

HARBOURS ACT 2010

Arrangement of Sections

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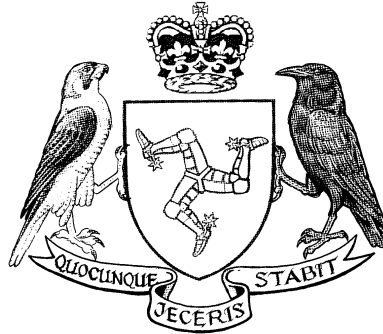
Schedule 1 — Purposes for which bye-laws may be made

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Isle of Man } Signed in Tynwald: 19th October 2010
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 Announced to Tynwald: 19th October 2010

AN ACT

to re-enact with amendments certain enactments relating to the management, control, operation, maintenance, development and improvement of harbours; to provide for the charging of dues and the making of other charges; to provide for the registration and operation of certain vessels; to make new provision to prohibit persons living on board certain vessels within harbour limits; to make new provision for compulsory insurance in respect of vessels; to make new provision to deal with the presence of alcohol and drugs on board vessels; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1

HARBOURS AND THEIR OPERATION

Harbour limits

1. (1) The limits of the harbours in the Island existing immediately before this section comes into operation continue to be the limits of the harbours for the purposes of this Act.

Harbour limits
 XIX p.538/4;
 1995/5/13

(2) The Department may by order alter harbour limits.

(3) The Department shall maintain and keep available for inspection by the public free of charge at its principal office maps showing what appear to the Department to be the limits of every harbour.

(4) If the Department considers it necessary to reduce danger to navigation, it may by order designate the whole or any part of Manx waters as being included within harbour limits, but only for the purposes of the application of bye-laws concerning any of the matters set out in Part 2 of Schedule 1.

(5) A designation under subsection (4) may be for specified days or times of day only or for an indefinite period of time.

(6) An order under subsection (2) or subsection (4) shall not come into operation unless it is approved by Tynwald.

Functions of the Department

General
functions

XIX p.538/6

2. The Department shall provide for the management, control, operation, maintenance, development and improvement of harbours and may provide facilities for vessels, goods and harbour users.

Coastguard
service

XIX p.538/6A

3. (1) The Department may employ, maintain and equip a coastguard service to perform such functions as the Department determines.

(2) Any reference in any statutory provision to, or to any member of, Her Majesty's Coastguard or the coastguard service, shall be construed as including any coastguard service established by the Department or, as the case may be, any member of that service.

Bye-laws

XIX p.538/20

4. (1) The Department may make bye-laws for the good government of harbours.

(2) Without limiting subsection (1), the Department may make bye-laws for the purposes mentioned in Schedule 1.

(3) Bye-laws shall not come into operation unless they are approved by Tynwald.

(4) A person who contravenes a bye-law made under subsection (1) commits an offence and is liable on summary conviction to a fine of up to £5,000 or, where the bye-law so provides, a lesser amount.

Harbour master

5. (1) The Department shall appoint a person to exercise the functions of the harbour master under this Act and to collect dues and other charges under this Act.

Appointment of harbour master

(2) The harbour master may by written instrument delegate to an officer of the Department any of the harbour master's functions, other than this power of delegation.

XIX p.538/5;
1993/14/Sch2/8

(3) A delegation under subsection (2) may authorise the sub-delegation of all or any of the functions delegated.

(4) A delegate shall, in the exercise of a delegated function, comply with any directions, conditions, qualifications, guidelines and exceptions communicated in writing to the delegate by the harbour master.

(5) A delegate shall be furnished with a certificate of authorisation and, when the delegate proposes to perform any function under this Act, the delegate shall, if requested, produce that certificate.

(6) A delegate shall also, if so requested, state his or her name, the function proposed to be performed, and the grounds for performing it.

(7) When performing a function authorised by this Act, the harbour master may act alone or may be accompanied by such other persons as the harbour master considers appropriate.

6. A person who obstructs or impedes the exercise of a function conferred on the harbour master by this Act commits an offence and is liable on summary conviction to a fine of up to £2,500.

Penalty for obstruction

XIX p.538/33

7. A direction or requirement by or on the authority of the harbour master to the master or owner of a vessel under this Act does not extend or diminish any responsibility of the master or owner of the vessel in relation to the vessel or its cargo.

