

No. 13 of 2018

VIRGIN ISLANDS

MERCHANT SHIPPING (AMENDMENT) ACT, 2018

ARRANGEMENT OF SECTIONS

Sections

1. Short title.
2. General amendment.
3. Section 2 amended.
4. Section 4 amended.
5. Section 28 amended.
6. Section 33 amended.
7. Section 65 amended.
8. Part V replaced.
9. Section 449 amended.

I Assent
(Sgd.) Augustus J. U. Jaspert,
Governor.
18th January, 2019

VIRGIN ISLANDS

No. 13 of 2018

An Act to amend the Merchant Shipping Act, 2001 (No. 13 of 2001).

[Gazetted 28th January, 2019]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

1. This Act may be cited as the Merchant Shipping (Amendment) Act, 2018.

General
amendment.
No. 13 of 2001

2. The Merchant Shipping Act, 2001 (hereinafter referred to as “the principal Act”) is amended

- (a) by replacing the words “Governor in Council” wherever they occur in the principal Act, with the word “Governor”; and
- (b) by replacing the words “Legislative Council” wherever they occur in the principal Act, with the words “House of Assembly”.

Section 2
amended.

3. Section 2 of the principal Act is amended by replacing the definition of “seaman” with the following:

"seafarer" means any person who is employed or engaged or works in any capacity on board a ship, to which this Part applies, but does not include persons providing ancillary or incidental services to a ship such as shore based repair crew, bunker crew, mooring crew, stevedores, longshoremen and pilots;”.

Section 4
amended.

4. Section 4 of the principal Act is amended

- (a) in subsection (1)
 - (i) paragraph (g), by inserting after the words “Member State where they last occur in the paragraph, the words “and persons who are nationals of a Member State of the Caribbean Community or the Organization of Eastern Caribbean States”;
 - (ii) paragraph (j), by deleting the words “ and registered in the Virgin Islands” and replacing the full stop with a semicolon; and
 - (iii) by adding the following new paragraph (k):
 - “(k) persons who are citizens, bodies corporate or foreign companies incorporated, established or registered in a recognised jurisdiction or any overseas country, territory or dependency of such a recognised jurisdiction.”.

- (b) in subsection (3), by adding after the word “present” the words “and “recognised jurisdiction” means a country included in Schedule 2 to the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008.”.

S.I. No. 13
of 2008

5. Section 28 of the principal Act is amended

Section 28
amended.

- (a) in subsection (1), by deleting the words “of 1500 tonnage or above” ;
- (b) in subsection (2), by replacing the coma at the end of subparagraph (i) with a full stop and deleting subparagraph (iii); and
- (c) by deleting paragraph (c).

6. Section 33 of the principal Act is amended in subsection (1) by deleting the words “of 1500 tonnage or above”

Section 33
amended.

7. Section 65 of the principal Act is amended in subsection (1), by replacing subparagraph (k) with the following:

Section 65
amended.

- “(k) any matter in relation to the registration of vessels under construction, small ships and pleasure vessels; and”.

Part V replaced.

8. The principal Act is amended by replacing Part V with the following:

“MASTERS AND SEAFARERS

Interpretation and application of Part.

87. (1) In this Part,

"MLC" means the Maritime Labour Convention, 2006 of the International Labour Organization;

"Regulations" means the Merchant Shipping (Maritime Labour Convention) Regulations made under this Part;

"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;

"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 the Virgin Islands.

(3) For the purposes of this Part

(a) a seafarer is discharged from a ship when his employment in that ship is terminated;

(b) a seafarer 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.

Application of MLC and STCW Convention and of this Part.

88. (1) Subject to relevant provisions of this Part, the MLC and the STCW Convention have the force of law.

(2) For the purposes of application of Article II paragraph 1(a) of the MLC, the Director is the competent authority.

(3) Within the context of the MLC, seafarers' organisations and collective bargaining rights may be recognised under this Act at the discretion of the Director.

(4) Any power conferred by this Part to provide for or grant an exemption or a dispensation includes power to provide for or grant the exemption or dispensation subject to conditions.

