



BERMUDA

MERCHANT SHIPPING AMENDMENT ACT 2020

2020 : 22

TABLE OF CONTENTS

1	Citation
2	Amends section 2
3	Inserts section 121ZA
4	Amends section 179
5	Amends section 180
6	Amends section 254
7	Inserts section 254A
8	Inserts Schedule 3A
9	Revokes BR 45 of 2005
10	Consequential amendment
11	Commencement and validation

SCHEDULE

WHEREAS it is expedient to amend the Merchant Shipping Act 2002 and make consequential amendments;

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:

Citation

1 This Act may be cited as the Merchant Shipping Amendment Act 2020.

Amends section 2

2 Section 2(1) of the Merchant Shipping Act 2002 ("the principal Act") is amended by inserting the following definition in its proper alphabetical position—

MERCHANT SHIPPING AMENDMENT ACT 2020

“Exclusive Economic Zone” (used in relation to Bermuda) means the exclusive economic zone proclaimed in the Proclamation Establishing an Exclusive Economic Zone for Bermuda 1996 No. 407;”.

Inserts section 121ZA

3 The principal Act is amended by inserting the following section next after section 121—

“Safety directions

121ZA A provision made by or by virtue of this Act (including one which creates an offence) shall have no effect in so far as it—

- (a) is inconsistent with the exercise by or on behalf of the Minister, of a power under Schedule 3A (safety directions);
- (b) would interfere with a person’s compliance with a direction under Schedule 3A; or
- (c) would interfere with an action taken by virtue of Schedule 3A.”.

Amends section 179

4 Section 179 of the principal Act is amended by repealing subsection (7).

Amends section 180

5 Section 180 of the principal Act is amended by repealing subsection (3).

Amends section 254

6 Section 254 of the principal Act is amended —

- (a) by repealing subsection (4A) and substituting the following subsections next after subsection (4)—
 - “(4A) The Minister may by order amend Schedule 6.
 - (4B) The Minister may by order amend Schedule 12.”; and
- (b) in subsection (5) by deleting “regulations” and substituting “regulations, orders, rules and notices”.

Inserts section 254A

7 The principal Act is amended by inserting the following section next after section 254—

“Ambulatory references to international instruments

254A (1) This section applies, where the Minister has power under this Act to make regulations, and the Minister exercises that power, to make regulations which—

MERCHANT SHIPPING AMENDMENT ACT 2020

- (a) give effect to an international instrument, in respect of Bermuda;
or
 - (b) refer to an international instrument.
- (2) The power may be exercised so as to have the effect that the referenced international instrument, is construed—
 - (a) as a reference to the instrument as modified from time to time; and
 - (b) if the instrument is replaced by another instrument, as a reference to that other instrument.
- (3) For the purposes of subsection (2)(a), an international instrument is modified if—
 - (a) amendments, omissions, additions or other alterations to the text of the instrument, take effect; or
 - (b) a supplementary provision made under the instrument takes effect.
- (4) In this section, a provision in regulations made by virtue of subsection (2) is referred to as an ambulatory provision.
- (5) Regulations which make an ambulatory provision may make provision as to—
 - (a) when a modification of an international instrument is to be treated as taking effect, for the purposes of subsections (2)(a) and (3); and
 - (b) when an international instrument is to be treated as having been replaced by another instrument, for the purposes of subsection (2)(b).
- (6) Regulations which make ambulatory provisions may—
 - (a) make transitional provisions in respect of rights or liabilities arising before the date on which a modification takes effect;
 - (b) require the Minister to publicise a modification—
 - (i) by notice in the Gazette;
 - (ii) on the website of the Bermuda Shipping and Maritime Authority;
 - (iii) by oral or written statement to the Legislature; or
 - (iv) in another specified way;
 - (c) include a Schedule setting out the text of the international instrument, in the form in which it has effect when the regulations are made;

MERCHANT SHIPPING AMENDMENT ACT 2020

- (d) provide for publication of the text of the international instrument in any other specified way, as it has effect when the regulations are made and with or without provision for re-publication of the text of the instrument as it has effect, from time to time; and
 - (e) authorise a person publishing a text of the regulations (whether under authority or not), to substitute, for any version of the international instrument set out in a Schedule to the regulations, the version having effect from time to time, in accordance with the regulations.
- (7) In this section—
- (a) a reference to an international instrument includes a reference to—
 - (i) a provision or part of the international instrument;
 - (ii) any protocol, appendix, annex or other addition to the international instrument; and
 - (iii) any code, scheme or other instrument which has effect under or by virtue of the international instrument; and
 - (b) “regulations” include orders, rules and notices made under this Act.”.

