

No. 3 of 2018

VIRGIN ISLANDS

DISASTER MANAGEMENT (AMENDMENT) ACT, 2018

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Insertion of sections 33A, 33B, 33C, 33D and 33E.

I Assent
(Sgd.) Augustus J. U. Jaspert,
Governor
9th July, 2018

VIRGIN ISLANDS

No. 3 of 2018

An Act to amend the Disaster Management Act, 2003 (No. 3 of 2003) and for other connected matters.

[Gazetted 11th July, 2018]

ENACTED by the Legislature of the Virgin Islands as follows:

Short title.

1. This Act may be cited as the Disaster Management (Amendment) Act, 2018.

Insertion of sections 33A, 33B, 33C, 33D and 33E. No. 3 of 2003

2. The Disaster Management Act, 2003 is amended by inserting after section 33 the following new sections:

33A. (1) This section and section 33B shall apply where there is a hazard.

(2) Where the Receiver is satisfied and considers that a vessel or any object recovered from a vessel is

(a) sunk, partially sunk, adrift, stranded or abandoned in the territorial waters, marine shelters, coastal or inland waters, beaches or the approaches thereto; or

(b) is likely to become an obstruction, impediment or danger to navigation or to the safe and convenient use or operation of any territorial waters, marine shelters, coastal or inland waters, beaches or approaches thereto,

such vessel or object recovered from a vessel shall be deemed to constitute a “hazard” for the purposes of this section.

(3) Where the Managing Director of Ports Authority is satisfied and considers that a vessel or any object recovered from a vessel is

- (a) sunk, partially sunk, adrift, stranded or abandoned in the ports, harbours or tidal waters under the control and jurisdiction of the Ports Authority; or
- (b) is likely to become an obstruction, impediment or danger to navigation or to the safe and convenient use or operation of any port, harbour or tidal waters under the control and jurisdiction of the Ports Authority,

such vessel or object recovered from a vessel shall be deemed to constitute a “hazard” for the purposes of this section.

(4) Where the

- (a) Receiver is satisfied that there is a hazard under subsection (2); or
- (b) Managing Director of Ports Authority is satisfied that there is a hazard under subsection (3),

he or she may by notice in writing require the owner or insurer of the vessel or object recovered from a vessel to raise, remove or destroy the whole or any part of such vessel or object recovered from a vessel, within sixty days after the issuing of such notice.

(5) A notice served under subsection (4) shall be given in writing and shall be considered sufficiently and duly served if addressed to the owner or insurer of the vessel or object recovered from a vessel, as the case may be, and is

- (a) transmitted by electronic communication, fax or registered post to the last known place of residence or business or registered office of the owner of the vessel or object recovered from a vessel;

- (b) affixed to a conspicuous part of the vessel or affixed to the object recovered from a vessel; or
- (c) published in the *Gazette* and one of the local newspapers.

(6) A notice required under this section to be served on the owner of the vessel shall where there are two or more owners be treated as duly served, if served on only one of the owners.

(7) Where the

- (a) Receiver is satisfied that there is a hazard under subsection (2); or
- (b) Managing Director of Ports Authority is satisfied that there is a hazard under subsection (3),

and the owner or insurer of a vessel or object recovered from a vessel, is not known or cannot be traced and as a result cannot be served with notice under subsection (4), the Receiver or the Managing Director of Ports Authority, as the case may be, may cause a notice to be affixed to the vessel or object recovered from the vessel, except where such vessel or object is sunk, and in addition publish such notice in the *Gazette* and one local newspaper circulating in the territory, identifying where possible, the name of the vessel and the physical location of the vessel or object recovered from the vessel.

(8) A notice under subsection (7) shall require that the vessel or object recovered from the vessel be raised, removed or destroyed in whole or in part, within sixty days after the notice is affixed to a vessel or object recovered from the vessel and published in the *Gazette* and a local newspaper.

(9) The Receiver or Managing Director of Ports Authority may require the owner or insurer of a vessel or any object recovered from a vessel to lodge a bond sufficient to cover the costs of the safe removal and disposal of the vessel or object in the time specified in writing by the Receiver or Managing Director of Ports Authority.

(10) Where the owner or insurer of a vessel or any object recovered from the vessel

- (a) fails to acknowledge ownership or an interest in a vessel or any object recovered from the vessel; and
- (b) fails to remove and dispose of the vessel or any object recovered from the vessel in the time specified in writing by the Receiver or the Managing Director of Ports Authority pursuant to subsection (4) and (8),

such person shall be responsible for all costs incurred by the Receiver or the Managing Director of Ports Authority, as the case may be, for the safe removal and disposal of the vessel or object recovered from the vessel, pursuant to section 33B (1).

(11) Where the owner or insurer of a vessel cannot be found after the affixing or publication of the notice under subsections (7) and (8), for the payment of costs incurred under subsection (10), such costs shall be payable from the

- (a) Consolidated Fund for the purposes of the Shipping Registry; or
- (b) Fund for the purposes of the Ports Authority.

(12) For the purposes of this section, a vessel or any object recovered from a vessel shall be deemed “abandoned” if the owner or the insurer who has an interest in the vessel or any object recovered from the vessel, does not establish his interest, proprietary or otherwise, as the case may be and claim the vessel or object from the Receiver or Managing Director of Ports Authority within thirty days immediately following a hazard.

(13) For the purposes of this section, a vessel or any object recovered from the vessel shall be deemed “stranded” if it has been run on shore which includes Crown land or private land, either accidentally or voluntarily, and cannot be returned to navigable waters without the use of outside assistance and measures.