Other responsibilities of master or owner of vessel not affected

XIX p.538/34

Use of harbour

8. (1) The master or owner of —

Reporting arrival or entry of vessel

(a) a vessel which arrives at a harbour; or

XIX p.538/24

(b) a vessel which enters the limits of a harbour whose length, breadth, draught or tonnage exceeds the limit prescribed by order of the Department,

shall report the arrival or entry (as the case may be) to the harbour master immediately, or as soon as is reasonably practicable after, the vessel enters harbour limits.

(2) An order under subsection (1)(b) shall be laid before Tynwald.

(3) A master or owner who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of up to £1,000.

Provision of
information
and
documentation
XIX p.538/23

9. (1) The harbour master may require the master or owner of a vessel which is in or is about to enter the limits of a harbour to provide such information and documentation in connection with that vessel or its crew, passengers or cargo as the harbour master may reasonably require.

(2) A master or owner who fails to comply with a requirement under subsection (1) commits an offence and is liable on summary conviction to a fine of up to £2,500.

(3) A master or owner who, on being required to provide information or documentation under subsection (1), gives information or documentation which that person knows to be false or misleading commits an offence and is liable on summary conviction to custody for up to 6 months, or a fine of up to £5,000, or both.

Directions in
connection
with use of
harbour
XIX p.538/26

10. (1) The harbour master may, subject to bye-laws, give such directions in connection with the use of the harbour as the harbour master considers proper for the purpose of protecting persons and property or regulating traffic.

(2) A direction under subsection (1) may be given to —

- (a) the master or owner of a vessel using the harbour; or
- (b) any person who appears to the harbour master to be in possession of or using any vessel or other thing in the harbour.

(3) If the person to whom a direction has been given under subsection (1) fails to comply with it or if the harbour master cannot find the relevant person in order to give the direction —

- (a) the harbour master may carry out the directions and do all things necessary for or incidental to that purpose;
- (b) the person to whom the direction was given, or would have been given if that person had been found, shall

pay to the Department the reasonable expenses incurred in so carrying out the direction; and

- (c) in default of payment under paragraph (b), the expenses may be recovered as a debt due to the Department.

(4) A person who fails to comply with a direction under subsection (1) commits an offence and is liable on summary conviction to a fine of up to £2,500.

11. (1) If the Department considers it necessary for the management, control, operation, maintenance, development or improvement of a harbour, it may by order designate an area in the harbour or specify harbour facilities which —

Limitation
of use of
harbour

XIX p.538/58A

- (a) shall not be available to harbour users; or
(b) shall only be available as specified in the order.

(2) Where an order is made under subsection (1) the Department may appropriate the designated area or the specified facilities —

- (a) for the exclusive or preferential use of a particular user;
or
(b) for a particular class of vessel, traffic or use.

(3) An order under subsection (1) has effect for the definite period of time which is specified in the order.

(4) Before making an order under this section, the Department shall satisfy itself that the order and the proposed use of the specified facilities or the designated area will not prejudice —

- (a) the safety of navigation in the harbour;
(b) the safe operation of the specified facilities and any other facilities provided by the Department; or
(c) the safety of the designated area or any other area within the harbour.

(5) An order under this section may specify facilities or designate an area by description or by reference to a map or chart.

(6) An order under this section shall be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting fails to approve it, the order shall cease to have effect.

Goods

Supervision
of loading and
unloading

XIX p.538/39

12. (1) If goods are being loaded onto or unloaded from a vessel which is within harbour limits, the master or an officer of the vessel appointed by the master shall supervise the loading or unloading.

(2) A master who fails to ensure compliance with subsection (1) commits an offence and is liable on summary conviction to a fine of up to £5,000.

Restriction on
landing and
shipping of
goods

XIX p.538/40

13. (1) No person shall land or ship goods of any description at any place within a harbour unless that place is designated in writing by the Department as a landing place or shipping place (as the case may be) for those goods.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of up to £2,500.

(3) It is a defence for a person charged under subsection (2) to show that he or she believed on reasonable grounds that the place where the goods were landed or shipped had been designated as a landing place or shipping place (as the case may be).

Power to
direct loading
or unloading
of cargo

XIX p.538/28

14. (1) If a delay occurs in loading or unloading the cargo of a vessel within harbour limits and the harbour master considers the delay unreasonable, the harbour master may direct the master or owner of the vessel to load or unload the cargo within a specified period.