Inserts Schedule 3A

8 (1) The principal Act is amended by inserting the Schedule to this Act, as Schedule 3A, next after Schedule 3.

(2) Schedule 3A (safety directions) has effect.

Revokes BR 45 of 2005

9 The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2005 are revoked.

Consequential amendment

10 The Dangerous Vessels Act 1990 is amended by inserting the following section next after section 6—

“Savings for safety directions

6A Directions under section 3 of this Act shall have no effect in so far as they—

- (a) are inconsistent with the exercise by or on behalf of the Minister, of a power under Schedule 3A to the Merchant Shipping Act 2002 (Safety directions);
- (b) would interfere with a person’s compliance with a direction under that Schedule; or

MERCHANT SHIPPING AMENDMENT ACT 2020

(c) would interfere with an action by virtue of that Schedule.”.

Commencement and validation

11 (1) Subject to subsection (2), this Act comes into force on assent.

(2) Section 7 shall be deemed to have come into force on 18 February 2019; and accordingly any ambulatory provisions in regulations made by the Minister under the principal Act on or after that date are hereby declared to be valid.

SCHEDULE

(section 8)

SCHEDULE 3A

(section 121ZA)

SAFETY DIRECTIONS

Direction following accident: person in control of ship

1 (1) The Minister may give a direction under this paragraph in respect of a ship, if in his opinion—

- (a) a ship has been involved in an accident or there has been an accident on a ship;
- (b) the accident has created a risk to safety or a risk of pollution by a hazardous substance; and
- (c) the direction is necessary to remove or reduce the risk.

(2) The direction may be given to—

- (a) the owner of the ship;
- (b) a person in possession of the ship;
- (c) the master of the ship;
- (d) a pilot of the ship;
- (e) the owner of a hazardous substance in the ship;
- (f) a salvor in possession of the ship;
- (g) a person who is the servant or agent of a salvor in possession of the ship and who is in charge of the salvage operation; or
- (h) the port authority or the harbour master, where the ship is in port, or has been directed to move into waters which are regulated or managed by a port or harbour authority.

(3) The direction may require the person to whom it is given to take or refrain from taking any specified action in relation to—

- (a) the ship;
- (b) anything which is or was in the ship;
- (c) anything which forms or formed part of the ship;
- (d) anything which is or was being towed by the ship; or
- (e) a person on the ship.

MERCHANT SHIPPING AMENDMENT ACT 2020

- (4) In particular, the direction may require a person to ensure that—
- (a) a ship or other thing is moved or not moved;
 - (b) a ship or other thing is moved or not moved to or from a specified place or area or over a specified route;
 - (c) a cargo is or is not unloaded or discharged;
 - (d) a substance is or is not unloaded or discharged;
 - (e) specified salvage measures are taken or not taken; or
 - (f) a person is put ashore or on board a ship.

Direction following accident: person in control of land

2 (1) The Minister may give a direction under this paragraph in respect of a ship, if in his opinion—

- (a) a ship has been involved in an accident or there has been an accident on a ship;
 - (b) the accident has created a risk to safety or a risk of pollution by a hazardous substance; and
 - (c) the direction is necessary to remove or reduce the risk.
- (2) The direction may be given to a person in charge of coastal land or premises.
- (3) For the purposes of this paragraph—
- (a) a person is in charge of coastal land or premises if he is wholly or partly able to control the use made of the land or premises; and
 - (b) “coastal” means adjacent to or accessible from Bermuda waters over which the public is permitted to navigate.
- (4) The direction may require the person to whom it is given, to grant access or facilities to, or, in relation to the ship, or, any person or thing which is or was on the ship.
- (5) In particular, a direction may require a person to—
- (a) permit persons to land;
 - (b) make facilities available for the undertaking of repairs or other works; or
 - (c) make facilities available for the landing, storage and disposal of cargo or of other things.
- (6) A direction under this paragraph—
- (a) must be given in writing; or
 - (b) where it is not reasonably practicable to give it in writing, must be confirmed in writing as soon as it is reasonably practicable.

MERCHANT SHIPPING AMENDMENT ACT 2020

Other direction

3 (1) The Minister may give a direction in respect of a ship under this paragraph if in his opinion it is necessary for—

- (a) securing the safety of a ship;
- (b) securing the safety of persons or property; or
- (c) preventing or reducing pollution.

