fee
(i)	in respect of ships registered		
	before 1 April 1999	\$ 6,750.00	
(ii)	in respect of ships registered		
	after 1 April 1999	\$ 3,000.00 plus an additional fee of 22 cents per ton for each ton in excess of 10,000 tons	
(c) exceeding 50,000 tons:			
	registration fee	\$ 7,500.00	
	tonnage fee		
(i)	in respect of ships registered		
	before 1 April 1999	\$10,500.00	
(ii)	in respect of ships registered		
	on or after 1 April 1999	\$11,800.00 plus an additional fee of 17 cents per ton for each ton in excess of 50,000 tons subject to a maximum of \$30,000.00	

MERCHANT SHIPPING ACT 2002

3. In respect of a third or subsequent ship being in the same ownership or management, registered at the time of registration of the first ship or within three years of such registration —

(a) not exceeding 10,000 tons:

registration fee \$ 1,000.00

tonnage fee

(i) in respect of ships registered

before 1 April 1999 \$ 2,875.00

(ii) in respect of ships registered

on or after 1 April 1999 \$ 3,000.00

(b) exceeding 10,000 tons but not exceeding 50,000 tons:

registration fee \$ 1,000.00

tonnage fee

(i) in respect of ships registered

before 1 April 1999 \$ 6,750.00

(ii) in respect of a ship registered

on or after 1 April 1999 \$ 3,000.00 plus
an additional
fee of 22
cents per ton
for each ton in
excess of
10,000 tons

(c) exceeding 50,000 tons:

registration fee \$ 1,000.00

tonnage fee

(i) in respect of ships registered

before 1 April 1999 \$10,500.00

(ii) in respect of ships registered

on or after 1 April 1999 \$11,800.00
plus an
additional fee of
17 cents per
ton for each

MERCHANT SHIPPING ACT 2002

ton in excess of	50,000 tons
	subject to a
	maximum of
\$30,000.00	

PASSENGER SHIPS

1. Passenger ships engaged in long international voyages and issued with Class I passenger ship safety certificates —

- | | |
|--------------------------------|--|
| (a) not exceeding 10,000 tons: | |
| registration fee | \$ 6,000.00 |
| tonnage fee | \$ 7,000.00 |
| (b) exceeding 10,000 tons: | |
| registration fee | \$ 6,000.00 plus
an additional
fee of 35 cents
for each ton in
excess of
10,000 tons |
| tonnage fee | \$ 7,000.00 plus
an additional
fee of 30 cents
for each ton in
excess of
10,000 tons. |

2. Passenger ships engaged in short international voyages and issued with Class II passenger ship safety certificates —

- | | |
|--------------------------------|---|
| (a) not exceeding 10,000 tons: | |
| registration fee | \$ 4,000.00 |
| tonnage fee | \$ 4,000.00 |
| (b) exceeding 10,000 tons: | |
| registration fee | \$ 4,000.00 plus
an additional
fee of 40 cents
for each ton in
excess of
10,000 tons |

MERCHANT SHIPPING ACT 2002

tonnage fee	\$ 4,000.00 plus an additional fee of 35 cents for each ton in excess of 10,000 tons.
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YACHTS

Yachts of 24 metres or over in registered length engaged in commercial activity:

registration fee	\$ 5,000.00
tonnage fee	\$ 3,750.00".

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

MERCHANT SHIPPING ACT 2002

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 seamen

52. (1) The master of a ship shall not in Bermuda sign a seaman 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", "seaman" 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.

MERCHANT SHIPPING ACT 2002

(2) In this section "ships" has the same meaning as in the Merchant Shipping Act 2002."

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 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.

MERCHANT SHIPPING ACT 2002

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);
- (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).