(2) If the master or owner of a vessel fails to comply with a direction made under subsection (1) or if the harbour master, after making reasonable enquiries, cannot find the master or owner of the vessel in relation to which the harbour master wishes to give a direction —

- (a) the harbour master may carry out the direction and do all things necessary for or incidental to that purpose;
- (b) the master or owner of the vessel shall pay to the Department the reasonable expenses incurred in carrying out the direction; and
- (c) in default of payment under paragraph (b), the expenses may be recovered as a debt due to the Department.

(3) A master or owner who fails to comply with a direction under subsection (1) commits an offence and is liable on summary conviction to a fine of up to £2,500.

(4) It is a defence for a person charged under subsection (3) to show that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

15. The Department shall allow persons entitled to or having control of goods deposited in or upon any premises, warehouses, quays or other places under the control of the Department to have reasonable access to those goods.

Access
to goods
XIX p.538/41

Dangerous goods etc

16. (1) The Department shall by order prescribe the goods or classes of goods which it considers to be dangerous goods for the purposes of this Act.

Dangerous
goods

(2) The Department may by order amend an order made under subsection (1).

(3) An order under subsection (1) or (2) may prescribe dangerous goods by reference to a classification published by a body specified in the order and may, in particular, apply a classification which is published by that body from time to time (that is, after as well as before the making of the order).

(4) An order under this section shall not come into operation unless it is approved by Tynwald.

17. (1) If the harbour master is satisfied that it is necessary to avoid endangering life or property the harbour master may give to any person directions as to the movement, handling and storage within a harbour of any dangerous goods which are within the limits of that harbour —

Directions
concerning
dangerous
goods
XIX p.538/26A

- (a) for the purpose of being loaded onto a vessel; or
- (b) awaiting removal from the harbour after being unloaded from a vessel.

(2) A person who fails to comply with a direction under subsection (1) commits an offence and is liable on summary conviction to a fine of up to £5,000.

(3) If the person fails to comply with a direction given under subsection (1), or if the harbour master, after making reasonable enquiries, cannot find the person who has charge of the goods —

- (a) the harbour master may carry out the direction and do all things necessary for or incidental to that purpose;

- (b) the reasonable expenses incurred in carrying out the direction shall be paid to the Department by —
- (i) the person to whom the direction was given, or would have been given if that person had been found; or
 - (ii) that person's employer (if the person was acting in the course of employment in connection with the movement, handling or storage of dangerous goods); and
- (c) in default of payment under paragraph (b), the expenses may be recovered as a debt due to the Department.

(4) It is a defence for a person charged under subsection (2) to show that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Control of
dangerous
goods

XIX p.538/45

18. (1) A person who is the owner of, or has charge of, any dangerous goods within harbour limits shall cause the goods to be removed to a place of safety within 2 hours after being required to do so by written notice of the harbour master.

(2) If dangerous goods remain within harbour limits, the owner or person having charge of them or, in default of that person, the harbour master at the expense of the owner, shall provide a sufficient number of persons to guard them for such period and in such manner as the harbour master may by written notice require.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of up to £5,000.

(4) Subsection (3) does not apply to the harbour master.

(5) If dangerous goods remain within harbour limits in contravention of subsection (1) or (2) the Department may remove them and place or store them in such place as the Department considers appropriate.

(6) The person referred to in subsection (3) shall pay to the Department the reasonable expenses of removal and placing or storing and, in default of payment, the expenses may be recovered as a debt due to the Department.

Control of
dangerous
articles

XIX p.538/43

19. (1) The harbour master may refuse to allow within harbour limits any article which the harbour master considers will endanger the safety of the harbour or of persons, vessels or goods within harbour limits.

(2) None of the persons mentioned in subsection (3) is liable in damages for, or in respect of, anything done or omitted to be done in good faith in the exercise, or purported exercise, of a refusal made under subsection (1).

(3) The persons referred to in subsection (2) are —

- (a) the harbour master;
- (b) any delegate or agent of the harbour master;
- (c) the Department;
- (d) any member, officer, employee or agent of the Department.

(4) Subsection (2) does not apply so as to prevent the award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 2001 (acts of public authorities).