(2) The direction may be given to—

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

(3) The direction may require the person to whom it is given to ensure that the ship is—

- (a) moved or not moved from a specified place or area in Bermuda waters;
- (b) moved or not moved to a specified place or area in Bermuda waters;
- (c) moved or not moved over a specified route in Bermuda waters; or
- (d) removed from Bermuda waters.

Action in lieu of direction

4 (1) This paragraph applies where the Minister thinks that circumstances exist which entitle him to give a direction under this Schedule, but the giving of a direction is not likely to achieve a sufficient result.

(2) This paragraph also applies where the Minister has given a direction under this Schedule, but in his opinion, the direction has not achieved a sufficient result.

(3) The Minister may take such action as appears to him necessary or expedient for the purpose for which the direction could have been given or was given.

(4) In particular, the Minister may—

- (a) authorise a person to enter land or make use of facilities;
- (b) authorise a person to do anything which the Minister can require a person to do by a direction;
- (c) authorise a person to assume control of a ship; or
- (d) make arrangements or authorise the making of arrangements for the sinking or destruction of a ship.

Enforcement

5 (1) A person to whom a direction is given under this Schedule—

MERCHANT SHIPPING AMENDMENT ACT 2020

- (a) must comply with the direction; and
 - (b) must comply with the direction in a manner which avoids risk to human life.
- (2) A person commits an offence if he contravenes sub-paragraph (1).
- (3) It is a defence for a person charged with an offence under sub-paragraph (1), to prove that—
- (a) he tried as hard as he could to comply with the relevant direction; or
 - (b) he reasonably believed that compliance with the direction would involve a serious risk to human life.
- (4) A person commits an offence if he intentionally obstructs a person who is—
- (a) acting on behalf of the Minister in connection with the giving of a direction under this Schedule;
 - (b) complying with a direction under this Schedule; or
 - (c) acting by virtue of paragraph 4.
- (5) A person found guilty of an offence under sub-paragraph (2) or (4) is liable—
- (a) on summary conviction, to a fine not exceeding \$100,000; or
 - (b) on conviction on indictment, to an unlimited fine.
- (6) No prosecution shall be instituted for an offence under sub-paragraph (2) or (4) without the consent of the Director of Public Prosecutions.

Variation and revocation

- 6 (1) A direction given under this Schedule may be varied or revoked by a further direction.
- (2) If the Minister thinks that a direction given under this Schedule is wholly or partly no longer necessary for the purpose for which it was given, he shall vary or revoke the direction as soon as reasonably practicable.
- (3) Where the Minister has given a direction to a person under this Schedule, he shall consider any representations about varying or revoking the direction, which are made to him by that person.

Procedure

- 7 (1) This paragraph applies where the Minister proposes to give a direction under this Schedule, to a company or other body.
- (2) The Minister may serve the direction in such manner as he thinks most suitable.
- (3) A person acting on behalf of the Minister may—
- (a) board a ship for the purpose of serving a direction under this Schedule; or

MERCHANT SHIPPING AMENDMENT ACT 2020

(b) enter land or premises for that purpose.

(4) Before giving a direction under paragraph 2 in respect of land or premises, the Minister shall, unless he thinks that it is not reasonably practicable—

- (a) give the person to whom he proposes to give the direction, an opportunity to make representations; and
- (b) consider any representations made.

Unreasonable loss and damage

8 (1) This paragraph applies where action taken in accordance with a direction under this Schedule or by virtue of paragraph 4 (“remedial action”)—

- (a) was not reasonably necessary for the purpose for which the direction was given; or
- (b) caused loss or damage which could not be justified by reference to that purpose.

(2) The Minister shall pay compensation to any person who suffers loss or damage as a result of the remedial action (whether it was taken by him or someone else), if the person applies to the Minister for compensation.

(3) In considering what is reasonably necessary or justifiable for the purpose of sub-paragraph (1), account shall be taken of—

- (a) the extent of the risk to safety or threat of pollution which the direction was intended to address;
- (b) the likelihood of the remedial action being effective; and
- (c) the extent of the loss or damage caused by the remedial action.

Expenses

9 (1) This paragraph applies where—

- (a) a direction is given to a person in respect of a ship under paragraph 2; or
- (b) the Minister relies on paragraph 4 to take or authorise action in respect of a ship in lieu of a direction under paragraph 2.

(2) The person to whom a direction is given is entitled to recover the costs of his compliance with the direction, from the owner of the ship.

