

M O N T S E R R A T

PORT AUTHORITY (AMENDMENT) BILL, 2023

No. 16 of 2023

ARRANGEMENT OF SECTIONS

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I ASSENT

Governor

DATE:

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A BILL FOR

AN ACT TO AMEND THE PORT AUTHORITY ACT (CAP. 7.09) TO PROVIDE FOR THE PORT AUTHORITY TO BE THE COMPETENT AUTHORITY FOR HYDROGRAPHY MATTERS, THE QUALIFICATIONS OF A PILOT, PILOTAGE, THE POWERS OF THE PORT MANAGER WITH RESPECT TO WRECKS AND FOR RELATED MATTERS.

BE IT ENACTED by The King’s Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat, and by the Authority of the same as follows:—

1. Short title

This Act may be cited as the Port Authority (Amendment) Act, 2023.

2. Interpretation

In this Act “**principal Act**” means the Port Authority Act (Cap. 7.09).

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3. Section 2 amended

Section 2 of the principal Act is amended by—

(a) deleting the definition of “**Port**” and substituting the following—

““**Port**” means the Port of Little Bay and such other port or ports as the Governor acting on the advice of Cabinet may by order prescribe, together with such limits to the port or ports as the Governor acting on the advice of Cabinet may by order specify;” and

(b) inserting the following definitions in the correct alphabetical sequence:

““**authorised pilot**”, in relation to an area, means a person authorised under section 53B for that area and, in relation to a ship, a person so authorised in respect of ships of that description;

“**Montserrat waters**” has the meaning given by section 2(1) of the Merchant Shipping (Registration) Act (Cap. 7.11);

“**pilot**” means a person not belonging to a ship who has the conduct of the ship and “pilotage” shall be construed accordingly;

“**pilot boat**” has the meaning given in section 53D;

“**pilotage direction**” has the meaning given in section 53E(1); and

“**pilotage exemption certificate**” means a certificate granted under section 53F;”.

4. Section 18 amended

Section 18 of the principal Act is amended by—

(a) deleting subsection 18(3)(e) and substituting the following—

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“(e) to be the competent authority for all hydrographic matters and to discharge the functions of the Government relating to hydrography.”; and

(b) deleting subsection (4) and substituting the following—

“(4) In discharging the functions of the Government relating to hydrography, the Authority may, in particular—

- (a) establish a team or teams to undertake hydrographic surveys comprising—
 - (i) officers or servants of the Authority; and
 - (ii) with the agreement of the Government, officers of the Government;
- (b) enter into arrangements with qualified hydrographic surveyors to undertake hydrographic surveys on its behalf; and
- (c) request the assistance and advice of the Government or any Ministry in respect of any hydrographic survey proposed or being undertaken.”.

5. PART 6A inserted

The principal Act is amended by inserting the following immediately after section 53—

**“PART 6A
PILOTAGE”.**

6. Sections 53A to 53I inserted

The principal Act is amended by inserting sections 53A to 53I immediately after “PART 6A PILOTAGE”—

“53A General duties as to provision of pilotage services

- (1) The Authority shall keep under consideration—

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- (a) whether any and, if so, what pilotage services need to be provided to secure the safety of ships navigating in the port or in its approaches; and
- (b) whether, in the interests of safety, pilotage should be compulsory for ships navigating in the port or in its approaches; and if so, for which ships and in which circumstances and what pilotage services need to be provided for those ships.
- (2) Without prejudice to the generality of subsection (1), the Authority shall, in performing its functions, have regard in particular to the hazards involved in the carriage of dangerous goods or harmful substances by ships.
- (3) The Authority shall provide such pilotage services as it considers necessary.
- (4) In this Part, references to a ship navigating or being navigated include references to the ship moving or being moved within the port for the purpose of changing from one mooring to another or of being taken into or out of a dock.

53B Authorisation of pilots

- (1) Subject to subsection (3) and section 53C, the Authority may authorise a number of persons to act as pilots in the port or in its approaches as it considers are suitably qualified to do so; and the authorisation shall specify the area within which it has effect and may specify that it only has effect in relation to a ship of a particular description.

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- (2) The Authority may—
- (a) determine the qualifications in respect of age, physical fitness, length of service, local knowledge, skill, character and any other requirements that a person shall have in order to apply for authorisation as a pilot,
 - (b) provide for the examination of persons applying to provide pilotage services, and
 - (c) impose such conditions as to the duties and powers of an authorised pilot, including the duties and powers in relation to the master of a ship, as the Authority may determine in the circumstances.
- (3) The Authority may suspend or revoke an authorisation granted under this section if it appears to the Authority that—
- (a) the authorised pilot is incompetent or has committed an act of misconduct affecting the capability of the person as a pilot;
 - (b) the authorised pilot has ceased to have the qualifications required under this section or has failed to provide evidence that he or she continues to have those qualifications; or
 - (c) it is appropriate to do so by virtue of the termination of any contract or other arrangement under which the services of pilots are provided within the port.

