

THE HARBOURS ACT

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THE HARBOURS ACT

[1st January, 1874.]

Cap. 145.
Act
1 of 1963,
42 of 1969
3rd Sch.

1. This Act may be cited as the Harbours Act.

Short title.

2. In this Act—

Interpreta-
tion.

“boat” means any canoe or craft undecked however propelled;

“captain” includes the master or person for the time being in charge of any vessel;

“Harbour Master” means the Harbour Master of the harbour in or nearest to which the duty or work is or has to be performed or in or nearest to which the act or omission shall have occurred, or the deputy of such Harbour Master as the case may be;

“mud” includes tidal mud and all other mud of any description, and all mixtures of earth or sand with mud;

“owner” means at the selection of the Authority the person who was owner at the time the vessel, wreck, hulk or floating timber became an obstruction in any harbour, or the person who has subsequently become owner by purchase or otherwise;

“reinstate” means with respect to any buoy, stake, or mark, the complete restoring of the buoy, stake, or mark to its previous position, condition, state of repair and efficiency, with all its peculiarities as a guide or mark for vessels, and in all cases in which it may in the opinion of the Harbour Master be necessary, the substitution of an entirely new buoy, stake, or mark in the same position, and in good and efficient condition, and of good materials, to the satisfaction of the Harbour Master;

“vessel” means any decked vessel or craft, whatever may be its rig or tonnage, and whether propelled by sail, steam or otherwise.

Power to constitute and declare the extent of, alter and abolish harbours.

3. The Minister may from time to time constitute any port, roadstead, bay, creek, or inlet, or any waters or places, to be a harbour of this Island, and may define and declare the extent and boundaries of any harbour now existing, or hereafter to be constituted, and may alter the extent or boundaries of any harbour and may abolish any harbour and declare the same to be no longer a harbour of this Island, and may reconstitute any harbour, and all legal harbours existing, on the coming into operation of this Act, shall continue to be harbours within the meaning of this Act, until so abolished or altered.

Harbour of Kingston its extent.

4. Until and except as altered under this Act, the Harbour of Kingston shall include all the body of water between the shores in the parishes of Kingston, St. Andrew, Saint Catherine, to the northward of the Palisadoes, from Harbour Head to Port Royal, and of a straight line from the westernmost point of the land at Fort Charles, in Port Royal, to the southernmost point of the Twelve Apostles Battery.

Appointment, and removal, Harbour Master.

5. It shall be lawful for the Governor-General from time to time to appoint a fit and proper person as Harbour Master to any harbour of this Island, and to remove any Harbour Master, and the same person may be appointed Harbour Master of more than one harbour.

Disqualifications for Harbour Master.

6. No person shall be appointed Harbour Master for any harbour in which he acts as agent or consignee for vessels, or on the shores of which is a wharf in which he has any interest as absolute or partial owner, tenant, or wharfinger; and every Harbour Master who shall become such agent or

consignee, or shall become so interested in any such wharf, shall be deemed to have resigned his appointment as such Harbour Master, and the Governor-General shall in such case appoint some other person to fill the vacancy in such office.

7.—(1) The Authority may make rules for the regulation and control of any harbour in the Island and of the channels and approaches leading thereto and of persons, boats and vessels using any such harbour or approaches, and for all purposes connected with any such matters. Rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may—

- (a) regulate the movement of boats and vessels in any harbour, or in the channels or approaches thereto, and the conduct of the Masters of, and of all persons on board, any such boats or vessels;
- (b) prescribe the construction of, and accommodation on, any boats or vessels to be licensed for use in such harbours, channels or approaches for carrying passengers, and the safety devices to be provided and the safety measures to be employed on such boats and vessels;
- (c) provide for the granting and refusing by the Authority of licences for boats and vessels to be used for carrying passengers or goods in such harbours, channels and approaches, and for persons owning or operating such boats or vessels, and for the conditions to be attached to the grant of such licences;
- (d) provide for the granting and refusing by the Authority of certificates of competency to all persons engaged in the navigation or handling of any boats or vessels to be used for carrying passengers or goods in such harbours, channels or approaches;

- (e) provide for the inspection and examination of any boats or vessels to be used for carrying passengers or goods in such harbours, channels or approaches;
- (f) provide for the charging of fees (and prescribe the fees to be charged) in connection with any matter or thing to be done under rules made under this section, and for the payment of fees to the prescribed persons;
- (g) provide for the charging of travelling allowance and subsistence allowance (and prescribe the rates of such allowances) in respect of the travelling or of the subsistence of any person performing any inspection or examination of any boat or vessel under paragraph (e) and for the payment of such allowances to the prescribed persons;
- (h) prescribe penalties, not exceeding two hundred dollars, for the breach of any rule.

