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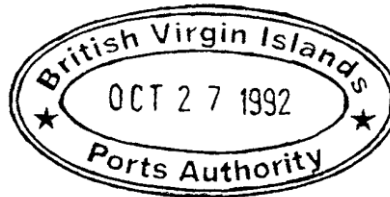
E X T R A O R D I N A R Y

NOTICE

The below listed document is circulated with and forms part of this issue of the Gazette: -

ACT

1990 NO. 12: - BRITISH VIRGIN ISLANDS PORTS AUTHORITY ACT, 1990



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VIRGIN ISLANDS

**British Virgin Islands
Ports Authority Act, 1990**

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No. 12 of 1990

British Virgin Islands
Ports Authority Act, 1990

I Assent

(Sgd) J.M.A. Herdman Governor
17th September, 1990

VIRGIN ISLANDS

NO. 12 OF 1990

An Act to provide for the establishment of a
Ports Authority in the British Virgin Islands.

(Gazetted 31 October, 1990)

PART I

PRELIMINARY

Short title
and date of
commencement.

1. This Act may be cited as the British Virgin Islands
Ports Authority Act, 1990 and shall come into operation on
such date as the Minister may appoint by notice published
in the Gazette.

Interpreta-
tion.

2. (1) For the purposes of this Act -

“animal” includes any domestic, captive or wild
animal, either bird, beast, fish, reptile or insect;

“authorized employee” means a person authorized by
the Authority to exercise the powers or perform
the duties in respect of which the expression
is used;

“Authority” means the British Virgin Islands
Ports Authority established by section 3;

“buoy” means any moored float and includes any
floating light, mark or sign used as an aid
to navigation, other than a lighthouse;

“cargo” includes all kinds of movable property other
than animals;

“charges” means all sums received or receivable, charged or chargeable, for or in respect of the carriage, storage or warehousing of goods by means of the Authority of for or in respect of any ship, harbor or other service performed or facility provided by means of the Authority;

“dangerous or offensive goods” means any goods defined as such by the regulations;

“employee” means a person who is employed whether on a whole-time or part-time basis by the Authority;

“ferry” means any vessel plying from one side of a waterway to the other or between places on the same or different islands or territories for the purpose of the carriage of goods or passengers;

“fund” means the Fund established by section 7;

“goods” include all kinds of goods, wares, merchandise and animals;

“harbour” means any harbour or port described in the Second Schedule, together with all the wharves, jetties, slips, docks and breakwaters, and the machinery, plant, tools and other property appertaining thereto vested in or used for the purposes of the Authority;

“master” in relation to a ship means any person other than a berthing master having charge for the time being of that ship;

“Managing Director” means the Managing Director appointed under section 20, and includes any employee acting under the authority in writing of such Managing Director;

“Minister” means the Minister responsible for the management of the Authority;

“owner” -

- (a) in relation to a ship includes any joint or part owner, and a person who, though only the hirer of a ship, appoints the master and other persons working such ship, and

includes also the agent of the owner or hirer;

- (b) in relation to goods means any person who is for the time being entitled, either as owner or as agent for the owner, to the possession of the goods;

“passenger” means a person other than a stowaway being carried on a ship who is not a member of the crew of that ship;

“perishable goods” means goods liable to rapid deterioration, and, in particular, include fish, fruit, vegetables, bread, meat, poultry, game, butter, eggs, milk, cheese, plants, small animals or any other thing which the Authority prescribes;

“pilot” means a qualified person duly appointed or licensed by the Authority and not belonging to a ship but has conduct therefore;

“pilotage certificate” means a pilotage certificate issued under section 61;

“pilot’s licence” means a pilot’s license issued under section 53 (2);

“pleasure yacht” includes any ship, launch, houseboat, randan, ferry, skiff, dinghy, shallop, punt or canoe, however navigated, not being used for the carriage of passengers or goods or for hire or reward;

“rates” includes all sums which may, under the provisions of this Act or the regulations, be levied for or in respect of the carriage, storage or warehousing of goods by means of the Authority, or for or in respect of any ship, harbour or other service performed or facility provided by means of the Authority;

“sea-plane” includes a flying boat and any other aircraft designed to maneuver on the water;

“ship” includes every description of vessel used in navigation not exclusively powered by oars and includes sea-planes and similar craft;

“territorial waters” means the territorial sea and internal waters of the British Virgin Islands, including all the bays, coves, inlets, sounds, channels, passages, marinas, ports and harbours directly or indirectly opening or adjacent thereto, whether natural or artificial, within the limits of the British Virgin Islands;

“Tariff Book” means the Tariff Book prepared and published under section 96;

“vehicle” includes any vehicle towed or propelled by any means whatsoever for the portage of goods or persons otherwise than by sea;

“vessel” includes every description of craft other than sea-plane on the water used or capable of being used as a means of transportation on, through or under water;

“warehouse” includes any building or part of a building, place, whether enclosed or not, wagon container, ship or vehicle used for the purpose of warehousing or depositing or storage of goods by means of the Authority;

“wharf” includes any wharf, jetty, pier, mooring or quay of whatever description erected or extending beyond the high water mark of Ordinary Spring Tides (OST) or extending into waters of any navigable channel and also includes any portion or extension moored in such waters and used as a wharf, jetty, pier, mooring or quay.

(2) A reference in this Act or the regulations or in any document issued under this Act to -

(a) “accepted by the Authority” means, subject to the provisions of any regulations made under this Act, accepted by an authorized employee in the course of his duty for carriage, storage or warehousing in accordance with the provisions of this Act or the regulations;

(b) “delivered to the Authority” means, subject

to the provisions of any regulations made under this Act, delivered to an authorized employee in the course of his duty under this Act or the regulations;

(c) “the possession of the Authority” means, subject to the provisions of any regulations made under this Act, the possession of any authorized employee in the course of his duty under this Act or the regulations;

(d) “the purposes of the Authority” means any purpose necessary or desirable for the performance of the services or the provision of any facilities authorized to be performed or provided by means of the Authority under this Act or the regulations.

PART II

ESTABLISHMENT, CONSTITUTION AND STATUS OF THE BRITISH VIRGIN ISLANDS PORTS AUTHORITY

Establishment of the Authority.

3. (1) For the purposes of this Act, there is hereby established an Authority to be known as the British Virgin Islands Ports Authority.

(2) The Authority shall be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in that name and perform such other acts as bodies corporate perform.

First Schedule.

(3) The provisions of the First Schedule shall have effect with respect to the constitution of the Authority and otherwise in relation thereto.

Functions of the Authority.

4. The functions of the Authority shall be -

(a) to provide, operate, and maintain all port and harbour services and facilities in the Territory as the Minister considers necessary;

(b) to take such action as the Authority considers necessary in relation to the exercise of any of its functions mentioned in paragraph (a);

(c) to provide in any port or harbour, directly or through any authorized agent, regular

services for stevedoring, shipping and transshipping, landing and warehousing loading and unloading of any cargo;

- (d) to collect the dues and charges authorized by this Act or the regulations;
- (e) to develop and manage all lands including lands on or under the sea-bed leased to or vested in the authority;
- (f) to perform such acts as the Minister determines and report to the Minister at such times as he requires respecting the matters to which this Act relates; and
- (g) generally to carry out the provisions of this Act.

Powers of the Authority.

5. Without prejudice to section 4, in the exercise of its functions under this Act, the Authority may -

- (a) make rules in relation to officers and other employees of the Authority including their appointment, promotion, remuneration, discipline, conduct, leave, working times, holidays and grant of loans and advances of salary to them;
- (b) make rules and prescribe procedures in respect of the administration of the Authority;
- (c) delegate to the Managing Director or any member of the Authority any such functions as the Authority may consider necessary to delegate for the efficient transaction of business;
- (d) co-ordinate and execute any Government project in any specified port;
- (e) control the entry of vehicles, persons, goods and animals within the limits of any specified port and to regulate their movements within such limits;

- (f) determine, impose and levy rates, charges, dues or fees for -
 - (i) services performed,
 - (ii) the use by any person of any facilities or services provided by the Authority; or
 - (iii) the grant to any person of a certificate, licence or permit;
- (g) prohibit, control or regulate -
 - (i) the use by any person of the services performed or the facilities provided by the Authority; or
 - (ii) the presence of any person, ship, vehicle or goods within any harbour port or premises occupied for the purposes of the Authority;
- (h) enter into agreement with any person for -
 - (i) the supply, construction (whether on or under the sea-bed or elsewhere), manufacture, maintenance or repair of any property, real or personal, which, in the opinion of the Authority, is necessary or desirable for the purpose of discharging any of its functions;
 - (ii) the performance or the provision any of the services or facilities which may be performed or provided by the Authority;
 - (iii) the payment or collection of any rates, charges or other receipts arising out of the performance or the provision of any of those services or facilities referred to in sub-paragraph (ii);
 - (iv) the raising by the Authority of charges or dues different from those specified in the Tariff Book, and for such

purposes, to finance or assist in financing whether by way of loan, the holding of stocks, shares or securities, the guaranteeing of interest or dividends on stocks, shares or securities, or otherwise;

- (i) enter into, and perform, directly or through any officer or agent authorized in that behalf by the Authority, all such contracts as may be necessary for the performance of the functions of and the exercise of the powers of the Authority;
- (j) engage in such other activities and do such other things as appear to the Authority to be beneficial or necessary or convenient for it to carry on, for or in connection with the exercise, performance and discharge of its functions or duties under this Act or necessary for carrying on its business;
- (k) established and maintain on and off the coast of the Territory such lights and other means for the guidance and protection of vessels as are necessary for navigation in and out of the specified ports; and
- (l) control the use of, and to issue licences in respect of all vessels crafts, equipment, vehicles and services that are operated within the limits of any specified port.

Powers of entry on land or building.

6. (1) Subject to subsection (2), the Authority may authorize any employee or any agent of the Authority to enter at all reasonable hours of the day into or upon, by himself or with such other assistants as are necessary any land or building for the purpose of making any survey or inspection or of executing any work required to be made or executed for the purposes of this Act.

(2) No land or building may be entered upon by a person authorized under subsection (1) unless at least seven days notice thereof is given to the owner or occupier of the land or building.

(3) An employee acting in accordance with an authorization under subsection (1) and all other persons assisting him shall cause no more damage than is necessary for the purpose, and where any damage is so caused to any person, no action or suit

shall lie, but such person is entitled to compensation in respect of the damage.

(4) In the case of a dispute in relation to liability or to the amount of compensation payable under this section, the matter shall be determined in accordance with the Arbitration Ordinance, 1976.

(5) Nothing in subsection (3) shall be construed as entitling any person to compensation -

(a) for any damage suffered, unless that person would have been entitled to compensation otherwise than under subsection (3); or

(b) for any damage suffered as a result of the use of any works authorized under this Act or the regulations unless such damage results from negligence in such use.

PART III

FINANCIAL PROVISIONS

Establishment and management of Fund.

7. (1) The Authority shall have its own Fund. All receipts of the Authority shall be paid into the Fund and all payments made by the Authority shall be paid out of the Fund.

(2) The Authority shall keep proper accounts of the Fund and proper records in relation thereto.