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- (4) Before suspending or revoking an authorisation under subsection (3)(a) or (b), the Authority shall—
- (a) give written notice of its intention to do so to the authorised pilot,
 - (b) state the reasons for which it proposes to act, and
 - (c) give the authorised pilot a reasonable opportunity to make representations.
- (5) If the Authority suspends or revokes an authorisation of an authorised pilot by virtue of subsection (3)(c), it shall give the person notice in writing—
- (a) stating that the suspension or revocation was by virtue of subsection 3(c), and
 - (b) specifying the duration of the authorisation in question and any previous authorisations granted to that person by the Authority.
- (6) If a person who is not an authorised pilot for an area—
- (a) holds themselves out as if he or she is in that area as a pilot, or
 - (b) so holds himself or herself out as to indicate or be reasonably understood to indicate that the person is such a pilot,
- the person commits an offence and is liable on summary conviction to a fine of \$20,000.

53C Employment of authorised pilots

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The Authority may make such arrangements as it considers appropriate for the provision of the services of authorised pilots in Montserrat waters, whether under a contract of employment or a contract for services.

53D Pilot boats

A ship employed to provide pilotage services provided by or on behalf of the Authority (in this Part referred to as “pilot boat”) shall—

- (a) if operated by the Authority, be approved by it; or
- (b) if operated by another person, be licensed by the Authority,

and the Authority shall not approve or licence a ship under this section unless it is satisfied that it is suitable for use as a pilot boat.

52E Pilotage directions

(1) Subject to this section, if the Authority considers that in the interests of safety it should do so, it shall direct that pilotage is compulsory for ships navigating in an area or part of an area of the port or in its approaches; and such a direction is referred to in this Act as a “pilotage direction”.

(2) A pilotage direction—

- (a) may, subject to subsection (3), apply to all ships or ships of a description specified in the direction (subject to any exceptions as may be specified);
- (b) shall specify the area of the port and its approaches and circumstances in which it applies;

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- (c) may specify the circumstances in which an authorised pilot in charge of a ship to which it applies is to be accompanied by an assistant who is also an authorised pilot; and
- (e) may contain such supplementary provisions as the Authority considers appropriate.
- (3) Before giving a pilotage direction, the Authority shall consult—

 - (a) the owners of ships which customarily navigate in the area to which the proposed direction would apply, and
 - (b) any other persons who carry on operations within the port,

or, in either case, such persons as it considers to be representatives of them.
- (4) The Authority shall arrange for any pilotage direction given by it to be published in such manner as to bring it to the notice of those persons likely to be interested.

53F Pilotage exemption certificates

- (1) This section applies where the Authority has given a pilotage direction under section 53E.
- (2) Subject to subsection (4), on application by a person who is the master or first mate of a ship, the Authority shall grant a certificate (in this Part referred to as a “pilotage exemption certificate”) to the person if it is satisfied, by examination or by reference to such other requirements as it may reasonably impose—

 - (a) that the applicant’s skill, experience and local knowledge are sufficient for the applicant to be capable of piloting the

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ship of which the applicant is master or first mate (or that ship and any other ships specified in the certificate) within the port, a part of the port or in its approaches as may be specified, and

(b) in any case where it appears to the Authority to be necessary in the interests of safety, that the applicant's knowledge of English is sufficient for that purpose.

(3) The requirements imposed under subsection (2) shall not be —

(a) unduly onerous having regard to the difficulties and danger of navigation in the port or its approaches, and

(b) more onerous than those required to be met by a person applying to the Authority for authorisation under section 52B.

(4) If the Governor is satisfied, on request by the Authority, that it is appropriate to do so by reason of the unusual hazards involved in shipping movements within the port or in its approaches, the Governor may make an order suspending the granting of pilotage exemption certificates for a period not exceeding three years.

(5) Where an order is made under subsection (4), any pilotage exemption certificate granted by the Authority ceases to have effect and the Authority shall notify the holders of such certificates of that fact.

(6) A pilotage exemption certificate shall remain in force for one year from the date on which it is granted, but—

(a) if the Authority is satisfied that the holder continues to be the master or first

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mate of a ship and the requirements under subsection (2) are met, the Authority may renew it for a further period of one year and for further periods of one year subsequently; and

(b) on the application of the holder, the certificate may be altered so as to refer to different ships from those to which it previously referred, if the Authority is satisfied that the requirements under subsection (2) in respect of those ships are met.

- (7) The Authority may suspend or revoke a pilotage exemption certificate if the holder has been found guilty of incompetence or misconduct which affects the holder's capability to pilot the ship of which he or she is master or first mate or any other ships specified in the certificate.
- (8) Before refusing an application by a person under this section for the grant, renewal or alteration of a certificate or suspending or revoking a certificate held by any person, the Authority shall give the applicant written notice of its intention to do so, stating the reasons for which it proposes to act, and must give the applicant a reasonable opportunity to make representations.
- (9) The Authority may charge such fees in respect of an examination required to be taken for the purposes of this section or the grant, renewal or alteration of any pilotage exemption certificate as the Authority considers reasonable for the purposes of meeting its administrative costs in connection with the granting of pilotage exemption certificates.