(3) The making, alteration or rescission of any rules under the provisions of this section shall be subject always to the approval of the Minister.

Duty of Harbour Master as to buoys, etc.

8. It shall be the duty of each Harbour Master, at the expense of the Island, to keep in good and sufficient order and repair, and in their proper places, and with all special distinctions of colouring and shape, all buoys, stakes, and marks for the time being of the harbour of which he is Harbour Master, and of all channels near or leading into or out of the same, and also, when directed by the Minister, to erect, float, and place other marks, stakes, or buoys in such places, and of such colours and shapes, and in such manner as the Minister shall direct, and to keep and render to the Accountant-General accounts of the expense thereof, in such manner as may be directed by the Minister.

Penalty on obstructions to buoys.

9. If any person makes fast, or hangs on, or secures any vessel, boat, or lumber to any buoy, stake, or mark in any harbour, or on or near any of the shoals, islands, or quays

in, about or near any harbour of this Island, or in, about, or near any channel in or leading into such harbour, or causes any obstruction to any vessel approaching, or going out of, or navigating in such harbour, by surrounding with boats, canoes, or lumber, any of such buoys, stakes, or marks, he shall be liable to a penalty not exceeding forty dollars.

10. If any person removes, injures, alters, or destroys any such buoy, stake, or mark, or any stave or vane attached thereto, he shall be liable to a penalty not exceeding eighty dollars, and also to pay all expenses of reinstating such buoy, stake or mark.

Penalty on injury, removal, etc., of any buoy, etc.

11. If any vessel or boat shall in any way remove, displace, or injure any such buoy, stake, or mark, the person in charge of such vessel or boat shall pay all expense incurred in reinstating such buoy, stake, or mark, and in every case of such removal, displacement or injury by any vessel, the Harbour Master shall give notice thereof to the chief officer of Customs at the port of clearance, and in case such vessel was at the time in charge of any person other than a pilot, it shall not be entitled to a clearance until such person shall have lodged with the Collector of Customs a sum sufficient, in the opinion of the Harbour Master, to reinstate such buoy, mark, or stake; and if such vessel were in charge of a pilot, such pilot shall not be entitled to pilot any vessel in or out of such harbour until he shall have lodged with the Collector of Customs a sum sufficient, in the opinion of the Harbour Master, to reinstate such buoy, mark, or stake:

Expense of reinstating buoy, etc.

Provided that this section shall not apply to any case where the removal, displacement, or injury was not caused by any wrongful act or negligence on the part of the person in charge of the vessel or boat, or of any person acting under him; but the onus of proving that there was no such

wrongful act or negligence shall be upon the person in charge of such vessel or boat.

Duty of Harbour Master to reinstate buoy, etc.

12. In the event of any buoy, stake, or mark being in any way damaged, displaced, sunk, or removed, it shall be the duty of the Harbour Master forthwith to reinstate such buoy, stake, and mark at the expense of the Island. In every such case the Harbour Master shall forthwith give notice of such damage to the Minister, and, so far as known, of the cause or occasion thereof, and of the person liable therefor, in cases in which any person is or can be made liable therefor under this Act, and shall render an account of the expense attending such reinstatement in such manner as may be directed by the Minister:

Expense thereof, how recoverable.

Provided, that in all cases in which under this Act the expense of reinstating any buoy, stake, or mark shall be payable by any person, the amount paid by the Treasury to the Harbour Master for reinstating the same may, in addition to all other penalties hereby imposed, be recovered from such person in an action at the suit of the Crown for money paid on account of such person at his request, and a certificate, purporting to be signed by the Minister, shall be *prima facie* evidence that the amount stated in such certificate to have been paid was, in fact, properly paid in respect of such damage:

Provided further, that it shall not be necessary that the money should be so paid before any action is commenced, but an action for damages at the suit of the Crown may be commenced as soon as the damage is done.

Inquiry as to mud ballast.

