



BERMUDA

MERCHANT SHIPPING AMENDMENT ACT 2021

2021 : 5

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WHEREAS it is expedient to amend the Merchant Shipping Act 2002 to fully implement the Wreck Removal Convention 2007 in the municipal law of Bermuda and update the Act to reflect current practice in the maritime field;

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 2021.

Inserts sections 73 to 80A

2 The Merchant Shipping Act 2002 ("the principal Act") is amended by inserting the following sections next after section 72—

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“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;
 - (b) has been seriously negligent in the discharge of his duties; or
 - (c) has failed to comply with 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 Regulations made under 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(1) 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 by any of the matters mentioned in subsection (1) (a) to (c), cancel or suspend any certificate issued to him under Regulations made 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 immediately to the persons holding the inquiry or to the Minister.

(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 Regulations made under section 59, other than one certifying that a person is qualified as an officer.

Inquiry into fitness or conduct of seafarer 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(1) 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 may—

- (a) confirm the decision of the Minister and cancel or suspend the certificate accordingly;
- (b) where the decision was to cancel the certificate, suspend it instead;
- (c) where the decision was to suspend the certificate, suspend it for a different period; or
- (d) instead of confirming the decision of the Minister, censure the holder of the certificate and take no further action,

and make a report on the case to the Minister.

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(4) The persons holding an inquiry under this section may make such order with regard to the costs of the inquiry as they think just.

(5) If the certificate is cancelled or suspended, it shall be delivered immediately to the persons holding the inquiry or to the Minister.

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

Rehearing 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 appears 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 rehearing under this section which is not held by the Supreme Court shall be conducted in accordance with Rules made under section 77(1).

(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 rehearing under section 76 which is not held by the Supreme Court.

(2) Notwithstanding subsection (1), Rules made 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 rehearings under section 76 which are held by the Supreme Court, or of appeals to the Supreme Court, may require the court, subject to such exceptions, if any, as may be allowed by the Rules, to hold such a rehearing or hear such an appeal with the assistance of one or more assessors.

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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 commits an offence and is liable on summary conviction, to a fine of \$10,000.

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 reissue 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 seafarer

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 that—
 - (i) 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) he has been duly served with the summons; and
 - (iii) 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.

Refusal to give evidence to inquiry

80A (1) 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—

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- (a) commit him to custody until the end of a 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
- (b) impose on him a fine of \$10,000,

or both.

(2) A fine imposed under subsection (1)(b) shall be treated for the purposes of its collection, enforcement and remission as having been imposed by a 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.”.

Amends section 216A

3 Section 216A of the principal Act is amended—

- (a) in subsection (1) by inserting the following definitions in their proper alphabetical positions—

“hazard” means any condition or threat that—

- (a) poses a danger or impediment to navigation; or
- (b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline of Bermuda or related interests of one or more States;

“related interests” means the interests of Bermuda directly affected or threatened by a wreck, such as—

- (a) maritime, coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;
- (b) tourist attractions and other economic interests of Bermuda;
- (c) the health of the coastal population and the well-being of Bermuda, including conservation of marine living resources and of wildlife; and
- (d) offshore and underwater infrastructure;

“removal” means any form of prevention, mitigation or elimination of the hazard created by a wreck and “remove”, “removed” and “removing” shall be construed accordingly;

“wreck” following upon a maritime casualty, means—

- (a) a sunken or stranded ship;
- (b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship;

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- (c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or
- (d) a ship that is about, or may reasonably be expected to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken;"; and

(b) by inserting the following subsection next after subsection (2)–

“(3) On the extension of the Wrecks Convention to Bermuda, the Chief Executive Officer of the Bermuda Shipping and Maritime Authority shall as soon as possible, notify the Secretary-General of the International Maritime Organization of the extent of the Bermuda Convention Area.”.

Amends section 216C

4 Section 216C of the principal Act is amended by inserting the following subsection next after subsection (5)–

“(6) A claim against a registered owner in respect of costs incurred under this section in respect of a wreck in Bermuda’s exclusive economic zone shall be brought only under this section.”.

Amends section 216D

5 Section 216D of the principal Act is amended by–

(a) inserting the following subsections next after subsection (1)–

“(1A) In making a determination under subsection (1)(b) in respect of a wreck in Bermuda’s exclusive economic zone, the Minister shall ensure that any measures or conditions proposed–

- (a) are proportionate to the hazard;
- (b) do not go beyond what is reasonably necessary to remove the wreck, and shall cease as soon as the wreck has been removed; and
- (c) shall not unnecessarily interfere with the rights and interests of–
 - (i) other States, including the ship’s flag State; or
 - (ii) any other person that may be affected.