(5) Unless specifically excepted by this Part or the Regulations, this Part applies to all Virgin Islands seagoing ships wherever they may be and to all other ships while they are in Virgin Islands ports and to all seafarers serving on board such ships.

(6) The exceptions referred to in subsection (5) are sections 106 to 112, 115, 117 to 126.

Inspection and certification of ships

88A. (1) The Minister with the approval of Cabinet, may make regulations providing for the issue of certificates to ships, the inspection of ships, and the authorisation of recognised organisations, in accordance with regulation 5.1.1, 5.1.2, 5.1.3, and 5.1.4 of the International Labour Organization's Maritime Labour Convention 2006 and may provide in those regulations for compliance with all of the requirements of those regulations.

(2) Regulations made by the Minister in accordance with subsection (1) may specify the classes of ship to which the regulations apply, may define the categories of seafarer to which they apply and may exempt certain classes of ship from the application of the regulations.

(3) Regulations made by the Minister in accordance with subsection (1) may grant to persons making inspections for the issue of certificates, the powers of an inspector included in sections 414 of this Act.

Engagement and Discharge of Crews

Seafarer Employment Agreements.

89. (1) An agreement in writing known as a "seafarer employment agreement" shall be made between every seafarer employed in a Virgin Islands ship and the ship owner or his authorised representative and the agreement shall be signed by both the seafarer and the ship-owner or his authorised representative. A SEA shall be contained in one document except in cases where the Director approves

- (a) more than one document containing such agreement; or
- (b) one seafarer employment agreement in relation to more than one ship.

(2) The provisions and form of an SEA shall be of a kind approved by the Director, and different provisions and forms may be so approved for different circumstances.

(3) An SEA or a copy thereof, containing, where applicable, evidence of any exemption granted pursuant to subsection (5), shall be carried in the ship to which it relates whenever the ship goes to sea.

(4) The Director may provide for exemptions from the requirements of this section with respect to such descriptions of ships or seafarers as he may specify and may grant other exemptions in respect of seafarers employed otherwise than under a crew agreement where he is satisfied that they will be adequately protected.

(5) 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 commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars and the ship, if in the Virgin Islands, may be detained.

90. (1) The Minister with the approval of Cabinet may make regulations with respect to

- (a) recruitment and placement of seafarers subject to this Part and in conformity with regulation 1.4 of the MLC including the provisions of its related Code as may be relevant; and
- (b) seafarers employment agreements subject to this Part and in conformity with regulation 2.1 of the MLC including the provisions of its related Code as may be relevant; and
- (c) compensation entitlement, resulting from the loss or foundering of ships as specified in regulations 1.4, 2.1, 2.4, 2.5, and 2.6 of the Maritime Labour Convention 2006.

Regulations relating to SEA's and recruitment and placement of seafarers.

(2) Regulations made by the Minister in accordance with subsection (2) shall take into account the fundamental rights in Articles III and IV of the Maritime Labour Convention 2006 and may specify the classes of ship to which the regulations apply, may define the categories of seafarer to which they apply and may exempt certain classes of ship from the application of the regulations.

(3) Regulations made by the Minister in accordance with subsection (2) may specify penalties to be applied for contravention of the regulations and for a ship, if in Virgin Islands to be detained.

Discharge of seafarers

91. (1) Where a seafarer is discharged; such discharge shall be recorded, whether by entries in the SEA and discharge book or otherwise.

(2) A person who contravenes this section is liable on summary conviction to a fine of fifteen thousand dollars.

Seafarer when the ship ceases to be registered in the Virgin Islands.

92. Where a Virgin Islands ship ceases to be registered, any seafarer employed in the ship shall be discharged from the ship unless he consents in writing to continue his employment in the ship, and sections 93 to 96 shall apply in relation to his wages as if the ship had remained a Virgin Islands ship.

Wages, etc.

Payment of seafarer's wages.