13. It shall be the duty of each Visiting Officer to inquire of the captain of each vessel entering the port or harbour for which he is Visiting Officer, whether or not there is mud ballast on board, and such captain shall be liable to a penalty not exceeding one hundred dollars for any refusal to give the required information, and for every false answer to such inquiry; and it shall be the duty of such Visiting

Officer forthwith to certify to the chief officer of Customs of the port or harbour every case in which a vessel has mud ballast on board, or in which he is not satisfied whether or not such ballast is on board; and in every case of any such certificate being given, the vessels so certified shall not be cleared outwards or permitted to leave the port or harbour, until such officer of Customs is satisfied that no mud ballast was on board when the vessel entered the port or harbour, or that all such mud ballast has been discharged.

14. No person shall use, take, or put on board any vessel in any harbour, or other place of this Island, any mud as ballast or otherwise. Every person so doing, and every captain of a vessel knowingly permitting the same to be done, shall be liable to a penalty not exceeding one hundred dollars; and on every infringement of this section the Harbour Master shall give to the Collector of Customs, or other chief officer of Customs of the port or harbour, notice thereof; and no vessel on board of which such mud shall be put, either as ballast or for any other purpose, shall be entitled to a clearance until such mud shall have been taken out.

Mud ballast
not to be
taken on
board.

15. The Authority may, at the expense of the Island and with the sanction of the Minister, remove out of the limits of any harbour, or to such part of any harbour as the Authority may see fit, any wreck, hulk, or other obstruction in the harbour, or in the approaches to the same, and also any floating timber which impedes the navigation of the same, and any vessel which shall be sunk or stranded in any harbour, or shall be aground, or laid by or neglected as unfit for sea service, upon the shore, or shoal water, or within the limits of any harbour, and the expense of removing any such vessel, wreck, hulk, obstruction, or floating timber shall be repaid by the owner of the same; and the Authority may detain such vessel, wreck, hulk, or floating timber, together with any tackling, apparel, equipage or things found therein respec-

Removal of
wreck, hulk,
etc., from
harbour.

tively, for securing the expenses, and on non-payment of such expenses on demand to the owner, if the owner is known and in Jamaica, or if unknown, or not in Jamaica, or if he cannot be found, without any demand may sell such vessel, wreck, hulk, or floating timber, and also any tackling, apparel, equipage, or things found thereon respectively, or any part thereof paying the proceeds of such sale into the Treasury. The owner shall be entitled to what remains of such proceeds, after deducting the amount of all expenses of and incidental to such sale, and of and incidental to the taking and keeping possession and charge and removal of such vessel, wreck, hulk, obstruction, or floating timber.

Survey of any vessel, wreck, hulk, etc., mentioned in section 15.

16. The Authority from time to time may direct any vessel, wreck, hulk, or other object mentioned in section 15, to be surveyed with a view to the exercise of the power hereinbefore conferred. The expense of every such survey shall be borne by the owner of the vessel, wreck, hulk, or other object surveyed.

The report of any surveyor under this section shall be *prima facie* evidence of the facts stated in such report, and shall if the facts stated are sufficient, warrant the exercise of the powers conferred by section 15.

Recovery against owners of expenses of removal of vessel, wreck, etc.

17. The owner of any vessel, wreck, hulk, or floating timber in respect of which any expenses have been incurred by the Authority under the authority of this Act, notwithstanding the said vessel, wreck, hulk, or floating timber has not been sold under the provisions of section 15, may be proceeded against forthwith for the recovery of such expenses, and may be sued by the Secretary of the Authority as plaintiff in the Resident Magistrate's Court which he may select as most convenient, or in the Supreme Court, according as the amount involved may be within their respective jurisdictions.

18. Every person who shall wilfully sink any vessel in any harbour, without having first obtained the permission in writing of the Authority, shall be liable to a penalty not exceeding two hundred dollars. In addition to such penalty, he shall be liable to pay all expenses incurred by the Harbour Master in removing such vessel. Such damages may be awarded by the Court before whom the person is convicted in the manner specified in section 31, or such damage may be recovered in an action in the manner specified in section 32.

Penalty for wilfully sinking vessel in harbour.

19.—(1) If any captain of any vessel or any other person shall throw or deposit, or permit to be thrown or deposited—

(a) any rubbish, earth, mud, stone, sand, ballast or other similar matter; or

(b) any oil or mixture containing oil or oil residues, in any channel leading into or out of any harbour, or in any place within the limits of any harbour other than such place therein as shall be set apart for such purpose he shall be liable to a penalty not exceeding two thousand dollars.