(3) The Authority shall, at least two months before the commencement of each financial year, submit to the Minister in respect of such year and in such form as he approves -

(a) estimates of capital expenditure for his approval;

(b) a statement of revenue and other expenditure for his information.

(4) The Authority shall within three months from the end of each financial year to which the accounts relate, prepare and submit a statement of accounts in respect of that year.

(5) The accounts of the Authority shall be audited at least once every financial year by an Auditor appointed by the Authority with the approval of the Minister.

(6) The fee to be paid to the auditor appointed under subsection (5) shall be such sum as the Authority determines.

Power to issue debentures or debenture stock or other security for the purpose of raising capital.

8. (1) Subject to subsection (3), the Authority may, borrow or raise money by the issue of debentures or debenture stock, or other security -

- (a) for the provision of working capital;
- (b) for the provision of capital for the expansion of and additions to its fixed assets;
- (c) for the repayment of any moneys borrowed or raised by the Authority;
- (d) to meet any other expenditure properly chargeable to capital account.

(2) Without prejudice to subsection (1), the Authority may, borrow by the way of overdraft or otherwise such sums as are required by the Authority for meeting its obligations and discharging its functions under this Act.

(3) The total amount of moneys borrowed or raised under this section shall not at any one time exceed such sum, having regard to the assets of the Authority, as the Minister responsible for Finance determines.

Guarantee of borrowings by Government.

9. (1) The Minister responsible for Finance may with the approval of the Legislative Council guarantee, in such manner and on such conditions as he thinks fit, the payment of the principal and of interest and other on any borrowings of the Authority under sections 8 and 10.

(2) Any guarantee given under this section shall be given in writing in the name of the Government, and such guarantee may be signed on behalf of the Government by the Minister

responsible for Finance or any person authorized in writing to do so by the Minister responsible for Finance.

(3) As soon as possible after a guarantee is given under this section, the Minister responsible for Finance shall cause to be presented to the Legislative Council a statement of the guarantee.

(4) Where the Government has guaranteed a loan, the Minister responsible for Finance may, from time to time, give general or special directions in writing to the Authority to furnish him with such returns and information with respect to the steps being taken to repay the loan and the Authority shall carry out every such direction.

(5) Where it is made to appear to the Minister responsible for Finance that there is reasonable cause to believe that the Government is or may become liable under any guarantee given under this section, the Minister responsible for Finance may give in writing such directions to the Authority to ensure that satisfactory arrangements are made by the Authority to enable it to duly discharge its obligations under this section and the Authority shall comply with such directions.

(6) Where the Minister responsible for Finance is satisfied that there is default in the repayment by the Authority of any principal moneys or interest guaranteed under this section, he shall direct that the repayment of such moneys or interest be made out of the Consolidated Fund.

Power to borrow from Government.

10. (1) The Authority may borrow by way of advances from the Government such sums as are necessary for carrying out its functions under this Act.

(2) Notice of advances made to the Authority under this section shall be given to the Legislative Council by the Minister responsible for Finance.

(3) For the purposes of making advances to the Authority, the Minister responsible for Finance may authorize advances out of the Consolidated Fund or from the proceeds of any loan to be raised for the purposes of the Authority.

(4) Where advances are to be met from the proceeds of a loan, the Minister responsible for Finance may, pending the raising of that loan, by warrant under his hand authorize the Accountant-

General to make advances out of the Consolidated Fund to the Authority in such sums and on such terms and conditions as he thinks fit.

(5) The repayment of any advances made under this section and the payment of interest and other charges thereon shall, subject to any special terms and conditions which the Minister responsible for Finance stipulates in relation to the repayment, be made by the Authority in like manner and on like conditions as borrowings by the Authority.

Application
of moneys
of the
Authority.

11. The moneys of the Authority in any financial year shall be applied in payment of the following charges: -

- (a) the interest and other charges on, on provisions for repayment of, any loan payable by the Authority;
- (b) the sums required to be paid towards the repayment of any loan made to the Authority;
- (c) the remuneration, fees and allowances payable under this Act;
- (d) the salaries, remuneration, allowances, pensions, gratuities, provident fund and other superannuation benefits of the officers and staff, employed in or in connection with the activities carried on by the Authority;
- (e) the working and establishment expenses of, and the expenditure on, or provision for the maintenance of the property and installations of the Authority, and the discharge of the functions of the Authority properly chargeable to revenue;
- (f) such sums as the Authority may deem appropriate to set aside in respect of obsolescence and depreciation or renewal or installations of the Authority;
- (g) the cost, or any portion thereof, of any new works, plant, or appliances not being a renewal of property as the Authority may determine to charge to revenue; and

- (h) any other expenditure authorized by the Authority and properly chargeable to revenue.

Authorized investments.

12. Any moneys standing to the credit of the Fund which are not immediately required to be expended in meeting the obligations or in the discharge of the functions of the Authority may be invested in securities with the concurrence of the Minister responsible for Finance, for investment by the Authority.

Assets to be interest free.

13. All assets transferred from the Government to the Authority shall be free of interest or any capital obligation except such as are being financed by loans raised by the Government at the commencement of this Act.

Grants for unremunerative services.

14. (1) Where services are provided by the Authority in any place or places, and the Minister is satisfied that -

- (a) those services are unremunerative; and
- (b) it is desirable for social or economic reasons that the service in question should for the time being continue to be provided either in the same or some different form or manner; and
- (c) because of the unremunerative nature of the service which the Minister is satisfied is desirable for those reasons (hereafter in this section referred to as “the required service”) the Authority cannot reasonably be expected to provide them without assistance under this section,

then, subject to the provisions of this section, the Minister may from time to time with the concurrence of the Minister responsible for Finance undertake to make grants to the Authority in respect of the provision of the required service during that period not exceeding three years at a time as the Minister may think fit.

(2) The aggregate amount payable by way of grants in pursuance of an undertaking under subsection (1) shall be the

amount by which it is estimated, on such basis and in such manner as the Minister, with the concurrence of the Minister responsible for Finance and after consultation with the Authority may determine, that the expenditure properly attributable to the provision of the required service will exceed the revenue properly so attributable.

Fixing of rates, fees etc.

15. (1) The Authority shall fix the rates fees, dues and other charges for or in connection with the carriage, storage or warehousing of goods by means of the Authority, and the fixing of ships' fees, dues, wharfage charges, harbor rates, fees, dues, other charges and the payment, exemption from payment, refund or remission thereof.

(2) The rates, fees, dues and other charges fixed by the Authority under subsection (1) shall be approved by the Legislative Council and shall be published in Gazette and in one issue of a local newspaper.

(3) The rates, fees, dues or other charges prescribed under the Ports and Marine Services Regulations 1988, shall be deemed to be the rates, fees, dues and other charges fixed under subsection (1), until such time such rates, fees, dues and other charges are fixed under this Act.

Rules.

16. (1) The Authority shall by resolution make rules in respect of the following matters –

- (a) the manner in which and the officers by whom payments are to be approved and cheques are to be signed;
- (b) the bank or banks into which the moneys of the Authority are to be deposited, and the title of an account with any such bank and the transfer of funds from one account to another;
- (c) the moneys to be retained by the accountant for the purpose of making petty disbursements or immediate payments, and the maximum amount that may be so disbursed for any one payment;

- (d) the method to be adopted in making payments out of the Fund;
- (e) generally as to all matters necessary for the proper keeping and control of the accounts and books and the control of the finance of the Authority.

(2) All decisions, orders, rules and regulations relating to the financial operations of the Authority and authorized by this Act shall be made by resolution of the Authority at a meeting thereof and shall be recorded in the minutes of the Authority.

Accounts and operations.

17. (1) The Authority shall, as soon as practicable after the end of every month, make up a statement of the financial condition of the Authority as at the close of business on the last business day of each month, and shall transmit a copy to the Minister.

(2) Within four months of the close of each financial year or such longer period as the Minister allows, the Authority shall -

- (a) transmit to the Minister a copy of its annual accounts certified by the auditor;
- (b) submit to the Minister a report on its operations during the year.

(3) The Minister shall lay a copy of the annual accounts of the Authority, together with the certificate of the auditor and the report on the Authority's operations for the year, before the Legislative Council as soon as practicable after he has received such accounts, certificate and report.

Exemption from customs duty, stamp duty, income tax and other taxes.

18. Notwithstanding any other enactment the Authority is exempt from -

- (a) the payment of customs duties and any other duties or taxes on goods imported for its own use;
- (b) the payment of any taxes in respect of lands owned or leased by the Authority;
- (c) the payment of stamp duty on its documents;

- (d) the payment of income tax and any other tax imposed on the income or profits.

Powers of the Minister in relation to the Authority.

19. (1) The Minister may give the Authority general directions in writing as to the performance of its powers under this Act on matters which appear to him to affect the public interest and the Authority shall give effect to such directions.

(2) The Minister may, from time to time, direct the Authority to furnish to him, in such form as he may require, returns, accounts and other information with respect to its property and business, and the Authority shall carry out every such direction.

(3) The Minister may, from time to time, order all or any of the activities of the Authority to be investigated and reported upon by such person or persons as he may specify, and upon such order being made, the Authority shall afford all such facilities and furnish all such information, as may be necessary to carry out the order.

PART IV

STAFF, ADMINISTRATION AND MANAGEMENT

OF THE AUTHORITY

Appointment of Managing Director and Deputy.

20. (1) The Authority shall, with the approval in writing of the Governor in Council appoint a Managing Director, and a Deputy Managing Director.

(2) The Managing Director shall, subject to the general direction of the Authority, be the Chief Executive Officer and be charged with the direction of the business of the Authority, the organisation and the exercise, performance and discharge of its powers, duties and functions and the administrative control of the employees of the Authority.

(3) The Managing Director may delegate in writing to the Deputy Managing Director or to any other employee of the Authority, such of his powers, duties or functions as he may from time to time consider necessary and the Deputy Managing Director or any employee to whom such powers, duties and functions are so delegated shall exercise them subject to the general or special directions of the Managing Director.

(4) If the Managing Director is temporarily absent from the Territory or is temporarily incapacitated by illness or for other reasons is temporarily unable to perform his duties, the Deputy

Managing Director shall act in the place of the Managing Director until he is able to resume duties.

(5) The Managing Director shall give effect to any of the powers delegated to him under section 5.

Power to appoint officers and other employees.

21. (1) Subject to the provisions of this Part, the Authority may appoint on such terms and conditions as the Authority may determine such other officers and employees as are necessary and proper for the administration, management and performance by the Authority of its functions under this Act.

(2) The Authority may, with the approval of and subject to such terms and conditions as may be imposed by the Minister, provide for the establishment and maintenance of a Pension Scheme or Provident Fund Scheme for the benefit of officers and employees of the Authority, and in any such Scheme different provisions may be made for classes of officers and employees.

Transfer of officers and employees from Government to the Authority.