(14) Notwithstanding the definition of hazard in section 2 of this Act, for the purposes of this section “hazard” shall be construed within the context of sections 33A (2) and (3).

(15) For the purposes of this section and section 33B wherever the following terms appear, unless the context otherwise requires

“beach” means that area of the coastal zone from the seaward limit of the foreshore running inland to the vegetation line or other natural barrier whichever is closer to the landward limit of the foreshore, and a beach may consist of sand, stones, gravel, shingle, coral fragments or boulders;

“coastal waters” means

- (a) the sea, bays, sounds, lagoons and estuaries;
- (b) any pond or other body of water that is within the adjoining land or adjacent to the landward limit of the adjoining land; and
- (c) any body of water that is connected permanently or intermittently with the sea and which contains a measurable quantity of sea water,

and includes the sea-bed and the land below and along the banks, or otherwise adjacent to, the waters mentioned in paragraphs (a), (b) and (c);

No. 12 of 1990

“Fund” means the Fund established by section 7 of the British Virgin Islands Ports Authority Act, 1990;

“harbour” has the same meaning as in section 2 of the British Virgin Islands Ports Authority Act, 1990;

“insurer” means a person that contracts to indemnify the owner of a vessel in the event of a loss, damage or liability;

“Managing Director” means the Managing Director appointed under section 20 of the British Virgin Islands Ports Authority Act, 1990 and includes any employee acting under the authority in writing of such Managing Director;

“owner” means a person or persons registered as the owner of a vessel or object recovered from the vessel and includes any person having a right in law to the vessel or object recovered from the vessel;

No. 12 of 1990 “Ports Authority” means the British Virgin Islands Ports Authority established under section 3 of the British Virgin Islands Ports Authority Act, 1990;

No. 13 of 2001 “Receiver” means the Receiver of Wrecks under section 269 of the Merchant Shipping Act, 2001;

“territorial waters” includes coastal land and areas adjacent thereto, whether on Crown Land or otherwise; and

“vessel” includes any ship or boat or any other description of vessel used in navigation and also includes every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel as the case may be.

Action to be taken where vessel/ object is not removed within time specified in notice.

33B. (1) Where a vessel or any object recovered from a vessel is not raised, removed or destroyed within the time specified in the notice in sections 33A (4) and (8), the Receiver or the Managing Director of Ports Authority as the case may be, may

- (a) take possession of and raise, remove, relocate store or destroy the whole or any part of such vessel or any object recovered from the vessel;
- (b) light, mark or buoy the vessel or object recovered from the vessel until it is raised, removed or destroyed; or
- (c) sell or dispose of the vessel or object recovered from the vessel, in such manner as is considered necessary.

(2) The Receiver or the Managing Director of Ports Authority as the case may be, may use the proceeds of sale under subsection (1)(c) as reimbursement for the whole of the expenses incurred in the exercise of powers under this section.

(3) All proceeds of sale raised under subsection (1) (c) shall be deposited in the

- (a) Consolidated Fund for the purposes of the Shipping Registry; or
- (b) Fund for the purposes of the Ports Authority.

(4) Subject to subsection (2), any surplus of the proceeds of sale under subsection (1) (c) shall be paid to the owner or insurer of the vessel or object recovered from the vessel, from the

(a) Consolidated Fund for the purposes of the Shipping Registry; or

(b) Fund for the purposes of the Ports Authority.

(5) Where the proceeds of the sale under subsection (1)(c) are insufficient to reimburse the Receiver or the Managing Director of Ports Authority as the case may be, for the whole expenses incurred, the Receiver or the Managing Director of Ports Authority may recover the balance from the owner or insurer of the vessel or object recovered from the vessel, as a debt in any court of competent jurisdiction.

(6) Where a vessel or object recovered from a vessel or any part thereof is raised, removed or destroyed by the Receiver or Managing Director of Ports Authority under subsection (1)(a) the owner or insurer of the vessel or object recovered from the vessel shall reimburse the Virgin Islands Shipping Registry or the Ports Authority as the case may be for the expenses incurred for raising, removing or destroying the vessel or object recovered from a vessel.

(7) Any expenses incurred by the

(a) Receiver under section 33A or this section shall be paid from the Consolidated Fund; or

(b) Managing Director of Ports Authority under section 33A or this section shall be paid from the Fund.

(8) Notwithstanding subsection (6), where a person fails to comply with a notice under section 33A(4) and (8) there shall be imposed by Cabinet an administrative penalty not exceeding ten percent of the cost to raise and remove the vessel or any object recovered from the vessel.

(9) A person who removes, destroys, defaces or otherwise interferes with a notice served, affixed or placed under

section 33A commits an offence and is liable on summary conviction to a fine not exceeding five hundred dollars.

Entering into contracts.

33C. The Minister responsible for Finance may enter into such contracts or agreements as may be necessary for the purposes of the Shipping Registry for raising, removing, storing or destroying a vessel or object recovered from a vessel or any other related acts under sections 33A and 33B.

Effect of sections 33A and 33B.

33D. Nothing in sections 33A and 33B shall be construed as affecting the functions or duties of the Receiver or the Managing Director of Ports Authority under the Merchant Shipping Act, 2001, the British Virgin Islands Ports Authority Act, 1990 or any other related enactment.

Acts done in good faith.

33E. No claim, proceedings or right of action shall lie against the Receiver or Managing Director of Ports Authority for any act done or omitted to be done in good faith, in the discharge or purported discharge of his or her functions under sections 33A and 33B.”

Passed by the House of Assembly this 29th day of June, 2018.

Ingrid Moses-Scatliffe,
Speaker.

Phyllis Evans,
Clerk of the House of Assembly.