Penalties for throwing mud, oil, etc., into harbour
1/1963
S. 2.

(2) For the purposes of this section—

“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 material consisting of, or arising from, oil or a mixture containing oil.

20. If any person shall dig up or carry away any stones, sand or ballast from any reef or breakwater, by which any harbour is protected, he shall be liable to a penalty not exceeding sixty dollars.

Penalty for injuring harbour protections.

21. No person shall take from the reefs or shoals, or dig up any stones below high water mark, from the easternmost or southernmost part of the cays, lying off Port Royal, and no stones, small or great, shall be fetched or taken up for

Stones not to be taken from certain reefs, shoals, etc. near Port Royal

ballast, or for any other use, from the easternmost side of the point on Port Royal, so far as Plumb Point, under a penalty not exceeding sixty dollars.

No stones, etc., to be carried away from certain cays near Port Royal.

22. No stones, shell, gravel, or sand shall be taken up or carried away by any person from any cays or shoals from between One Bush Cay to the easternmost Cay so called, or within the space or compass of three miles within or without the said Cays or either of them, under a penalty not exceeding sixty dollars:

Provided that this section shall not hinder any person from taking any stones from the westward or northward of the leewardmost channel.

Liabilities of Harbour Master as to mooring vessels.

23. Every Harbour Master who, from ignorance or neglect, shall moor or place, or caused to be moored or placed, any vessel in such a position as to occasion damage to it, or to any other vessel, or to any wharf, shall be liable to make good such damage, and may be proceeded against by action in the Supreme Court or Resident Magistrate's Court according to the amount involved.

Power of Harbour Master as to mooring vessels.

24. Every Harbour Master shall, subject to the harbour rules, and to any direction of the Authority, have full power to direct and regulate the locality, position, and method of mooring the vessels within such harbour, and generally to give directions for the due regulation of the harbour, and the boats and vessels therein, and to vary any directions given.

Offences in any harbour.

25. Every captain of a vessel, and every other person, who shall commit any of the following offences in any harbour, shall be liable to a penalty not exceeding one hundred and twenty dollars—

allowing pitch, tar, turpentine, rosin, or other combustible matter to be boiled or heated on board of any vessel, or in any boat, unless such boat shall

- have been moored at least thirty fathoms distant from the nearest vessel and wharf;
- beating, blowing or using, or permitting to be beaten, blown, or used on board of any vessel, any drum, trumpet, horn, or other noisy instrument, to the disturbance or annoyance of any of the inhabitants of any city or town binding on or adjacent to the harbour in which such vessel shall be lying;
- burning, scorching, or paying, or allowing the side or bottom of any vessel to be burned, scorched, or payed at any place other than a careening place or place appointed by the Harbour Master for the purpose;
- cutting, breaking, or untying the rope or chain by which any buoy is held to or connected with any anchor, place, or thing; or setting loose any buoy from any anchor, place, or thing, to which it shall have been attached;
- discharging, or causing or permitting to be discharged, any firearms on board of any vessel, a steam vessel, whose anchor is about to be weighed preparatory to her departure, excepted;
- employing, or causing to be employed, or permitting to remain on board of any vessel, any indentured apprentice, or immigrant labourer under contract, without the permission of his master or employer;
- kindling, or permitting to be kindled, a fire on board of any vessel, in any other than a proper iron fireplace or caboose;
- obstructing any Harbour Master in the discharge of any of his duties, or refusing or neglecting to obey his lawful directions;
- obstructing or hindering the mooring, unmooring, removal, or placing of any vessel ordered by the Harbour Master to be moored, unmoored, removed, or placed in any situation;

refusing or neglecting, whenever a boat is passing to or from any wharf to which a vessel is attached by a bow or stern fast, to slacken such bow or stern fast, so as to permit the passage of such boat; or, whenever a boat is veered astern of any vessel to haul such boat up close astern of such vessel, whenever any other vessel shall happen to be passing;

refusing or neglecting to moor, unmoor, remove, or place any vessel at the time, and in the place and manner directed by the Harbour Master of the harbour in which the vessel shall happen to be;

removing any vessel from one wharf to another, or from any other place to a wharf, or from a wharf to any other place, without having previously informed the Harbour Master and received his direction in respect to such removal;

suffering the dead body of any human being or the carcass of any animal to remain on board of any vessel more than twelve hours;

throwing, or casting into, or letting go, or causing to be thrown, or cast into, or let go, in any harbour, or leaving or causing to be left on the shore of the sea of the same, without the permission of the Harbour Master, the carcass of any animal, either from any vessel in, or from any part of the shore of such harbour.