93. (1) Where a seafarer employed under an SEA relating to a Virgin Islands 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 seafarer under the agreement shall either

- (a) be paid to him in full at the time when he so leaves the ship (in this section 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 seafarer under regulation 50(3) of the Regulations 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 94(1), 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 94(1) exceeds two hundred dollars and it is not practicable to pay the whole of it at the time of discharge, not less than two hundred dollars 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 seafarer is not paid at the time at which it is so payable the seafarer 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 fifty-six 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 carry interest at the rate of twenty percent per annum.

(4) Where the SEA referred to in subsection (1) provides for the seafarer'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 seafarer 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.

(5) If it is not practicable, in the case of any amount due to the seafarer 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 seafarer is not paid at the time at which it is so payable, it shall carry interest at the rate of twenty percent 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 seafarer; 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 the Court in proceedings for its recovery so directs.

(8) Where a seafarer is employed under an SEA 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 seafarer, in pursuance of section 92, is discharged from a ship outside the Virgin Islands but returns to the Virgin Islands 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 an SEA 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 the Virgin Islands, 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 seafarer

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

Account of
seafarer's wages.

94. (1) Every account of wages delivered to a seafarer in accordance with regulation 50(3) of the Regulations shall indicate whether it is subject to any later adjustment that may be found to be necessary, and if that is the case, a further adjusted account shall

be delivered to the seafarer no later than the time at which the balance of his wages is payable to the seafarer.

(2) Where section 93(4) or (5) applies to the payment of any amount of wages due to a seafarer under an SEA,

- (a) the persons who employed the seafarer shall deliver to him an account of the wages payable to him under those subsections and of the deductions subject to which the wages are payable;
- (b) any such account shall be so delivered at the time when the wages are paid to him;
- (c) subsection (1) shall not apply,

and section 93(10) shall apply for the purposes of this subsection as it applies for the purposes of that section.

(3) The Governor may make regulations relating to calculation and payment of wages and prescribing minimum wages taking into account Guideline B2.2 of regulation 2.2 of the MLC as may be appropriate.

(4) Where a seafarer is employed under an SEA 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 SEA.

(5) If a person fails without reasonable excuse to comply with this section he commits an offence and is liable, on summary conviction, to a fine not exceeding ten thousand dollars.

Director's
powers re- wages
and accounts.

95. (1) The Director may determine a maximum amount payable as a contribution to the seafarer's repatriation expenses where he has been dismissed for breaches of a crew agreement or of a code of conduct referred to in section 116.

(2) The Director may

- (a) require wages due to a seafarer under an SEA to be paid in a certain manner or form as he may determine;

- (b) determine the manner in which such wages are to be dealt with and accounted for in circumstances where a seafarer leaves his ship in the Virgin Islands otherwise than on being discharged; and
- (c) direct the form and manner in which any account referred to in section 93 is to be prepared and the particulars to be contained therein.

Power of Director or Registrar to decide disputes on wages.

96. (1) Any dispute relating to the amount payable to a seafarer employed under an SEA may be submitted by the parties to a Director or Registrar for decision, but the Director or Registrar 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 Director or Registrar on a dispute submitted to him under this section shall be final.

Restrictions on assignment of and charges upon wages.

97. (1) As respects the wages due or accruing to a seafarer employed in a Virgin Islands ship,

- (a) the wages shall not be subject to attachment;
- (b) an assignment thereof before they have accrued shall not bind the seafarer and the payment of the wages to the seafarer 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.

Power of court to award interest on wages due.

98. In any proceedings by the master of a ship or a person employed in a ship otherwise than under an SEA 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;
- (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 order them to pay, in addition to the sum due, interest on it at the rate of twenty percent 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.

99. (1) A seafarer's right to make an allotment under this section shall be subject to such limitations as may, by virtue of the provisions of this section, be imposed by the Director.

(2) The Director may specify different conditions in relation to different descriptions of seafarers and different circumstances.

(3) A person to whom any part of a seafarer's wages has been allotted by an allotment note shall have the right to recover that part in his own name and for that purpose shall have the same remedies as the seafarer has for the recovery of his wages.

(4) In any proceedings brought by a person named in such an allotment note as the person to whom any part of a seafarer's wages has been allotted it shall be presumed, unless the contrary is shown, that the seafarer 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.