22. (1) (a) Every officer and employee of the Ports and Marine Services Department shall, at the commencement of this Act, be deemed to be transferred from the service of Government to service of the Authority upon terms and conditions not less favourable in aggregate than those which are attached to the appointments held by such officers and employees under Government and shall be offered within three months thereafter the alternatives of

(i) continuing in the service of the Authority whereby such service shall be retrospective from the date of his transfer and he shall be entitled to such pension, gratuity and other allowances and rights if any as he would have received had he been retired from the service of Government on the abolition of his appointment on the date of his transfer to the Authority;

(ii) transferring to another department of Government, subject to a suitable vacancy existing, with his service

with the Authority counting as service with Government in respect of his pension, gratuity and other allowances and rights if any; or

(iii) being deemed to have retired from the service of Government on the abolition of his appointment on the date he ceases to be in the service of the Authority.

(b) Any such officer or employee who within one month of the alternatives under paragraph (a) of this subsection being offered him fails to indicate which of the alternatives he elects to accept shall be deemed to have accepted alternative (iii).

(c) The Authority shall reimburse Government with the cost of the pension, gratuity and other allowance and rights, if any, arising from the period which any such officers or employees who do not elect to continue serving with the Authority did serve with the Authority.

(2) Nothing in this section shall be deemed to affect the right of the Authority to terminate the employment of any such officer or employee transferred to the service of the Authority or to vary his rate of pay or conditions of service, in the manner and to the extent that Government could have done had he continued in the service of the Government.

(3) Notwithstanding anything to the contrary in this section where any officer or employee has elected under subparagraph (i) of paragraph (a) of subsection (1) to continue in the service of the Authority, then, such officer or employee shall not be entitled to be paid any pension, gratuity or other allowances that may have accrued to such officer or employee whilst in the service of the Government until such officer or employee would have qualified for a pension, gratuity or other allowances under the Pensions Act, had such officer or employee continued in the service of the Government.

PART V

CONTROL OF SHIPPING

Harbours.
Second
Schedule.

23. (1) The harbours specified in the Second Schedule shall be harbours for the purposes of this Act.

(2) The Minister may by order amend the Second Schedule by extending the limits of an existing harbour or by adding thereto or deleting therefrom any harbour.

Vessels
under
general
direction
of the
Managing
Director.

24. (1) All vessels within the territorial waters or entering, being or remaining in any harbour in the Territory are, during their continuance therein, subject to the general direction and control of the Managing Director.

(2) Notwithstanding anything contained in the regulations, the Managing Director may -

- (a) give directions as to where any vessel or sea-plane shall be berthed, moored, anchored, or parked and as to the method of berthing, mooring, anchoring or parking of the vessel or sea-plane within a harbour or the approaches thereto;
- (b) order the removal of any vessel or sea-plane from any berth, station or position to another berth, station or position and specify in the order the time within which removal is to be effected;
- (c) regulate the movement of vessels or sea-planes and other traffic within a harbour and the approaches thereto; and
- (d) request the Master of any vessel to proceed to and render assistance to any other vessel in distress.

Removal of
foreign
vessel from
territorial
waters.

25. (1) Notwithstanding anything contained in the Regulations, the Minister with the approval of the Governor in Council, may order the removal of any foreign vessel, or sea-plane from the territorial waters and may specify the time limit within which the removal is to be effected.

(2) In specifying the time limit referred to in subsection (1), the Minister may take due account of any limitations of the vessel, sea-plane and of the crew.

(3) Any owner or person in charge of any vessel or sea-plane who, without reasonable excuse, fails to comply with an order given under section 24 (?) or under subsection (1) of this section is guilty of an offence and is liable on summary conviction to a fine of \$2,000.

(4) Where a person has been convicted of an offence under subsection (3) and the order in respect of which the conviction was obtained is still not complied with, that person is guilty of a continuing offence and is liable on summary conviction to a fine of \$1,000 for each day in respect of which the offence continues after the first conviction was obtained.

(5) In the case of a failure to comply with any order given under subsection (1) the Minister is satisfied that it is urgent and necessary and in the public interest or for the protection of the marine environment so to do, he may, without prejudice to any proceedings being instituted against any person, request the Authority or the Managing Director to take such measure and action as may be reasonable and necessary for the purpose of having the order complied with; and any measure and action taken at the request of the Minister shall be at the risk and expense of the person against whom the order under subsection (1) was directed.

(6) This section does not apply to a vessel in distress in the territorial waters, if the vessel is removed by the owner or person in charge of it within such period of time as the Minister considers reasonable.

Removal and disposal of wrecks etc.

26. (1) No owner or person in charge of a vessel shall -

- (a) unlawfully place that vessel; or
- (b) allow that vessel to remain sunk, stranded or abandoned,

within any harbour, or other territorial waters or in any fairway or on the seashore or on or near any rock, bank, shoal, or reef or in any part of the sea adjacent to the coast of the British Virgin Islands.

(2) Where a vessel is allowed to remain sunk, stranded, abandoned or unlawfully placed in a place mentioned in subsection (1) and the Authority is satisfied that the vessel is likely -

- (a) to cause -

- (i) obstruction to navigation or to the lawful landing of a vessel on the beach, foreshore or bank of the harbour, bank of the inland water or of the sea; or
- (ii) obstruction to the use of the beach, harbour, inland water or sea; or

(b) to constitute -

- (i) a risk of pollution; or
- (ii) a danger to the environment,

the Authority may without notice to the owner of the vessel, authorize the Managing Director or any other officer of the Authority to perform in relation to the vessel any of the acts specified in subsection (3).

(3) The acts referred to in subsection (2) are -

- (a) to take possession of or raise, remove or destroy the whole or any part of the vessel;
- (b) to light the vessel or any part of it or buoy it until it is raised, removed or destroyed, as the case may be; or
- (c) to sell, in such manner as may be convenient -
 - (i) the vessel or any part thereof; or
 - (ii) its contents or any part thereof.

(4) The proceeds of a sale under this section shall be appropriated in satisfaction of the expenses incurred by the Authority as a result of the raising of the vessel and of the sale and the remainder shall be held in trust for the person entitled thereto.

(5) If, after the expiration of a period of six months, no claim is made for the remainder of the proceeds to which subsection (4) refers, it shall be paid into the Fund.

(6) If the proceeds of a sale under this section are less than the expenses mentioned in subsection (4), the balance may be recovered in civil proceedings as debt due to the Authority.

(7) An order of the court is not necessary for the taking of possession and sale of a vessel under this section and no liability attaches to the Crown, to the Authority or to any person acting under the authorization of the Authority for any act performed under subsection (3).

Willful sinking and abandoning etc. of vessel in harbour.

27. (1) Any person who, without the permission in writing of the Authority -

- (a) willfully sinks, strands or abandons a vessel in any harbour, or in the territorial waters; or
- (b) does so in contravention of the terms of any such permission,

is, without affecting the operation of subsections (2) to (7) of section 26, guilty of an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of twelve months or to both such fine and imprisonment.

(2) A vessel that is left anchored in the territorial waters for a period of three months or more and is not removed by the owner upon being requested to remove it by the Managing Director is an abandoned vessel for the purposes of this section and section 26.

Obstruction of territorial waters etc.

28. (1) No person shall unlawfully cause an obstruction or do anything that is likely to cause obstruction to -

- (a) navigation in the territorial waters;
- (b) the lawful use of any landing place, whether or not it has been reserved under the regulations or otherwise;
- (c) the lawful use of any pier, jetty, wharf, quay, dock, or mooring; or
- (d) any works connected with navigation in the territorial waters.

(2) Any person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$500 or to imprisonment for a term of six months or to both such fine and imprisonment.

(3) Notwithstanding subsection (2), the court may, in addition to any punishment it imposes under that subsection, make such order for the removal of the obstruction as it thinks fit and the order may contain a direction that the convicted person pay the cost of the removal.

Setting
vessel
adrift.

29. Any person who, for the purpose of obtaining salvage or for any other purpose -

- (a) willfully sets any vessel adrift; or
- (b) cuts, breaks or unfastens the moorings of any vessel with intent to set the vessel adrift,

is guilty of an offence and is liable on summary conviction to a fine not exceeding \$2,000 or to imprisonment for a term of six months or to both such fine and imprisonment.

Prevention of
collisions.

30. (1) The prevention of Collisions at Sea Act, 1987 shall be followed in respect of all vessels, sea-planes and other craft navigating all territorial waters of the British Virgin Islands, including British Vessels registered in the British Virgin Islands, upon the high seas and in all waters connected therewith navigable by seagoing vessels; except in any case as may be prescribed by the Authority or by any regulations under the Merchant Shipping Act, 1894, of the United Kingdom Parliament or any Act replacing that Act.

(2) Any master or owner of a vessel who operates a vessel in contravention of the regulations referred to in subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$5,000.

(3) If any damage to person or property arises as a result of non-compliance with any of the regulations referred to in subsection (1), the damage shall be deemed to have been occasioned by the willful default of the person in charge of the deck or the person for the time being having the immediate control or direction of the vessel, unless the Court is satisfied that the

circumstances of the case made a departure from the regulations necessary.

Liability for pollution, damage to property, of Authority or Crown and to marine environment.

31. (1) The owner or master of a vessel is liable to the Authority for -
- (a) any damage, caused, by the vessel or or by any person employed on or about the vessel to any harbour works, installation, plant, equipment or machinery or other property of the Authority or of the Crown.
 - (b) the cost of clearing from the territorial waters or from any part of the foreshore any pollution caused by the vessel or by any person employed on or about the vessel; and
 - (c) any damage or injury to the marine environment or marine life of the British Virgin Islands, arising from or connected with the pollution or any other damage done by the vessel or by any person employed in or about the vessel.

(2) An amount in respect of which the owner of a vessel is liable under subsection (1) is recoverable from the owner of the vessel in civil proceedings as a debt due to the Authority of the Crown.

(3) Subsection (2) shall be construed as not affecting any other remedy available to the Crown under any law for the time being in force in the Territory.

(4) Notwithstanding subsections (2) and (3), a vessel referred to in subsection (1) and any other vessel belonging to the owner of that vessel may be seized and detained until the estimated cost of making good such damage or injury or of clearing of the pollution has been fully paid or security therefore given to the Authority or the Crown.

Accident and pollution.

32. (1) Where damage or injury referred to in paragraph (a) or (c) of section 31 (1) had been caused by a vessel, or where any vessel in the territorial waters -

- (a) has sustained damage;
- (b) has been the cause of an accident resulting in the loss of life or in serious injury to any person; or
- (c) has sustained any material damage affecting its seaworthiness or efficiency either in its hull or in any part of its machinery, gear or tackle,

its owner shall within the period of 24 hours immediately following the accident or as soon as possible thereafter submit to the Managing Director, a written report of the accident or damage and the probable occasion thereof signed by the owner or master.

(2) A master or owner of a vessel who fails without reasonable cause to comply with this section is guilty of an offence and is liable on summary conviction to a fine of \$500.

Assistance to damaged vessel a duty.

33. (1) Where two or more vessels are involved in a collision, the master or person in charge of each vessel, shall, in so far as he can without damage to his vessel, crew and passengers, if any, -

- (a) render to the other vessel involved in the collision, its master, crew and passengers, such assistance as may be practical and necessary to save them from danger and to stay by the other vessel until he has ascertained that it has no need for further assistance, or
- (b) give to the master or person in charge of the other vessel involved in the collision -
 - (i) his own name and address;
 - (ii) the name of his vessel; and
 - (iii) the name and address of its owner and its owner and its port of registration.