Offences
in the
Harbour
of
Kingston.

26. Every captain of a vessel, and every other person, who shall commit any of the following offences in the Harbour of Kingston, shall be liable to a penalty not exceeding one hundred and twenty dollars—

omitting, within twenty-four hours after he has anchored the vessel, under his command, or within twenty-four hours after he has received the harbour regulations, to deposit all the gunpowder in such vessel at such place as may be appointed

42/1969
3rd Sch.

- by the Minister for the purpose, or omitting, on demand of the Harbour Master, to produce to such Harbour Master a receipt from the officer in charge of the magazine for such gunpowder;
- omitting to have the flying jib-boom and main-boom of his vessel close rigged in, or not keeping them so, when required by the Harbour Master to do so;
- receiving any gunpowder, or knowingly permitting the same to be received, on board his vessel, in the said harbour;
- taking up or carrying away, without the permission of the Harbour Master, any earth, sand, stones, or ballast, from the Palisadoes:

Provided always, however, that when a vessel in the Harbour of Kingston has gunpowder on board in transit stowed in properly constructed magazines, if the Harbour Master is satisfied that no damage is likely to arise from the fact of such gunpowder being so stowed as aforesaid, he may authorize the captain of such vessel to omit depositing such gunpowder at the place appointed by the Minister for the purpose, and in that case the captain shall be relieved from the liability to any penalty for such omission.

42/1969
3rd Sch.

27. In case of any dispute arising between any Harbour Master and any captain, consignee, or owner of any vessel, touching the method in which such Harbour Master shall perform his duties, or touching any direction he shall give as Harbour Master in any particular case, the matter may be forthwith referred to the Authority, who may decide the matter as they shall think fit.

Disputes
referred to
Authority.

28. Every breach of this Act, and every breach of any rule or ordinance made under or recognized by this Act, shall be punishable by the penalty specially imposed, and in case of any fine being imposed, the court trying the case may, if it think fit order that the informer shall receive, out of the amount of the fine when paid, such portion thereof as

Offences
how
punishable.

may in such order be mentioned, and thereupon the officer receiving such fine from the party convicted shall forthwith pay over, on application, such portion thereof to the informer specified in such order.

Appoint-
ments and
rules to
appear in
the *Gazette*.

29. All appointments made by the Governor-General, and all rules approved by the Minister, under this Act, shall be published in the *Gazette*, and shall come into operation on such publication, or at such other time as may be therein specified. It shall not be necessary to prove in any proceedings under such rules that they were so published, but it shall be lawful to prove that they were not so published.

Proceedings
for penalties
and enforce-
ment thereof.

30. All proceedings for penalties under this Act, or under any rules or ordinances made under or recognized by this Act, may be tried summarily and the court in default of payment forthwith of any penalty, may award imprisonment with or without hard labour for a period not exceeding six months, where the maximum penalty exceeds eighty dollars, and not exceeding three months in all other cases.

Damages
awarded at
the time of
adjudging
penalties.

31. Whenever any person is adjudged liable to any penalty under this Act, or under any ordinance made under or recognized by this Act, in respect of any injury to, or removal or destruction of, any buoy, stake, or mark, or for sinking any vessel, it shall be lawful for the court before whom such person is convicted, if it shall think fit, to adjudge that such person shall pay, in addition to the penalty, the amount of the damage, to be then fixed by the court caused by such injury, removal, destruction, or sinking, and the amount so fixed as damages may be recovered in the same way, in all respects, as the penalty, and the person convicted may be imprisoned, for non-payment thereof, in the same way as he might be imprisoned for non-payment of the penalty. An order for the payment

Enforcing
payment
thereof.

How far
a bar.

of damages under this section shall be a bar to any further proceedings on the part of the public in respect of such damage.

32. Any damage to any buoy, stake, or mark, and all expenses incurred by any Harbour Master in removing wrecks, damaged vessels, obstructions to harbours, or floating timber, under this Act, or for which any person is liable under this Act, or under any rule or ordinance made under or recognized by this Act, may be recovered by action at the suit of the Crown in the Supreme Court or Resident Magistrate's Court according to amount.

Action in Supreme or Resident Magistrate's Court for damages and expenses.