100. (1) Where a Virgin Islands ship is sold while outside the Virgin Islands or ceases to be a Virgin Islands ship and a seafarer'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 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.

(2) A seafarer shall not be entitled to wages by virtue of subsection (1) for a day on which he was unemployed, if it is shown that the seafarer was able to obtain suitable employment for that day but unreasonably refused or failed to take it.

Protection of certain rights and remedies.

101. (1) A seafarer'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 seafarers 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.

Remedies of master for remuneration, disbursements, etc.

102. 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 he has for his wages.

Safety, Health and Welfare

Obligation of ship owners as to seaworthiness.

103. (1) In every SEA between the owner of a Virgin Islands ship and any seafarer employed in the ship there shall be implied an obligation on the owner of the ship that the owner, master and every agent charged with loading, preparing or sending 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 during the voyage.

(2) The obligation imposed by subsection (1) shall apply notwithstanding any agreement to the contrary.

Ship owners relief from liability as to seaworthiness.

104. No liability on the owner of a ship arises under section 103 (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.

105. (1) The Minister with the approval of Cabinet may make regulations with respect to

- (a) the crew accommodation to be provided in Virgin Islands ships;
- (b) living and working conditions of seafarers on board Virgin Islands ships; and

(c) provisions and water on board Virgin Islands ships.

(2) In making the regulations referred to in subsection (1) due regard shall be had to the relevant provisions of Title 3 of the regulations of the MLC.

(3) If the provisions of any regulations under this section are contravened in the case of a ship the owner or master commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars and the ship, if in the Virgin Islands, may be detained.

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

Manning, Qualifications, Training and Uniform

Manning.

106. (1) Subject to subsection (3), the Minister with the approval of Cabinet may make regulations relating to safe manning, training and certification and

(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 seafarers or qualified seafarers of any description as may be prescribed;

(b) prescribing 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 seafarers of any description in order to be qualified for the purposes of this section; and

(c) prescribing medical fitness requirements for seafarers.

(2) In making any regulations under this section, the Minister shall have due regard to the STCW Convention and relevant provisions of the MLC.

(3) The Minister shall not exercise his power to make regulations requiring ships to carry seafarers other than doctors and cooks except to the extent that it appears to him necessary or expedient in the interests of safety.

(4) Regulations under this section may make different provisions for different descriptions of ships or for ships of the same description in different circumstances.

(5) Without prejudice to the generality of subsection (1) (b), the conditions prescribed or specified under that paragraph may include conditions as to nationality, and regulations made for the purposes of that paragraph may make provision, or enable the Director to make provision, 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.

(6) 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 commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars.

Power to exempt from manning requirements.

107. (1) The Director may grant an exemption to a ship or a dispensation to a member of a ship's complement belonging to the management or professional category pursuant to relevant provisions of the STCW Convention from any requirements of regulations made under section 106.

(2) An exemption given under this section may be confined to a particular period or to one or more particular voyages

Prohibition on going to sea undermanned.

108. (1) Subject to section 107, if a ship to which this section applies goes to sea or attempts to go to sea without carrying such officers and other seafarers as it is required to carry under section 106, the owner or master commits an offence and is liable

(a) on summary conviction, to a fine not exceeding twenty-five thousand dollars;

(b) on conviction on indictment, to a fine not exceeding fifty thousand dollars;

and the ship, if in the Virgin Islands, 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 the Virgin Islands" were omitted.

Production of certificates and other documents of qualification.

109. (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 111 shall on demand produce it to any surveyor of ships or inspector 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 commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars.

Crew's knowledge of English.

110. (1) Where in the opinion of the surveyor of ships 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 there being no common working language or the Safety Management Manuals are not in the common language of the crew and there absence of adequate arrangements for transmitting the orders in a language of which the crew have sufficient knowledge, then

- (a) if the surveyors of ships has informed the master of that opinion, the ship shall not go to sea; and
- (b) if the ship is in the Virgin Islands, 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 commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars.

Unqualified seafarers going to sea as qualified persons.