(2) A master or person in charge of a vessel who fails without reasonable cause to comply with this section is guilty of an offence and is liable on summary conviction to a fine of \$2,000.

Detention of unsafe vessels.

34. (1) The Managing Director may provisionally detain a vessel that is in a harbor and direct the master not to put it to sea if the Managing Director is satisfied that the vessel is an unseaworthy

vessel -

- (a) by reason of the defective condition of its hull, equipment or machinery;
- (b) by reason of undermanning; or
- (c) by reason of overloading or improper loading,

and it cannot be put to sea without serious danger to human life, having regard to the nature of the service for which the vessel is being used.

(2) Where a vessel has been provisionally detained under subsection (1), the Managing Director shall serve notice thereof on its owner or master directing him not to put the vessel to sea until the Managing Director has cleared the vessel as safe for being put to sea.

(3) If any ship -

- (a) has been provisionally detained under subsection (1); and
- (b) a notice has been served on the owner or master under subsection (2).

and the ship is put to sea in contravention of that notice, the owner or master, as the case may be, is guilty of an offence and is liable on summary conviction to a fine of \$1,000.

(4) Every notice served under subsection (2) must contain particulars of the alleged unseaworthiness of the vessel and a statement to the effect that an order for the final detention of the vessel will be issued unless steps are taken within such period as may be specified in the notice for the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, or the manning of the vessel, as the Managing Director may require.

(5) The Managing Director may vary a notice given under this section and may extend the period required by the notice within which any act is to be performed.

(6) If the owner or master of any vessel on whom notice has been served under this section complies with the notice within

the period specified therein or within any extended period granted, the Managing Director shall release the vessel, but if he fails to comply with the notice the Managing Director shall order the vessel to be finally detained.

(7) An order for final detention of a vessel shall be served on the owner or master of the vessel affected thereby and shall indicate the date from which it is effective.

Provisions in relation to finally detained vessel.

35. (1) No vessel in respect of which an order for final detention has been made shall be put to sea or remain in any harbor for a longer period than ten days after the date of the order for its final detention except in accordance with the written permission of the Managing Director.

(2) The Managing Director may direct that a vessel in respect of which an order for final detention has been made be beached or moored in any part of a harbor where its presence will neither constitute a hazard to navigation nor injuriously affect the interests of other users of the harbor.

(3) The owner or master of a vessel in respect of which an order for final detention has been made who -

- (a) puts the vessel to sea; or
- (b) allows the vessel to remain in any harbor in contravention of any direction given under subsection (2),

is guilty of an offence and is liable on summary conviction to a fine of \$2,000 if the offence is in contravention of paragraph (a) and \$1,000 if the offence is in contravention of paragraph (b).

(4) If any vessel in respect of which an order for final detention had been given remains in any harbor contrary to any direction given under subsection (2), the Managing Director may cause the vessel to be removed and disposed of.

(5) Subsections (3) to (7) of section 26 apply mutatis mutandis with respect to the disposal of a vessel that is in contravention of subsection (4) as they do in respect of vessels that are in contravention of that section.

Cancellation of order for final detention.

36. If at any time after an order for final detention has been made in respect of any vessel but before it has been disposed of under section 35 (4), the owner or master thereof satisfies the Managing Director that the vessel is no longer seaworthy within the meaning of subsection (1) of section 34 the Managing Director shall cancel

the order for its final detention.

Appeal
against
order for
final deten-
tion.

37. The owner or master of any vessel in respect of which an order for final detention had been made may, within three days of being notified of the order, appeal to the Minister whose decision shall be final.

Putting to
sea in
inclement
weather.

38. Where the Managing Director is satisfied that, by reason of any impending hurricane or other threatening signs of turbulent weather, it would be unsafe to allow any vessel in a harbor to put to sea, he may direct the owner of that vessel not to put it to sea and an owner who puts a vessel to sea contrary to such direction is guilty of an offence and is liable on summary conviction to a fine of \$500.

Passengers
etc. to be
embarked etc.
only at a
harbor.

39. (1) Subject to subsection (2), no ship may embark or disembark any passenger or goods at any place other than a harbor as described in the Second Schedule.

(2) The Authority may with the consent in writing of -

- (a) the Minister responsible for Finance, in the case of goods;
- (b) the Minister responsible for Immigration and Customs, in the case of passengers,

authorise the master of any ship to embark or disembark such goods or passengers at any place, other than at harbour as mentioned in subsection (1), designated by the Authority for the purpose.

Master to
supply in-
formation.

40. The master of any ship arriving in a harbour shall produce on demand to an authorized employee -

- (a) the ship's register and the ship's papers;
- (b) a list of the passengers, if any, showing particulars of their sex, occupation and nationality;
- (c) a list showing the deaths, if any, which occurred during the voyage;
- (d) a list showing stowaways, if any on the ship; and
- (e) the ship's manifest,

and shall also supply such other information in relation to the ship, passengers and cargo thereof, as such employee requires.

Power to arrest ship for harbor rates and charges.

41. (1) Where any harbour rates or charges are owing in respect of any ship, an authorized employee may arrest the ship and the tackle, apparel and furniture thereof, and may detain it until the amount of such rates or charges is paid.

(2) Where, after an arrest under subsection (1), any harbor rates or charges remain unpaid for a period of seven days, the authorised employee may cause the ship and the tackle, apparel and furniture thereof arrested to be sold, and out of the proceeds of such sale he shall retain the amount necessary to meet the expenses of the detention and sale thereof and shall, after paying the amount of any harbour rates or charges which is owing to the Authority, deliver the balance, if any, to the master of the ship.

Power to withhold clearance.

42. (1) Before any discharge or outward clearance is given to any vessel, the Comptroller of Customs or any customs officer shall require the master, owner, or person in charge of the vessel to submit to him a certificate from the Managing Director stating that -

- (a) all dues and charges payable under this Act or the regulations and any costs against the vessel or master or owner or person in charge of such vessel have been paid;
- (b) security to the satisfaction of the Managing Director has been given for the payment of the dues and charges; and
- (c) he has complied with the provisions of this Act and of the regulations.

Removal of wrecks etc.

43. The Authority may take such action as may be prescribed respecting the removal and disposal of any wreck, building, ship or other thing causing obstruction in or about any harbour.

Retention and Delivery of goods etc.

44. (1) Where the owner or master of a ship from which any goods have been landed at a harbour and accepted by the Authority for carriage, storage or warehousing or for delivery to the consignee, notifies the Managing Director in writing that freight or other charges to the amount specified in the notice remain unpaid in respect of the goods, the Managing Director shall obtain and refuse delivery thereof to the consignee or any other person until -

- (a) the payment of any rates, charges and customs duties due in respect of such goods; and
- (b) the production of a receipt for, or a release from, the payment of such amount signed, or purporting to be signed by or on behalf of the ship owner; or
- (c) the payment of the amount by the person entitled to take delivery thereof; or
- (d) the deposit by the consignee of the goods with the Managing Director of a sum of money equal in amount to the sum claimed as freight and other charges as specified in the notice by the owner or master of a ship; and in which event the lien for freight and other charges shall be discharged without prejudice to any other remedy which the shipowner may have for recovery of the freight charges.

(2) When a deposit is made with the Managing Director under paragraph (d) of subsection (1), the person making the same may, within fifteen days after making it, give to the Managing Director notice in writing to retain it, stating in the notice the sums, if any, which he admits to be payable to the shipowner, or, as the case may be, that he does not admit any sum to be so payable, but if no such notice is given, the Managing Director may, at the expiration of the fifteen days, pay the sum deposited over to the shipowner.

(3) If a notice is given as aforesaid the Managing Director shall immediately apprise the shipowner of it, and shall pay or tender to him out of the sum deposited the sum, if any, admitted by the notice to be payable, and shall retain the balance, or, if no sum is admitted to be payable, the whole of the sum deposited, for thirty days from the date of the notice.

(4) At the expiration of those thirty days unless legal proceedings have in the meantime been instituted by the shipowner against the owner of the goods to recover the said balance or sum, or otherwise for the settlement of any disputes which may have arisen between them concerning the freight or other charges as aforesaid, and notice in writing of those proceedings has been served on the Managing Director, the Managing Director shall pay the balance or sum to the owner of the goods. The Managing

Director by any payment made under this section shall be discharged from all liability in respect thereof.

(5) Where the Managing Director causes to be delivered any goods in respect of which a notice has been given under subsection (1) to a person producing such receipt or release or making such payment as is referred to in paragraph (b) or (c) or making a deposit as is referred to in paragraph (d) of that subsection, the Authority shall be freed from all liability to any person in respect of the goods.

(6) An authorised employee is entitled to levy such charges as may be determined under this Act or the regulations in respect of the custody of any goods delivered to him in accordance with this section, and he may do all such reasonable acts and incur such reasonable expenses as are necessary for the proper custody and preservation of the goods, and the Authority shall have a lien on the goods for such charges and any other expenses so incurred.

(7) Nothing in this section shall be construed as requiring any person to take into the custody of the Authority any goods which would not otherwise be receivable by means of the Authority under this Act or the regulations, or as requiring the Managing Director to enquire into the validity of any claim for freight or any other charges made in any notice given by a master under subsection (1).

Sale of
of goods
by Managing
Director.

45. (1) If the lien is not discharged, and no deposit is made as aforesaid the Managing Director may, and, if required by the shipowner, shall, at the expiration of ninety days from the time when the goods were placed in his custody, or, if the goods are of a perishable nature, at such earlier period as in his discretion he thinks fit, sell by public auction, either for home use or for exportation, the goods or so much thereof as may be necessary to satisfy the charges hereinafter mentioned.

(2) Before making the sale the Managing Director shall give notice thereof by advertisement in two local newspapers and also, if the address of the owner of the goods has been stated on the manifest of the cargo, or on any of the documents which have come into the possession of the Managing Director or is otherwise known to him, send notice of the sale to the owner of the goods by post.

(3) The title of a bona fide purchaser of the goods shall not be invalidated by reason of the omission to send the notice

required by subsection (2), nor shall any such purchaser be bound to inquire whether the notice has been sent.

Application of proceeds of sale.

46. The proceeds of sale shall be applied by the Managing Director as follows, and in the following order: -

- (a) first, if the goods are sold for home use, in payment of any customs or excise duties owing in respect thereof; then
- (b) in payment of the expenses of the sale; then
- (c) in payment of the charges of the Managing Director and the shipowner according to such priority as may be determined by the terms of the agreement (if any) in that behalf between them; or if there is no such agreement -
 - (i) in payment of the rent, rates, and other charges due to the Managing Director in respect of the said goods; and then
 - (ii) in payment of the amount claimed by the shipowner as due for freight or other charges in respect of the said goods;

and the surplus, if any, shall be paid to the owner of the goods.

Managing Director's rent and expenses.

47. Whenever any goods are placed in the custody of the Managing Director the Managing Director shall be entitled to rent in respect of the same and shall also have power, at the expense of the owner of the goods, to do all such reasonable acts as in the judgment of the Managing Director are necessary for the proper custody and preservation of the goods, and shall have a lien on the goods for the rent and expenses.