(1B) Where the Minister determines that a wreck constitutes a hazard, the Minister shall–

- (a) give the ship’s registered owner notice of the wreck in accordance with subsection (2);
- (b) inform the ship’s flag State; and

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(c) where the wreck is in Bermuda's exclusive economic zone, consult the ship's flag State and any other State affected by the wreck, regarding measures to be taken in relation to the wreck.”; and

(b) inserting the following subsections next after subsection (3)–

“(3A) The registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard, on behalf of the registered owner.

(3B) Before such removal commences, the Minister may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

(3C) When a wreck has been determined to constitute a hazard, the registered owner or other interested party, shall provide the Minister with evidence of insurance or other financial security, as required by subsection (2).”.

Amends section 216F

6 Section 216F of the principal Act is amended by–

(a) inserting the following subsections next after subsection (1)–

“(1A) Where the Minister removes a wreck in Bermuda's exclusive economic zone, the Minister shall ensure that any measures taken to remove the wreck–

(a) are proportionate to the hazard;

(b) do not go beyond what is reasonably necessary to remove the wreck and shall cease as soon as the wreck has been removed; and

(c) shall not unnecessarily interfere with the rights and interests of–

(i) other States, including the ship's flag State; or

(ii) any other person that may be affected.

(1B) The Minister shall before removing a wreck in Bermuda's exclusive economic zone, consult the ship's flag State and any other persons affected by the wreck with regards to measures to be taken in relation to the wreck.”; and

(b) inserting the following subsection next after subsection (5)–

“(6) A claim against a registered owner in respect of costs incurred under this section in respect of a wreck in Bermuda's exclusive economic zone shall be brought only under this section.”.

Amends section 216J

7 Section 216J of the principal Act is amended by inserting the following subsection next after subsection (5)–

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“(5A) The registered owner of a ship of 300 gross tonnage and above, flying the flag of Bermuda shall be required to maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability under the Wrecks Convention in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases, not exceeding an amount calculated in accordance with Article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims 1976 as amended.”.

Amends section 216N

8 Section 216N of the principal Act is amended by—

(a) inserting the following subsections next after subsection (3)—

“(3A) The Minister may authorise an institution or an organisation recognised by him to issue the certificate referred to in subsection (2).

(3B) Such institution or organisation shall inform the Minister, of the issue of each certificate and the Minister shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.

(3C) The Minister shall notify the Secretary-General of the International Maritime Organization of—

- (a) the specific responsibilities and conditions of the authority delegated to an institution or organisation recognised by it;
- (b) the withdrawal of such authority; and
- (c) the date from which such authority or withdrawal of such authority takes effect.

(3D) An authority delegated shall not take effect prior to three months from the date on which notification to that effect is given to the Secretary-General.

(3E) The institution or organisation authorised to issue certificates in accordance with this section shall have the authority to withdraw these certificates, if the conditions under which they have been issued are not maintained; in all cases, the institution or organisation shall report such withdrawal, to the State on whose behalf the certificate was issued.”; and

(b) inserting the following subsection next after subsection (5)—

“(5A) A certificate issued or certified under the authority of a Convention State shall be accepted by the Minister and shall be regarded as having the same force and effect as a certificate issued or certified by the Minister.”.

Inserts section 216PA

9 The principal Act is amended by inserting the following section next after section 216P—

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“Exceptions to liability

216PA To the extent that measures under this Act or the Wrecks Convention are considered to be salvage under applicable national law or an international convention, such law or convention shall apply to questions of the remuneration or compensation payable to salvors to the exclusion of the provisions of this Act or the Wrecks Convention.”.

Inserts section 216SA

10 The principal Act is amended by inserting the following section next after section 216S—

“Exclusion

216SA (1) This Part does not apply to measures taken under—

- (a) the Conventions listed in subsection (2); and
- (b) enactments that implement those Conventions in Bermuda.

(2) The Conventions are—

- (a) the Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969; and
- (b) the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil 1973.”.

Amends section 228

11 Section 228 of the principal Act is amended in subsection (4) by deleting “Chief Marine Surveyor” wherever it occurs and substituting “Chief Executive Officer of the Bermuda Shipping and Maritime Authority”.

[Assent Date: 22 January 2021]

[Operative Date: 22 January 2021]