111. (1) If a person goes to sea as a qualified seafarer of any description without being such a qualified seafarer, he commits an offence and is liable

- (a) on summary conviction, to a fine not exceeding ten thousand dollars;
- (b) on conviction on indictment, to a fine not exceeding twenty thousand dollars.

(2) In this section "qualified" means qualified for the purposes of section 106.

Special certificates of competence.

112. (1) The Director 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 106(1)(b), and issue directions for purposes corresponding to those mentioned in section 106(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 commits an offence and is liable on summary conviction to a fine not exceeding twenty thousand dollars.

Uniform.

113. (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 commits an offence.

(2) A person who commits an offence under subsection (1) is liable, on summary conviction,

- (a) except in a case falling within paragraph (b), to a fine not exceeding level five on the standard scale;
- (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 not exceeding level five on the standard scale or to imprisonment for a term not exceeding one month.

(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 commits an offence and is liable on summary conviction to a fine not exceeding level five on the standard scale.

Offences by Seafarers

Conduct endangering ship, persons, etc.

114. (1) This section applies

- (a) to any seafarer employed in, a Virgin Islands ship; and
- (b) to any seafarer employed in a foreign ship, which is in a port in the Virgin Islands or within Virgin Islands 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 is, subject to subsections (6) and (7), commits an offence.

- (3) The conditions referred to in subsection (2) are
- (a) that the act or omission was deliberate or amounted to a breach or neglect of duty;
 - (b) that the seafarer in question was under the influence of an alcoholic 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, subject to subsections (6) and (7), commits an offence.

(5) A person who commits an offence under this section is liable

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
- (b) on conviction on indictment to a fine not exceeding ten thousand dollars or, to imprisonment for a term not exceeding 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 subsections (2) or (4)
 - (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 it being caused, either could not reasonably have been foreseen by the accused or could not reasonably have been avoided by him.

(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 without the consent of the Attorney General.

(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 seafarer, 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.

115. (1) If a seafarer employed in a Virgin Islands ship combines with other seafarers 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 commits an offence.

(2) A seafarer who commits an offence under subsection (1) is liable,

- (a) on summary conviction, to a fine not exceeding ten thousand dollars;
- (b) on conviction on indictment, to a fine not exceeding fifteen thousand dollars, or to imprisonment for a term not exceeding two years, or both.

(3) 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 seafarers of codes of conduct.

116. (1) A "disciplinary body" may be established for the purpose of maintaining discipline on board Virgin Islands ships.

(2) Hearings may be conducted on shore in the Virgin Islands of a complaint by the master or owner of a Virgin Islands ship, other than a fishing vessel, against a seafarer alleging that during his employment on board the ship the seafarer contravened, on or off the ship and in the Virgin Islands or elsewhere, a

provision of a code of conduct approved by the Director for the purposes of this section.

- (3) The disciplinary body may
 - (a) dismiss the complaint if it finds the allegation not proved; or
 - (b) if it finds the allegation proved
 - (i) warn the seafarer;
 - (ii) reprimand the seafarer; or
 - (iii) recommend to the Director that the seafarer shall, either for a period specified in the recommendation or permanently, cease to be entitled to a discharge book under section 134 and shall be required to surrender any such book which has been issued to him.

(4) A seafarer may appeal against such a recommendation to an appellate body which may

- (a) confirm the recommendation;
- (b) cancel the recommendation; or
- (c) in the case of a recommendation that the seafarer shall cease to be entitled to a discharge book permanently or for a particular period, 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) A recommendation that the seafarer shall permanently cease to be entitled to a discharge book shall not be submitted to the Director unless it has been confirmed, either on appeal or otherwise, by an appellate body.

(6) A member of such a body may be paid such remuneration and allowances as the Minister may determine.

(7) Without prejudice to subsection (1) to (6), proceedings may take place notwithstanding the absence of the seafarer to whom they relate.

(8) Nothing in this section 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 Seafarers other than Masters and Inquiries

Inquiry into fitness or conduct of officer.