Failure to pay customs duty etc.

48. Where customs duty or any other duty or charge payable in respect of goods in possession of the Authority under this Act remains unpaid for a period of one month or more, those goods may be disposed of as unclaimed goods.

Liability for demurrage.

49. The Authority is not liable for any demurrage which may occur or be due on any ship, howsoever such demurrage may have

been caused.

Master responsible for contravention of Act etc.

50. The master of a ship is responsible for the compliance in respect of such ship with the provisions of this Act and the regulations, and, in the event of a contravention thereof, he may be proceeded against and held liable for the contravention.

Delivery to masters of copy of Act.

51. The Managing Director shall, on the demand of the master of any ship arriving at any harbor, cause to be delivered to such master on loan for a period of 14 days a copy of this Act and any Regulations relating to harbours, quarantine and matters related thereto.

PART VI PILOTAGE

Compulsory pilotage harbour.

52. (1) The harbours specified in the Second Schedule shall be compulsory pilotage harbours, and all ships, other than exempted ships, navigating, whether by entering, leaving or moving within the limits thereof, shall be under the pilotage of -

(a) a licensed pilot employed by the Authority or a person whose services are on contract with the Authority; or

(b) any other person licensed as a pilot.

(2) For the purposes of this section, exempted ships are -

(a) ships belonging to Her Majesty;

(b) pleasure yachts or fishing vessels;

(c) ferry boats plying as such exclusively within the limits of a harbour;

(d) ships of less than two hundred tons gross registered tonnage;

(e) ships trading exclusively between harbours within the Territorial waters;

(f) tugs, dredgers, barges or similar vessels whose ordinary course of navigation does not extend beyond the limits of the territorial waters.

(3) The Managing Director may exempt any ship from compulsory pilotage.

(4) Where any harbour is a compulsory pilotage harbour, the Authority may prescribe the limits of such harbour for the purposes of compulsory pilotage.

(5) Neither the Authority nor the Crown shall be responsible for any loss or damage through the act, neglect or default of any pilot.

(6) The owner or master of a ship navigating under circumstances in which pilotage is compulsory shall be answerable for any loss or damage caused by the ship or by any fault of the navigation of the ship in the same manner as he would if pilotage were not compulsory.

(7) A pilot shall not be liable for neglect or want of skill in the performance of his duties under this Act or the regulations beyond the sum of five thousand dollars.

(8) Where any proceedings are taken against a pilot for any neglect or want of skill in respect of which his liability is limited under subsection (7), and other claims are made or apprehended in respect of the same neglect or want of skill, the court in which the proceedings are taken -

- (a) may determine the amount of the liability;
- (b) upon payment into court by the pilot of any amount so determined or the sum of five thousand dollars, whichever is the less, may order that the amount so paid into court be distributed rateably among the several claimants;
- (c) may, where that court is the High Court, order that any proceedings pending in any other court in relation to the same matter be stayed; and
- (d) may proceed in such manner and subject to such conditions as to making persons interested parties to the proceedings, the exclusion of any claimants who do not commence proceedings within a certain time, requiring security from the pilot, and the payment of any costs as the court thinks just.

Compulsory pilotage and licencing of pilots.

53. (1) The Authority may with the approval of the Minister upon receipt of the prescribed fee, license as pilots such persons as the Authority is satisfied are competent to conduct cargo vessels and passenger vessels into and out of a harbor.

(2) Every qualified pilot on his appointment shall be issued with a licence, to be known as a “pilot’s license” in such form as the Minister approves and the licence shall, in addition to any other particulars, contain in respect of the person to whom it is issued, the following: -

- (a) his name and address;
- (b) his photograph; and
- (c) the limits within which he must operate as a pilot.

(3) Every pilot’s licence must be signed by the holder thereof and also by the Chairman of the Authority or any other officer authorised by the Chairman.

(4) A pilot’s licence is valid for a period of one-year unless a shorter period is specified in the pilot’s licence for its validity; but it is renewable for a further period of one year upon payment of the prescribed fee.

Production of pilot’s licence.

54. Every pilot shall, when acting as such, produce his pilot’s licence to any person by whom he is employed or to whom he offers his services as pilot.

Delivery up of pilot’s licence.

55. (1) Every pilot shall, when required to do so by the Authority, deliver up his pilot’s licence to the Authority or to such person as the Authority authorises to take possession of the licence.

(2) On the death of a pilot, any person who has possession of such pilot’s licence shall transmit it to the Authority without delay.

(3) A pilot who contravenes subsection (1) and a person who contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$250 or to imprisonment for a term of one month or to both such fine and imprisonment.

Pilot’s licence not transferable.

56. A pilot’s licence is not transferable.

Fraudulent use of pilot's licence.

57. A person who -
- (a) uses or attempts to use a pilot's licence that he is not entitled to use; or
 - (b) uses or attempts to use a pilot's licence for a purpose that is not within the limits specified in the licence in pursuance of paragraph section 53 (2),

is guilty of an offence and is liable on summary conviction to a fine of \$500 or imprisonment for a term of three months or to both such fine and imprisonment.

Recovery of pilotage fees.

58. (1) Pilotage fees due to any pilot, in respect of services rendered in respect of a vessel may be recovered by the pilot in civil proceedings from -
- (a) the master or owner of the vessel; or
 - (b) a consignee or an agent who has paid or made themselves liable to any charge or account of the vessel at port of arrival, discharge, loading or departure,

except that no action for recovery of pilotage fees shall be entertained by the Court unless a request for payment had been made in writing by the pilot.

Indemnity of consignee or agent for fees.

59. A consignee, or an agent, not being the master or owner of a vessel who is liable for payment of pilotage fees or from whom payment of pilotage fees has been recovered may, out of any moneys received by him on account thereof or belonging to the owner of the vessel, retain any reasonable expenses he has incurred by reason of payment of the fees or of his liability to pay the fees.

Offences in relation to pilots.

60. (1) A pilot who -
- (a) lends his pilot's licence to any person;
 - (b) within or outside the limits of his licence acts as a pilot during a period that he is suspended;
 - (c) within or outside the limits of his licence acts as a pilot while he is under the influence of alcohol or drugs;

- (d) refuses to take charge or willfully delays in taking charge, of any vessel within the limits of his licence -
 - (i) when not prevented from doing so by reason of illness or other reasonable cause; and
 - (ii) upon being requested to do so by the master of the vessel, its owner, agent or consignee or by any member of the Authority or by the Managing Director;
- (e) unnecessarily cuts, slips or causes to be cut or slipped, any cable or line belonging to any vessel;
- (f) refuses when requested by the master to conduct a vessel of which he is in charge into any harbour, port or place into which he is qualified to conduct that vessel, except on reasonable grounds of the likelihood of danger to the vessel; or
- (g) without the consent of the master, quits a vessel of which he has charge before the service for which he has been hired has been performed,

is guilty of an offence and is liable on summary conviction to a fine of \$500 or to imprisonment for a term of three months and, in addition thereto, is personally liable for any damage to the vessel that is the result of his action.

(2) A person who aids, abets, counsels or procures the commission of any offence under this section is liable in like manner and to the same extent as specified in subsection (1).

(3) If the person referred to in subsection (1) is a pilot, he is, in addition to the liability he incurs, liable at the discretion of the Authority to suspension or dismissal.

(4) If a pilot while he is in charge of a vessel willfully, negligently or by reason of his being under the influence of drugs or alcoholic drink -

- (a) does anything that -
 - (i) causes or is likely to cause the loss or destruction of, or serious damage to, the vessel, or

(ii) is likely to be a source of danger to the life or limb of any person on board thereof; or

(b) fails to do any lawful act that is necessary to be done by him for -

(i) preserving the vessel from loss, destruction or serious damage; or

(ii) preserving any person belonging thereto or on board thereof from danger to life or limb,

is guilty of an offence.

(5) A pilot guilty of an offence under subsection (4) is liable -

(a) on conviction on indictment to a fine of \$5,000 or to imprisonment for a term of 2 years or to both such fine and imprisonment; or

(b) on summary conviction to a fine of \$2,000 or to imprisonment for a term of twelve months or to both such fine and imprisonment;

and, in addition thereto, the Authority may revoke his pilot's licence.

Pilotage certificates to masters and mates.

61. (1) The Authority may, if it thinks fit -

(a) on the application of the master or mate of any vessel; and

(b) on payment by him of the prescribed fee,

examine him as to his competence to pilot the vessel of which he is master or mate within any harbour in respect of which there is compulsory pilotage.

(2) If the Authority, after an examination of a master or mate, is satisfied that the master or mate is competent to pilot the vessel of which he is the master or mate, it may issue to him on payment by him of the prescribed fee a certificate to be known as a pilotage certificate specifying -

- (a) the name of the person to whom it is issued;
- (b) the vessel in respect of which it is issued;
- (c) the limits which the master or mate is entitled to pilot the vessel; and
- (d) the period for which it is valid.

(3) A person to whom a pilotage certificate is granted is, while he is acting as master or mate of the vessel specified in the certificate, entitled to pilot that vessel within the limits specified in the certificate.

(4) A pilotage certificate is not transferable and is valid for a period of one year unless a shorter period is specified in the pilotage certificate for its validity; but it is renewable for a further period of one year upon payment of the prescribed fee.

(5) A person to whom a pilotage certificate has been issued who -

- (a) lends his pilotage certificate to any person;
- (b) acts as a pilot after his pilotage certificate has been cancelled under section 62;
- (c) acts as a pilot without having obtained a pilotage certificate; or
- (d) acts as a pilot while he is under the influence of alcohol or drugs,

is guilty of an offence and is liable on summary conviction to a fine of \$500 or to imprisonment for a term of three months; and, in addition, is personally liable for any damage that results from his actions.

Cancellation of pilotage certificate.

62. The Authority may cancel any pilotage certificate it has issued if it is satisfied that the person to whom it was issued has been guilty of misconduct or has shown himself incompetent to pilot the vessel.

Liability of master of vessel.

63. Notwithstanding the provisions of this Act or any law in force in the Territory, the owner or master navigating in circumstances in which pilotage is compulsory is answerable for any loss or damage caused by the vessel or by any fault arising from the navigation of the vessel as he would be if pilotage were not compulsory.

Liability

64. The grant of renewal of a pilot's licence or pilotage

in case of grant or renewal of pilot's licence or pilotage certificate.

certificate by the Authority under the powers given to it by this Act does not operate to attach liability to the Crown, the Authority or to any member or staff of the Authority for any loss or damage that arises as a result of any act or default of a person to whom a pilot's licence or a pilotage certificate has been issued.

Pilot to be servant of owner or master.

65. A pilot is, while he is engaged in any act of pilotage, the servant of the owner, master or person in charge of the vessel under pilotage, and neither the Crown nor the Authority nor any member of the Authority is liable for any loss or damage that arises as a result of the act, omission or default of any pilot, whether or not the pilot is normally employed in the service of the Authority.

Inquiries by Authority into conduct of pilots.