(3) A person in charge of coastal land or premises is entitled to recover from the owner of the ship, costs incurred by him as a result of action taken by virtue of paragraph 4, in relation to that coastal land or premises.

(4) The Minister may make payments to a person on account of sums recoverable by that person under sub-paragraph (2) or (3).

(5) The Minister is entitled to recover from the owner of the ship—

MERCHANT SHIPPING AMENDMENT ACT 2020

- (a) costs incurred in connection with the giving of a direction;
 - (b) costs incurred in connection with action taken under paragraph 4; and
 - (c) costs incurred under sub-paragraph (4).
- (6) A right under sub-paragraph (2), (3) or (5) permits the recovery of costs only in so far as they are not recoverable—
- (a) under another enactment;
 - (b) by virtue of an agreement; or
 - (c) under the law relating to salvage.

Jurisdiction

10 The Admiralty jurisdiction of the Supreme Court shall include jurisdiction to hear and determine any claim arising under paragraph 8 or 9.

Ships to which Schedule applies

- 11 (1) A direction under paragraph 1 or 2, in so far as it relates to a risk of pollution, may have effect in respect of a ship only if it is—
- (a) a Bermuda ship; or
 - (b) in Bermuda waters.
- (2) The Minister may by order provide that a direction under paragraph 1 or 2, in so far as it relates to a risk of pollution, may have effect in respect of a ship which—
- (a) is not a Bermuda ship; and
 - (b) is not in Bermuda waters.
- (3) An order under this paragraph—
- (a) may be expressed to apply generally or only in specified circumstances;
 - (b) may make different provisions for different circumstances;
 - (c) may provide for this Schedule to have effect in cases to which the order applies, with specified modifications; and
 - (d) may contain transitional or consequential provisions (including provisions amending an enactment).
- (4) A direction under paragraph 1 or 2, in so far as it relates to a risk to safety, may have effect in respect of a ship only if it is in Bermuda waters and—
- (a) it is not a qualifying foreign ship; or
 - (b) it is a qualifying foreign ship which in the Minister's opinion, is neither exercising the right of innocent passage nor the right of transit passage through straits used for international navigation.

MERCHANT SHIPPING AMENDMENT ACT 2020

(5) A direction under paragraph 3 may have effect in respect of a ship, only if it is in Bermuda waters and—

- (a) it is not a qualifying foreign ship; or
- (b) it is a qualifying foreign ship which in the Minister's opinion is neither exercising the right of innocent passage nor the right of transit passage through straits used for international navigation.

(6) A direction may not be given under paragraph 3(3)(d) in respect of a Bermuda ship.

(7) A direction may not be given under paragraph 1(2)(a) to (d) or 3 in respect of—

- (a) a ship of Her Majesty's Navy; or
- (b) a Government ship.

Interpretation

12 (1) In this Schedule—

“accident” means a collision of ships, a stranding, another incident of navigation or another event (whether on board a ship or not) which results in material damage to a ship or its cargo or is an imminent threat of material damage to a ship or its cargo;

“action” includes omission;

“enactment” means an Act of the Legislature or an instrument made under an Act of the Legislature;

“harbour master” includes a dock master or pier master, and any person specially appointed by a harbour authority for the purpose of enforcing this Schedule, in relation to the harbour;

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

“pilot” means a person who does not belong to a ship but who has the conduct of it;

“pollution” means significant pollution in Bermuda waters, Bermuda territorial waters or the Exclusive Economic Zone of Bermuda;

“risk to safety” means a risk to the safety of persons, property or anything navigating in or using Bermuda waters.

(2) In this Schedule “hazardous substance” means—

- (a) oil;
- (b) any other substance which creates a hazard to human health, harms living resources or marine life, damages amenities or interferes with lawful use of the sea; or

MERCHANT SHIPPING AMENDMENT ACT 2020

- (c) any substance prescribed by order of the Minister, as hazardous.

Savings

13 Nothing in this Schedule shall be taken to prejudice any right or power of the Government of Bermuda.

Safety directions and ships under arrest

- 14 (1) This paragraph applies where action is taken—
- (a) in respect of a ship which is under arrest or in respect of anything in a ship which is under arrest; and
 - (b) in accordance with a direction under this Schedule or by virtue of an action under paragraph 4.
- (2) An action under paragraph 4 shall not—
- (a) be treated as a contempt of court; or
 - (b) give rise to civil liability on the part of the Government.

[Assent Date: 16 June 2020]

[Operative Date: 16 June 2020]