- 117.** (1) If it appears to the Director 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 the provisions of section 151,

the Director 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 under regulations made pursuant to section 106 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 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 121 (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 of any of the matters mentioned in paragraphs (a) to (c) of subsection (1), cancel or suspend any certificate issued to him under regulations made pursuant to section 106 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 Director,

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

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

Disqualification
of holder of
certificate other
than officer.

118. (1) Where it appears to the Director 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 Director may give him notice in writing that he is considering the suspension or cancellation of the certificate.

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

(3) After considering any representations made in pursuance of subsection (2) the Director 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 Director 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 119.

(5) Where, before the date specified in the notice, the holder 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) This section applies to every certificate issued under section 112 and to any certificate issued under regulations made pursuant to section 106 other than one certifying that a person is qualified as an officer.

Inquiry into fitness or conduct of seafarer.

119. (1) Where a person has, before the date mentioned in section 118(4), required his case to be dealt with by an inquiry under this section, an inquiry shall be held by one or more persons appointed by the Minister.

(2) An inquiry under this section shall be conducted by persons referred to in subsection (1) with the assistance of one or more assessors.

(3) The persons holding an inquiry under this section

- (a) may confirm the decision of the Director and cancel or suspend the certificate accordingly;
- (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 Director, 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 Director.

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

120. (1) Where an inquiry has been held under section 117 or 119, the Minister may order the whole or part of the case to be reheard, and shall do so

Rules as to inquiries and appeals.

- (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 by the Court.

(3) 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 Court.

Re-hearing and appeal from inquiries.

121. (1) The Minister with the approval of Cabinet may make rules for the conduct of inquiries under sections 117 and 119, and appeals and for any re-hearing under section 120.

(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 120 which are held by the Court, or of appeals to the Court, 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.

Failure to deliver cancelled or suspended certificate.

122. If a person fails to deliver a certificate as required under section 117, 118 or 119, he commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars.

Power to restore certificate.

123. Where a certificate has been cancelled or suspended under section 117, 118, 119 or 120, the Director, 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.

124. (1) The persons holding an inquiry under section 117 or 119 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.

125. (1) If any person attending or brought before an inquiry referred to in section 124 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
- (b) impose on him a fine not exceeding level 1 on the standard scale,

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 the 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 Seafarers for Offences

Civil liability for absence without leave.

126. (1) This section shall apply with respect to the liability of a seafarer employed in a Virgin Islands 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 twenty dollars;
 - (b) if special damages are claimed his liability shall not be more than two hundred dollars.

Civil liability for smuggling.

127. If a seafarer employed in a Virgin Islands ship is found in civil proceedings before a Court in the Virgin Islands to have committed an act of smuggling, whether within or outside the Virgin Islands, he shall be liable to make good any loss or expense that the act has caused to any other person.

Civil liability for fines under immigration Acts.

128. (1) This section shall apply where, at a time when a Virgin Islands ship is in the national waters or territorial seas of any country outside the Virgin Islands, a seafarer 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 seafarer the penalty shall be treated as being attributable to his absence without leave and may, subject to the provisions of section 126, 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 one hundred dollars then one hundred dollars may be recovered by him from the seafarer.

Relief and Repatriation and Relief Costs

Relief and return of seafarers left behind or shipwrecked.

129. (1) A "distressed seafarer " as defined in regulation 76 of the Regulations shall be entitled to relief, repatriation, and maintenance until his return and such other provisions as may be required by the Regulations, by the persons who last employed him as a seafarer, and shall include the repayment of expenses incurred in bringing a shipwrecked seafarer ashore and maintaining him until he is brought ashore and payment of the expenses of the funeral of a seafarer who dies before he can be returned.

(2) The Director shall, in accordance with the Regulations as may be relevant

- (a) determine the place to which a person is to be returned;
- (b) determine the manner in which any wages due to any person left behind or taken to a proper return port or country, and any property of his left on board ship, are to be dealt with;

- (c) require the Surveyor of ships or Registrar to make such provision as may with respect to any matter referred to in this section;
- (d) require the master of any Virgin Islands ship to convey a person to a place determined in accordance with the Regulations and enable the Surveyor of ships or registrar to give the master directions for that purpose;
- (e) provide for the making of payments in respect of the conveyance of a person, and for the keeping of records and the rendering of accounts in connection with all matters relating to this section.