66. (1) The Authority may on its own motion or when so directed by the Minister, inquire into the conduct of a pilot whenever -

- (a) there is reason to suspect that the pilot has been guilty of misconduct affecting his capability as a pilot;
- (b) has failed to perform his duty or has been negligent in the performance of his duty as a pilot;
- (c) appears to be no longer competent to act as a pilot; or
- (d) has had an allegation of negligence or incompetence made against him.

(2) If the Authority after the inquiry under subsection (1), is satisfied as to -

- (a) the misconduct, failure, neglect or incompetence of a pilot; or
- (b) the truth of the allegation made against a pilot, it may, with the approval of the Minister, suspend or cancel the pilot's licence of the pilot.

Suspension of pilot's

67. (1) The Authority in its discretion, may suspend the pilot's licence of any pilot pending an inquiry under section 66

licence
pending
inquiry.

but any such suspension shall be reported forthwith to the Minister by the Authority.

(2) A pilot who is aggrieved by the suspension of his licence under subsection (1) may appeal to the Minister.

(3) The Minister may, after hearing an appeal, either himself or by some person assigned by him for the purpose, affirm, vary or reverse the decision of the Authority but, before varying any decision of the Authority in such a way as to be detrimental to the pilot, the Minister shall give the pilot an opportunity to be heard.

(4) The decision of the Minister under this section is final.

PART VII

RESPONSIBILITY OF THE AUTHORITY AS A WAREHOUSEMAN

Liability
for loss
etc goods.

68. (1) Subject to this Act or the regulations or any contract, the Authority is of not liable for the loss, misdelivery or detention of, or damage to, goods -

- (a) delivered to or in the possession of the Authority otherwise than for the purposes of carriage, storage or warehousing, except where the loss, misdelivery, detention or damage is caused by the want of reasonable foresight and care on the part of any person employed in or for the purpose of the Authority;
- (b) accepted by the Authority for carriage, storage or warehousing where the loss, misdelivery, detention or damage occurs otherwise than while the goods are being carried, stored or warehoused and is not caused by the want of reasonable foresight and care on the part of any person employed in or for the purpose of the Authority.

(2) The Authority is in no case liable for any loss, misdelivery, detention or damage arising from -

- (a) an act of God;
- (b) an act of war of the Queen's enemies;

- (c) arrest or restraint of princes or rulers, or seizure under legal process;
- (d) an act or omission of the consignor, consignee, depositor, or the servant or agent of any such person;
- (e) fire, flood, hurricane, tempest, earthquake, riot, civil commotion, strike, lock-out, stoppage, or restraint of labour from whatever cause, whether partial or general;
- (f) inherent liability to wastage in bulk or weight, latent or inherent defect, vice or natural deterioration;
- (g) deficiency in the contents of unbroken packages;
- (h) insufficient or improper packing or from leakage from defective drums, containers or packages.

Limitation for loss etc. where value of goods given is mis-stated.

69. The liability of the Authority in respect of any goods accepted by the Authority for carriage, storage or warehousing, shall be based on the true value of the goods and not on the mis-stated value of any such goods.

Burden of proof.

70. In any proceedings brought against the Authority, it shall not be necessary for the person claiming damages or compensation to prove how the loss, misdelivery, detention, or damage to the goods occurred.

PART VIII

FERRIES

Ferry Licences.

71. (1) No person shall operate a ferry service within the territorial waters unless he has obtained a licence from the Authority for the purpose.

(2) An application to obtain a licence to operate a ferry service shall be in the prescribed form and is obtainable from the

Authority.

(3) The Authority shall upon receiving an application under subsection (2) -

- (a) interview the applicant; and
- (b) carry out such investigations in respect of the application as may be necessary.

(4) The Authority shall upon completion of its investigations, with the approval of the Minister -

- (a) approve the schedule and the route of the ferry service proposed by the applicant; or
- (b) disapprove the application.

(5) Where an application has been granted under this section, the Authority shall, subject to such terms and conditions it may deem fit and upon payment of the prescribed fee, issue to the applicant a licence on such form as may be prescribed.

(6) Where the Authority disapproves an application it shall notify the applicant setting out the reasons for such disapproval.

(7) Notwithstanding the issue of a Ferry Licence under subsection (5) the Authority may, having regard, to the safety of navigation within the territorial waters, amend, modify or vary any condition set out therein.

(8) A Ferry Licence is valid for a period of one year but is renewable for a like period upon payment of the prescribed fee and may only be used in respect of the ferry in relation to which it is issued.

Ferry
Licence to
be displayed.

72. Where the Authority issues a Ferry Licence, that license shall be displayed in a conspicuous place on the ferry in respect of which the Ferry Licence is issued.

Suspension
of Ferry
Licence.

73. The Authority may, with the approval of the Minister, suspend a Ferry Licence granted under this Part if the ferry or the mode of its operation is, in the opinion of the Authority, unsafe or, as the case may be, contrary to good seamanship; or contravenes the terms and conditions of a licence; and where a Ferry Licence is

suspended, the suspension remains until the Authority is satisfied that the cause of the suspension has been remedied.

Ferries to be licensed in accordance with coastal craft regulations.

74. Every vessel in respect of which a Ferry Licence has been issued shall be licensed in accordance with the regulations relating to coastal craft and if the vessel ceases at anytime to be so registered the Ferry Licence granted under this Part lapses.

Appeal against decision of the Authority.

75. (1) Any person who is aggrieved by a decision of the Authority made under section 73 may, within seven days of the receipt of such decision, appeal in writing against such decision to the Minister.

(2) Upon receipt of any appeal under subsection (1) the Minister shall -

- (a) allow the appeal; or
- (b) confirm the decision of the Authority; or
- (c) require the Authority to vary or reconsider the decision of the Authority.

(3) The decision of the Minister on an appeal under this section shall be final.

Duty of person operating a ferry service to operate approved route and schedule.

76. (1) It shall be the duty of every person who operates a ferry service to operate such service in accordance with the approved route and schedule.

(2) Any departure by a licensee from the approved routes and schedules due to force majeure shall be reported by him to the Managing Director or his representative at the port of arrival or departure.

Offences in relation to this part.

77. (1) Any person who -

- (a) contravenes section 71 (1) or 72;
- (b) in an application for a Ferry Licence willfully makes a statement that he knows to be false;
- (c) operates a ferry while the Ferry Licence is suspended under section 73; or

- (d) operates a ferry contrary to the approved route and schedule under section 76,

is guilty of an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for a term of three months or to both such fine and imprisonment.

(2) Where a person convicted of an offence under paragraph (c) or (d) of subsection (1) is the holder of a certificate of competency issued under this Act the Court may, in addition to any other penalty that may be imposed, order that the certificate of such person be suspended on such terms and conditions as may be specified in such order or if the certificate was issued outside the Territory, order that the holder shall not be entitled to operate any ship or coastal craft within the territorial waters for such period of time as the Court may determine.

(3) The Court shall cause the particulars of the conviction and of any other order made under subsection (2) to be endorsed on the certificate and shall cause a copy of such particulars to be sent to the Director, who shall thereupon note them on the appropriate register.

(4) A person who, without reasonable cause, fails to produce any certificate required to be produced under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars.

(5) A person who is convicted of an offence under paragraph (a) or (c) or (d) of subsection (1) and continues the offence is guilty of a continuing offence and is liable on summary conviction to a fine of two hundred dollars in respect of each day or part thereof on which the offence continues after the first conviction.

PART IX

OFFENCES

Damaging property in manner likely to endanger life.

78. (1) A person who unlawfully damages or in any way interferes with any lighthouse, a buoy, mark, beacon or any other property of the Authority or of the Crown is guilty of an offence and is liable on summary conviction upon indictment to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

(2) Where any damage is caused to any lighthouse, buoy, mark, beacon or any other property of the Authority or of the

Crown it shall be the duty of such person who caused such damage to forthwith report such damage to the Managing Director.

(3) Every person who fails to comply with the provisions of subsection (2) is guilty of an offence and is liable to a fine not exceeding on thousand dollars.

(4) This section shall not prevent the Authority from taking any legal proceedings for the recovery of the full amount of the damage caused by such person.

False returns

79. A person who makes, either knowingly or recklessly, any statement which is false in any material particular in any return, claim or other document, which is required or authorised to be made under this Act or the regulations is guilty of an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for two years, or to both such fine and imprisonment.

Person endangering safety of operations.

80. A person who, while on duty or lawfully employed in any premises of the Authority or of the Crown used by or for the purposes of the Authority or upon any ship or vehicle of the Authority or of the Crown used by or for the purposes of the Authority, endangers the safety of any other person by -

- (a) contravening any of the provisions of this Act or of the regulations;
- (b) contravening any lawful order, direction or rule given to such person, or made in respect of his service;
- (c) being under the influence of alcohol or drugs; or
- (d) any rash or neglect or negligent act,

is guilty of an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

Person demanding improper amount.

81. A person who, with intent to defraud, demands or receives from any other person delivery goods for carriage, storage or warehousing by means of the Authority, or from any other person making use of the facilities provided by means of the Authority any greater or less amount than he should demand or receive is guilty of

an offence and is liable on summary conviction to a fine of one thousand dollars or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Miscellaneous summary offences.

82. A person who -
- (a) being a trespasser on any wharf or premises of the Authority or of the Crown used by or for the purposes of the Authority, or upon any ship or vehicle of the Authority or of the Crown used by or for the purposes of the Authority, refuses to leave such wharf or premises, ship or vehicle after being requested to do so by any authorized employee or member of the Police Force;
 - (b) being on any wharf or premises of the Authority or of the Crown used by or for the purposes of the Authority, or upon any ship or vehicle of the Authority or of the Crown used by or for the purposes of the Authority -
 - (i) refuses when called upon by an authorised employee or member of the Police Force to give his name and address, or gives a false name or address, for the purpose of avoiding prosecution;
 - (ii) is in a state of intoxication or behaves in a violent or offensive manner to the annoyance of any other person;
 - (iii) discharges any firearm or does anything which may cause injury to any person on such wharf or premises or upon such ship or vehicle;
 - (iv) commits any nuisance or act of indecency, or uses profane, obscene, indecent or abusive language;
 - (v) without lawful excuse contravenes any lawful directions given by any authorized employee;

- (vi) save with the express permission of the Managing Director hawks, sells or exposes for sale on any wharf or premises, any article, or touts, applies for or solicits custom of any description; or
- (vii) smokes in any part of any wharf or such premises, ship or vehicle bearing a notice that smoking is not permitted in that part;
- (c) writes, draws, or affixes any profane, obscene, indecent or abusive word, matter, representation or character on any wharf or premises of the Authority or of the Crown used by or for the purposes of the Authority, or upon any ship or vehicle of the Authority or of the Crown used by or for the purposes of the Authority;
- (d) defaces the writing on any board or any notice authorised to be maintained on any wharf or premises of the Authority or of the Crown used by or for the purposes of the Authority, or upon any ship or vehicle of the Authority or of the Crown used by or for the purposes of the Authority;
- (e) damages or without lawful excuse interferes with any property of the Authority or of the Crown, used by or for the purposes of the Authority;
- (f) without lawful excuse does any act which obstructs, or is likely to obstruct the free navigation of any harbour or the use of any wharf or dock therein;
- (g) being a driver or conductor of any vehicle, disobeys, while upon premises of the Authority or of the Crown used by or for the purposes of the Authority, any reasonable directions given by any authorised employee or member of the Police Force;
- (h) fails to deliver at the earliest possible opportunity to any authorised employee any

property which there is reason to believe has been lost or misplaced, found on any wharf or premises of the Authority or of the Crown used by or for the purposes of the Authority;

- (i) willfully obstructs or impedes any other person in the discharge of his duties arising out of his employment in or for the purposes of the Authority;
- (j) gives or offers to any other person money or money's worth for the purpose of avoiding payment of any sum due to the Authority; or
- (k) unlawfully removes any property of the Authority or of the Crown used by or for the purposes of the Authority,

is guilty of an offence and is liable on summary conviction to a fine of five hundred dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Navigating without pilot in compulsory pilotage harbour.