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53G Prevention of discrimination in favour of Authority's ships

The Authority shall ensure that a ship owned or operated by the Authority and used by the Authority in the exercise of its functions otherwise than under this Act is subject to the same obligations as respects pilotage whilst navigating within the port or its approaches as required for any other ship.

53H Compulsory pilotage

A ship which is being navigated in an area and in circumstances in which pilotage is compulsory for it by virtue of a pilotage direction shall be under the pilotage of —

- (a) an authorised pilot accompanied by such an assistant, if any, as is required by virtue of the direction, or
- (b) a master or first mate possessing a pilotage exemption certificate in respect of that area and ship.

53I Liability for ships under compulsory pilotage

The fact that a ship is being navigated in an area and in circumstances in which pilotage is compulsory for it does not affect any liability of the owner or master of the ship for any loss or damage caused by the ship or by the manner in which it is navigated.”.

7. Section 55 amended

Section 55 of the principal Act is deleted and substituted by the following—

“55. Power of the Port Manager in respect to wrecks, etc.

(1) This section applies where—

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- (a)* a ship is sunk, stranded or abandoned in, or near any approach to a port or its approaches, and
 - (b)* in the opinion of the Port Manager the ship or other property is, or is likely to become, an obstruction or danger in the port or its approaches to—
 - (i)* navigation, or
 - (ii)* lifeboats engaged in lifeboat service.
- (2)** If this section applies, the Port Manager may—
- (a)* take possession of, and raise, remove or destroy the whole or any part of the ship and any other property;
 - (b)* light or buoy the ship or part of the ship and any such other property until it is raised, removed or destroyed;
 - (c)* subject to subsections (4) and (5), sell, in such manner as the Port Manager thinks fit, the ship or part of the ship so raised or removed and any other property recovered in the exercise of the powers conferred by paragraph *(a)* or *(b)*;
 - (d)* retain out of the proceeds of the sale any expenses incurred by the Port Manager in relation to the sale; and
 - (e)* where the proceeds of a sale under paragraph *(c)* are less than the expenses incurred, recover the balance in civil proceedings as a debt.
- (3)** A surplus of the proceeds of a sale under subsection (2)*(c)* shall be held by the Port Manager on trust for the persons entitled to those proceeds.

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- (4) 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 Montserrat.
- (5) 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 them on payment of its fair market value.
- (6) The market value of property for the purposes of subsection (5) shall be that agreed by the Port Manager and the owner or, failing agreement, that determined by a person appointed for the purpose by the Minister.
- (7) The sum paid to the Port Manager in respect of any property under subsection (5) shall, for the purposes of this section, be treated as the proceeds of sale of the property.
- (8) Any proceeds of sale arising under subsection (2)(c) from the sale of a ship and any other property recovered from the ship shall be treated as a common fund.
- (9) An order of the court is not necessary for the taking of possession and sale of a ship under this section and no liability attaches to the Port Manager for any act performed under section (2).
- (10) For the purposes of this section, “**other property**” includes an article or thing or collection of things being or forming part of the equipment, cargo, stores or ballast of the ship.”.

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8. Section 62 amended

Section 62(1) of the principal Act is amended by deleting paragraph (l) and inserting the following—

- “(l) the licensing of shipping agents, customs brokers, landing agents, forwarding agents, baggage and parcel agents, porters, contractors for supplies and victualling, and other person concerned in or engaged in or performing any service or work in connection with the port; and
- (m) the authorisation and qualifications of pilots under section 53B, the employment of authorised pilots, the making of applications for pilotage exemption certificates under section 53F, the licensing, approval and operation of pilot boats, and the making of pilotage directions.”.

9. Section 65 amended

Section 65 of the principal Act is amended by inserting the following immediately after subsection (4)—

- “(5) A person who, not being a person authorised as a pilot under section 53B—
 - (a) holds themselves out as if he or she is in an area as an authorised pilot, or
 - (b) so holds himself or herself out as to indicate or be reasonably understood to indicate that the person is an authorised pilot,commits an offence and is liable on summary conviction to a fine of \$5,000.
- (6) A master of a ship, which is not under pilotage as required by subsection 53H after an authorised pilot has offered to take charge

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of the ship, commits an offence and is liable on summary conviction to a fine of \$5,000.

- (7) A master of a ship who navigates the ship in an area and in circumstances in which pilotage is compulsory as required under a pilotage direction given under section 53E, without notifying the Authority that he or she proposes to do so, commits an offence and is liable on summary conviction to a fine of \$2,000.”.

SPEAKER

Passed by the Legislative Assembly this day of , 2023.

CLERK OF THE LEGISLATIVE ASSEMBLY