(3) This section applies to a person left behind on being discharged in pursuance of section 92, whether or not at the time he is left behind the ship is still a Virgin Islands ship.

(4) A contravention of any provision of this section is an offence punishable on summary conviction with a fine not exceeding fifteen thousand dollars.

Limit of employer's liability under section 128.

130. Where a person left behind in or taken to any country as mentioned in section 129(1) remains there after the end of a period of three months, the persons who last employed him as a seafarer shall not be liable under that section to make provision 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 make provision with respect to him.

Documentation

Official and other log books.

131. (1) Except as provided by regulations made under this section, an official log book in a form approved by the Director shall be kept in every Virgin Islands ship.

(2) The Minister with the approval of Cabinet may make regulations prescribing the particulars to be entered in English 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 made 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 made under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding ten thousand dollars or not exceeding a lesser amount.

(6) All Virgin Islands ships shall, in addition to the official log book, carry on board a deck log book and an engine room log book in which shall be recorded particulars relating to the deck watch and the engine room watch respectively.

(7) Subject to subsection (8), the entries in the deck log book and engine room log book referred to in subsection (6) shall be made in English except where all persons making entries in those log books have a common language other than English in which case the entries may be made in that common language.

(8) The Director may require a log book or an extract thereof written in a language other than English to be translated officially into English.

(9) All log books referred to in this section shall be admissible in evidence.

(10) If a person intentionally destroys or mutilates or renders illegible any entry in any log book he commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars.

Lists of crew.

132. (1) Except as provided by regulations made under this section, the master of every Virgin Islands ship shall make and maintain a list of the crew containing such particulars as may be required by the regulations.

(2) The Minister with the approval of Cabinet 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 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.

(5) Regulations under this section may make a contravention of any provision thereof an offence punishable on summary conviction with a fine not exceeding ten thousand dollars or not exceeding a lesser amount.

Virgin Islands
seafarers' cards.

133. (1) The Minister with the approval of Cabinet may make regulations providing

- (a) for the issue to Virgin Islands seafarers of cards (in this section referred to as "Virgin Islands seafarers' 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 Virgin Islands seafarers to apply for such cards;

- (b) for requiring the holders of Virgin Islands seafarers' cards to produce them to such persons and in such circumstances as may be prescribed by the regulations;
- (c) for the surrender of Virgin Islands seafarers' cards in such circumstances as may be prescribed by the regulations;
- (d) for any incidental or supplementary matters for which the Governor 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 Virgin Islands seafarers 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 not exceeding ten thousand dollars or not exceeding a lesser amount.

(3) 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 Virgin Islands seafarer's card, he commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Discharge books.

134. (1) The Minister with the approval of Cabinet may make regulations providing

- (a) for the issue to persons who are proposed to or have been employed in Virgin Islands 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 such discharge books; and

- (b) for all other matters relating to discharge books for which the Governor 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 provide

- (a) for a person to cease to be entitled to a discharge book in consequence of a recommendation made by a disciplinary body under section 116; and
- (b) 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 not exceeding ten thousand dollars or not exceeding a lesser amount.

(4) A person who, in the Virgin Islands or elsewhere,

- (a) obtains employment as a seafarer on board a Virgin Islands 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 seafarer a person who he knows or has reason to suspect is disentitled as provided in paragraph (a),

commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale or, on conviction on indictment to a fine not exceeding ten thousand dollars or, imprisonment for a term not exceeding one year, or both.

Handing over
of documents
by master.

135. (1) If a person ceases to be the master of a Virgin Islands 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 commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.”.

Section 449
amended.

9. Section 449 of the principal Act is amended by inserting a new subsection (2a) as follows:

“(2a) There shall be Deputy Registrars of Shipping who shall act as the Registrars for the purposes of this Act.”.

Passed by the House of Assembly this 20th day of December, 2018.

(Sgd.) Ingrid Moses-Scatliffe,
Speaker.

(Sgd.) Phyllis Evans,
Clerk of the House of Assembly.