83. If any ship is navigated in circumstances in which pilotage is compulsory and such ship is not under the pilotage of a pilot, the master thereof is guilty of an offence and is liable on summary conviction to a fine of one thousand dollars or to imprisonment for a term of six months or to both such fine and imprisonment.

Offences by masters.

84. A master who contravenes any of the provisions of section 39 or 40 or produces any document or gives any information which is false in any material particular is guilty of an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for a period of twelve months or both such fine and imprisonment.

Power of arrest or removal.

85. (1) A person who commits any offence mentioned in section 80, 82 or 84 may be arrested without a warrant by any member of the Police Force.

(2) A person who commits any offence against this Act or the regulations, other than an offence mentioned in subsection (1), may be arrested without warrant by any member of the Police Force if -

- (a) there is reason to believe that such person will abscond;

- (b) he refuses on demand to give his name and address; or
- (c) there is reason to believe that the name or address given by him is incorrect:

Provided that, save where there is reason to believe that such person will abscond, he shall, if his true name and address are ascertained, be released on his executing a bond without sureties for his appearance before a Magistrate when required.

(3) A person who commits any of the offences set out in section 84 may be required by any member of the Police Force to leave the premises, ship or vehicle, as the case may be, in which such person is at the time of the commission of the offence, and if such person fails to comply with such requirement he may be removed therefrom with such force as may be reasonably necessary in the circumstances.

Compounding
of offences.

86. (1) Notwithstanding anything contained in this Act, where -

- (a) an offence has been committed under this Act; and
- (b) the Managing Director is satisfied that the departure of a vessel may be unduly delayed by reason of the time that is likely to elapse before the trial of the offence is concluded,

he may, if the accused person admits to committing the offence, offer him the opportunity of paying to the Managing Director an amount equal to three-quarters of the maximum penalty that the court may impose for the offence as well as the total cost of repairing any damage or replacing any loss sustained by the Authority or the Crown as a result of the offence having been committed.

(2) Where an amount is paid under subsection (1), the Managing Director shall give a receipt for the amount paid and the effect of the receipt given is to discharge the accused person from all liability in respect of the offence.

(3) An amount collected by the Managing Director under this section shall be paid into the Fund.

PART X

GENERAL LEGAL PROVISIONS

Notice of
claim.

87. (1) Notwithstanding anything contained in any other Act, no person -

- (a) is entitled to compensation or damages for non-delivery of the whole of a consignment of goods, or of any separate package forming part of such consignment, accepted by the Authority for carriage, storage or warehousing, unless a claim in writing, giving such particulars as may reasonably be necessary, is given to the Managing Director within six months of the date upon which such goods were accepted by the Authority; and
- (b) is entitled to compensation or damages for any goods missing from a packed or unpacked consignment of, or for misdelivery of, damage or delay to, or detention of, any goods accepted by the Authority for carriage, storage or warehousing unless-
 - (i) the Managing Director is notified of the fact in writing within four days of the date upon which such goods were delivered to the consignee or person entitled to take delivery thereof; and
 - (ii) a claim in writing, giving such particulars as may reasonably be necessary, is given to the Managing Director within one month of such date.

(2) Where the person claiming compensation or damages proves that it was impracticable for him to notify the Managing Director or to give the Managing Director his claim as set out in subsections (1) and (2) within the times specified therein and that such notification or claim was made or given in a reasonable time, nothing in those subsections shall prejudice the right of such person to obtain compensation or damage.

Limitation.

88. Where after the commencement of this Act, any action or other legal proceedings is commenced against the Authority for any act done in pursuance or execution, or intended execution of this Act or the regulations or of any public duty or authority imposed or conferred by this Act or the regulations, or in respect of any alleged neglect or default in the execution of this Act or the regulations, or of any such duty or authority, the following provisions shall have effect notwithstanding anything contained in any other Act -

- (a) the action or legal proceeding shall not be commenced until at least one month after written notice containing the particulars of the claim, and of intention to commence the action or legal proceeding, has been served upon the Managing Director by the plaintiff or his agent;
- (b) the action or legal proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default or damage complained of, or in the case of a continuing injury or damage, within six months next after the cessation thereof.

Restriction of execution against property of the Crown or the Authority.

89. Notwithstanding anything to the contrary contained in this Act or the regulations or in any other Act or regulations made under that other Act, where any judgment or order of any court or any award of an arbitration tribunal has been obtained against the Authority for or in respect of anything done or omitted to be done under the provisions of this Act, the regulations, any contract or Otherwise for or in respect of the Authority or its purposes –

- (a) no execution or attachment or process in the nature thereof shall be issued against the Crown or against any property of the Crown or of the Authority, but the Minister responsible for Finance shall cause to be paid out of the Consolidated Fund such amounts as may, by the judgment or order, be awarded against the Crown or against the Authority to the person entitled thereto;
- (b) no property of the Crown or of the Authority shall be seized or taken by any person having by law power to attach or distrain property.

Overcharge.
and under-
charge of
rates.

90. (1) Subject to subsection (2), where the amount paid for any harbour rates or charges is found to be incorrect, then if such amount is-

- (a) an overcharge, the person who paid the rate or charge is entitled to a refund of the amount of the overcharge;
- (b) an undercharge, the amount of the undercharge may be collected from the person who paid the rate or charge.

(2) Notwithstanding anything contained in any other Act, such overcharge or undercharge shall not be refunded, or collected, as the case may be, unless notice in writing containing such particulars as may reasonably be necessary is given -

- (a) by the person claiming such overcharge, to the Managing Director; or
- (b) by the Managing Director to the person against whom the amount of such undercharge is claimed,

within six months after the goods were accepted or the services rendered, as the case may be, by the Authority, so however, that where such undercharge is caused by any information or description subsequently found to be incorrect, such period of six months shall commence from the date of the discovery by the Managing Director of the correct information or description.

Medical
examination
of person
claiming
compensation
or damages.

91. Whenever any person claims compensation or damages against the Authority in respect of any injury alleged to be suffered by him as a result of the operation of the Authority, any court or person having by law, or consent of the parties, authority to determine the claim, may order that the person injured be examined by a registered medical practitioner named in the order, and may also make such order with respect to the costs of the examination as may be thought fit.

Service of
notice etc.
on the
Managing
Director, any
authorised
employee or

92. A notice or other document required or authorised under this Act or the regulations to be served on the Managing Director, any authorized employee or an employee may be served by -

- (a) delivering the notice to the Managing Director or to the authorised employee;

an employee.

- (b) leaving it at the office of the Managing Director; or
- (c) sending it by registered post addressed to the Managing Director at his office.

Service of notice etc. by the Managing Director, any authorised employee or an employee.

93. A notice or other document required or authorised under this Act or the regulations to be served on any person by the Managing Director, any authorised employee, or an employee may be served by -

- (a) delivering it to the person;
- (b) leaving it at the usual or last known place of abode of the person; or
- (c) sending it by registered post addressed to the person at his usual or last known address.

PART XI

MISCELLANEOUS

Regulations.

94. (1) The Minister may make Regulations in respect of matters required by this Act to be prescribed or in respect of which regulations are authorised to be made and in particular in respect of all or any of the following matters: -

- (a) the services to be performed by the Authority including the provision of lighthouses and other facilities for the safety of navigation in the territorial waters;
- (b) the maintenance of order on any wharf or premises, or in any harbour, ship or vehicle used by or for the purposes of the Authority;
- (c) the collection, receipt, storage, conditions of carriage, storage or warehousing and delivery of goods to or by means of the Authority, and the disposal of perishable or unclaimed goods;
- (d) the prohibition of smoking in any portion of any wharf, premises, ship or vehicle used by or for the purpose of the Authority;

- (e) the proper control and management of harbours and the entrances thereof, the prevention and removal of obstructions therein, and the regulation of any work, service or facility performed or provided thereat;
- (f) the control of all persons and vehicles on any wharf or premises used by or for the purposes of the Authority, the maintenance of order thereon and the admission or exclusion of persons therefrom, and the charges, if any, to be made for admission;
- (g) the protection of ships and cargoes, and the removal, destruction, sale or abandonment of stranded ships and their cargoes and appurtenances which obstruct or are likely to obstruct the fairway of any harbour, the payment of expenses in connection therewith, and the levy and recovery of a rent for the right of a hulk or wreck or wreckage to lie in any harbour;
- (h) the examination, registration and licensing of pilots, their duties and obligations and the charges to be made for pilotage;
- (i) the licensing of ferrymen, boatmen, porters, landing agents, stevedores, forwarding agents, shipping agents, baggage and parcel agents, and contractors for the supply of water or ballast, or other persons concerned in harbour work, and the regulation of charges leviable by them and their duties and the hours of their attendance at work;
- (j) the defining of dangerous or offensive goods, and the conditions under which they may be carried, stored or warehoused;
- (k) the sale of any article on any premises occupied for the purposes of the Authority;
- (l) subject to the provisions of any law relating to merchant shipping -

- (i) the taking of measures for the prevention of ships from leaving any harbour if overloaded, improperly found, insufficiently named or without qualified officers or engineers, or with a number of passengers in excess of the number that can be carried with reasonable safety, or if otherwise unseaworthy;
- (ii) the examination and certification of masters, mates and engineers of tugs, dredges, and light craft, and licence fees payable in respect thereof;
- (iii) the registration, licensing, inspection and control of ferries, tugs, launches, hulks, fishing or ferry boats, or other craft, the charges to be paid therefore and the number of passengers to be carried therein;
- (m) the prevention of theft of, pilferage of or damage to, or the commission of nuisance on, any property owned, used or being handled by the Authority;
- (n) the safety of employees of the Authority and of port users in any specified port;
- (o) the prevention of damage to or pollution of premises of the Authority and the pollution of the water in the harbours of any specified port;
- (p) the operation of a security service to protect cargo, equipment and property of the Authority, to assist in maintaining law and order within the premises of specified ports and to enforce the provisions of this Act;
- (q) the entry of persons and vehicles and goods to and the regulation of their movement within specified ports;

- (r) defining the boundaries of any harbour specified in the Second Schedule and of any compulsory pilotage harbour;
- (s) the preservation of the marine environment in a harbour area;
- (t) the prevention of accidents and the procedure to be followed in the case of an accident;
- (u) the procedures to be adopted in the event of a natural disaster for the safety of employees of the Authority and of other persons within its premises or of any port and for the prevention of damage to any equipment, property or premises of the Authority or of any port;
- (v) the giving effect to the provisions of any treaty or convention ratified by the United Kingdom; and
- (w) prescribing anything that is by this Act to be prescribed.

(2) The power of the Minister to make regulations under this section in relation to any matter shall not be construed as derogating from any other powers conferred upon the Minister under this Act or the regulations in relation to any such matter in any different manner.

(3) Regulations made under this section may provide that any breach or contravention of any regulation shall be punished by the imposition of such fine not exceeding five thousand dollars or of such term of imprisonment not exceeding twelve months or to both such fine and imprisonment as may be specified in the regulations.

(4) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(5) Every regulation made by the Minister shall, as soon as convenient after its publication in the Gazette, be brought before the Legislative Council for approval.

(6) Any regulation which is not so approved, shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously done thereunder.

(7) The date on which any regulation shall be deemed to be rescinded shall be published in the Gazette.

Rules made by the Authority.

95. (1) The Authority may make rules in respect of all or any matters for which rules are authorised or required by this Act to be made.

(2) A rule made by the Authority under subsection (1) shall not have effect until its approved by the Minister and notification of such approval is published in the Gazette.

Tariff Book.

96. The Authority shall cause to be prepared and published in such manner as it thinks fit –

(a) a Tariff Book containing all matters which under this Act or the regulations are required to be contained therein together with such other matters as the Authority thinks fit; and

(b) such other books and other documents as under this Act or the regulations are required to be kept.

Authority may maintain a ports security service.

97. The Authority may establish and maintain a ports security service within the limits of any specified Port.

PART XII

VESTING OF CERTAIN PROPERTY RIGHTS AND LIABILITIES IN THE AUTHORITY

Vesting of certain property, purposes rights and liabilities.

98. (1) Upon the commencement of this Act, all property including lands and buildings, and all interest therein of whatever nature, belonging to the Crown and used exclusively for the purposes of the Ports and Marine Services Department shall be transferred to and be vested in the Authority.

(2) Where a question arises as to whether any property lands or buildings to which subsection (1) applies was used exclusively for the purposes of the Ports and Marine Services Department, a certificate under the hand of the Minister shall be

conclusive.

Transitional provisions.

99. (1) All liabilities incurred by or on behalf of the Ports and Marine Services Department in respect of any of its functions under the Ports and Marine Services Ordinance 1985 and subsisting at the commencement of this Act shall, as from such commencement, have effect as if they had been incurred by the Crown.

(2) Any contract made by or on behalf of the Ports and Marine Services Department in respect of any of its functions to be transferred to the Authority upon the commencement of this Act, shall, as from such commencement, be construed with such modifications and adaptations as are necessary to give effect to the provisions of this section.

(3) Where at the time of the transfer of any functions by or under this Act, any legal proceedings are pending to which the Ports and Marine Services Department is a party and those proceedings relate to the functions transferred by or under this Act, the Authority shall be substituted in those proceedings for the Ports and Marine Services Department and the proceedings shall not abate by reason of the substitution.

(4) All debts and liabilities standing in the books of the Ports and Marine Services Department shall be assumed by the Authority at the time of transfer and be enforceable against the Crown.

(5) All works, capital or otherwise, negotiation of any kind, or any matter incomplete at the time of transfer from the Ports and Marine Services Department to the Authority shall be continued as if there had been no transfer from one body to the other.

(6) If any difficulty arises with respect to any of the provisions of this Act, the Minister may, within one year from the commencement of the Act, make such order as he considers necessary to remove the difficulty and such order may modify the provisions of this Act so far as may appear to the Minister to be necessary or expedient for removing the difficulty.

(7) An order made under subsection (6) shall be subject to a negative resolution.

(8) All equipment in use immediately before the commencement of this Act exclusively for the purposes of the Port and Marine Services Department shall, upon such commencement, be transferred to and be vested in the Authority.

(9) Notwithstanding the repeal by this Act of the Ports and Marine Services Ordinance 1985 or of any written law -

- (a) every rule, or regulation made under such repealed Ordinance or law shall, if it is in force immediately prior to the date of commencement of this Act and is not inconsistent with the provisions of this Act, be deemed to be a rule, or regulation made under this Act, and have effect accordingly; and may be amended, replaced or rescinded by any rule, or regulation, as the case may be, under this Act;
- (b) any order or requirement made, table of fees, licences or certificates issued, notice, decision, determination, direction or approval given, application made, or thing done, under the repealed Ordinance or law, by this Act; and every such order requirement, table of fees, licence certificate notice, decision, determination, direction, approval, application or thing shall, if in force on the date immediately prior to the date of commencement of this Act, continue in force and in the case of a licence, or certificate until the date of expiry of such licence or certificate by effluxion of time or otherwise as set out in such licence or certificate and shall, so far as it could have been made, issued, given or done under this Act have effect as if made, issued given or done under the corresponding provisions of this Act.

Repeal and savings.

100. (1) Subject to subsection (2), the Ports and Marine Services Ordinance, 1985 is repealed.

Third Schedule.

(2) The enactments specified in the Third Schedule shall continue in force until amended or revoked by the Minister under this Act, and shall be so construed as to give effect to the provisions of this Act.

CONSTITUTION OF THE BRITISH VIRGIN ISLANDS
PORT AUTHORITY AND MATTERS RELATED THERETO

Constitution of the Authority.

1. (1) The Authority shall consist of -
 - (a) A Chairman appointed by the Governor in Council on the recommendation of the Minister;
 - (b) not more than six members (hereinafter referred to as “appointed members”) who shall not be public officers and such members shall be appointed by the Governor in Council, having taken into account the desirability of such interests as are affected by the Authority’s activities being represented; and
 - (c) three other members, hereinafter referred to as “ex officio members”, who shall be the persons holding office for the time being as -
 - (i) the Permanent Secretary of the Ministry responsible for the subject of Ports;
 - (ii) the Managing Director of the Authority or if he is unable to attend any meeting of the Authority, any other officer authorised by him to attend and vote on his behalf at that meeting; and
 - (iii) the Financial Secretary or if he is unable to attend any meeting of the Authority any officer authorised by him to attend and vote on his behalf at that meeting.
- (2) A person shall be disqualified from being appointed or being a member of the Authority under subsection (1) -
 - (a) if he is an elected member of the Legislative Council;

- (b) if he has been declared insolvent or bankrupt under any law in any country and has not been discharged, or has made a composition with his creditors and has not paid his debts in full.

Resignation and removal in from office.

2. The Chairman or any appointed member of the Authority may resign his office by notice in writing addressed to the Governor in Council, and may be removed from office by the Governor in Council in his discretion at any time.

Tenure of office.

3. (1) Subject to section 2, an appointed member, other than the Chairman or an ex officio member, shall hold office for such periods not exceeding three years, as may be specified in the notice appointing him, and on the expiration of such period shall be eligible for re-appointment, but in the case of appointed members the Governor in Council shall specify such periods of appointment so that the periods of appointment of not more than one-third of the members shall expire in any one year.

(2) Subject to section 2, the Chairman shall hold office as Chairman for a period of three years and may be reappointed for any further period of three years.

(3) The Authority shall once in every year elect from among its appointed members a Deputy-Chairman who shall hold office as Deputy Chairman for a period of one year.

(4) Where the Chairman or a member appointed under subsection (1) is by reason of illness, other infirmity or for any other cause temporarily unable to perform the duties of his office, the Governor in Council may appoint any person to act in his place.

(5) The Authority shall pay to all or any of its members such remuneration, fees and allowances for expenses as may be approved by the Governor in Council.

Meetings of the Authority.

4. (1) The Authority shall meet at least once in every four months or at such other times and places as may be necessary or expedient for the transaction of its business.

(2) The Chairman, or in the event of his absence from the Territory or inability to act as such, the Deputy Chairman, may at any time call a special meeting of the Authority within seven days of the receipt by him of a requisition for that purpose addressed to him in writing and signed by three members.

(3) Subject to sub-section (4), the Chairman, or in his absence the Deputy Chairman, shall preside at all meetings of the Authority.

(4) In the absence of both the Chairman and the Deputy Chairman, the members present and constituting a quorum shall elect a Chairman from among their number to preside at that meeting.

(5) Five members of the Authority present at a meeting shall form a quorum.

(6) The decisions of the Authority shall be by a majority of votes, and in any case in which the voting is equal the Chairman presiding at the meeting, in addition to having an original vote, shall have a casting vote.

(7) Minutes of each meeting shall be confirmed by the Authority and signed by the Chairman or Deputy Chairman at the next meeting of the Authority.

(8) Certified copies of the minutes of each meeting shall be forwarded to the Minister.

(9) Minutes of meetings of the Authority shall be recorded by a person assigned by the Managing Director from among the staff of the Authority to be Secretary.

(10) (1) The Authority may -

(a) appoint such committees composed of members of the Authority and other persons not being members of the Authority, for the purpose of assisting or advising the Authority in the proper carrying out of its functions; and

(b) delegate to such committees functions as it considers necessary.

(2) A person co-opted under paragraph (1) shall not vote at any meeting of the Authority.

(11) Subject to this Act, the Authority may regulate its own procedure.

(12) Any act done or proceeding taken by the Authority under this Act or the regulations shall not be questioned on the ground of the existence of any vacancy in the membership of the Authority, or any defect in the constitution of the Authority.

SECOND SCHEDULE

(Section 23)

LIST OF HARBOURS IN THE VIRGIN ISLANDS

1. Road Harbour which includes all that area of water and foreshore lying to the north of an imaginary line drawn from Burt Point to Hog Point, in the Island of Tortola.
2. West End Harbour which includes all that area of water and foreshore lying between the island of Tortola and Frenchman’s Cay bounded on the west by an imaginary line joining the westernmost point of Frenchman’s Cay to the westernmost point of Tortola at Steele Point, West End, and on the east by the causeway connecting Frenchman’s Cay with the island of Tortola.
3. Great Harbour (Jost Van Dyke) which includes all that area of water lying generally to the north of, and enclosed by, an imaginary line joining Dog Hole Point and Betty Brown Rock in Thomas George Bay in the island of Jost Van Dyke.
4. St. Thomas Bay which includes all that area of water lying generally to the east of, and enclosed by, imaginary line drawn from Collision Point to Fort Point, on the island of Virgin Gorda.

THIRD SCHEDULE

(Section 100)

ENACTMENTS AFFECTED

FIRST COLUMN	SECOND COLUMN
Foreign Shipping (Agreements) Act (Cap. 120)	Substitute the words “the Managing Director of the British Virgin Islands Ports Authority” for the words “the Director of Ports and Marine Service” wherever they appear therein.

Receivers of Wreck Act (Cap. 126)

Substitute the words “Managing Director of the British Virgin Islands Ports Authority” for the words “Director of Ports and Marine Services”.

Power-craft Ordinance, 1972

In section 5, substitute the words “office of the Managing Director of the British Virgin Islands Ports Authority” for the words “office of the Director of Ports and Marine Services”.