[c.1]

20. (1) The Department may, by notice displayed in a prominent place at a harbour and otherwise published in such manner as the Department considers appropriate, prohibit anything from being brought within harbour limits which is specified in the notice as being, in the opinion of the Department, likely to endanger the safety of —

Prohibition
on bringing
certain articles
within harbour
limits

XIX p.538/44

- (a) that harbour; or
- (b) persons, vessels or goods within harbour limits.

(2) Whilst displayed in accordance with subsection (1), the notice has effect according to its terms.

(3) A person who contravenes a notice under subsection (1) commits an offence.

(4) A person guilty of an offence under subsection (3) is liable —

- (a) on conviction on information to custody for up to 2 years, or a fine, or both; or
- (b) on summary conviction to custody for up to 6 months, or a fine of up to £5,000, or both.

(5) The Department may remove anything brought within harbour limits in contravention of a notice under subsection (1) and place or store it in such place as the Department considers appropriate.

(6) The person referred to in subsection (3) shall pay to the Department the reasonable expenses of removal and placing or storing and, in default of payment, the expenses may be recovered as a debt due to the Department.

Dangerous and unfit vessels

Directions concerning dangerous vessels

XIX p.538/
36A, 36B
and 36D

21. (1) This section applies if, in the opinion of the harbour master, the condition of a vessel or the nature or condition of anything on or in it is such that its presence in the harbour might involve —

- (a) grave and imminent danger to the safety of any person, vessel or property; or
- (b) grave and imminent risk that the vessel may, by sinking or foundering in the harbour, prevent or seriously prejudice the use of the harbour by other vessels.

(2) If this section applies, the harbour master may give a direction prohibiting the vessel entering into, or requiring its removal from, a harbour.

(3) A direction under subsection (2) may be given —

- (a) to the master of the vessel;
- (b) to the owner of the vessel;
- (c) to the pilot of the vessel;
- (d) to a salvor in possession of the vessel, or to any person who is an employee or agent of a salvor in possession of the vessel, and who is in charge of the salvage operation; or
- (e) to any person in possession of the vessel.

(4) In determining whether to give a direction under subsection (2), the harbour master shall have regard to all the relevant circumstances and, in particular, to the safety of persons and vessels (whether inside or outside the harbour and including the vessel to which the direction relates).

(5) A direction may be given under subsection (2) in such reasonable manner as the harbour master considers appropriate.

(6) The harbour master giving a direction under subsection (2) shall at the same time inform the person to whom the direction is given of the grounds for giving it unless it is not practicable to

do so, in which case the grounds shall be communicated as soon as reasonably practicable afterwards.

(7) A person who without reasonable excuse fails to comply with any direction given under subsection (2) commits an offence and is liable —

- (a) on conviction on information to a fine; or
- (b) on summary conviction to a fine of up to £5,000.

(8) It is a defence for a person charged under this section to show that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(9) If a person fails to comply with any direction given under this section or if the harbour master is satisfied that the circumstances are such that a direction should be given but that it is impractical to do so —

- (a) the harbour master may carry out the direction and do all things necessary for or incidental to that purpose;
- (b) the person to whom the direction was given or, where no direction was given, the master or owner of the vessel shall pay the reasonable expenses incurred in carrying out the direction to the Department; and
- (c) in default of payment under paragraph (b), the expenses may be recovered as a debt due to the Department.

(10) Where —

- (a) the Department is liable for any loss or damage occurring outside a harbour in consequence of a direction given by, or the actions of, the harbour master in purported exercise of a power under this section; and
- (b) the provisions of section 191 of the Merchant Shipping Act 1995 (of Parliament) as it has effect in the Island, would apply so as to limit that liability if the loss or damage in question had occurred in that harbour,

then, for the purposes of that Act, the loss or damage shall be deemed to have occurred in that harbour.

22. (1) A vessel which is —

- (a) laid up as unfit for sea service;
- (b) derelict; or

Unfit vessels

XIX p.538/16B

(c) so neglected as to be unfit for sea service,

may not lie within harbour limits, and the Department may take possession of, raise (where necessary) and sell the vessel.

(2) If a vessel remains within harbour limits except as may be permitted by —

- (a) the harbour master;
- (b) this Act; or
- (c) any other statutory provision,

the harbour master may remove the vessel to any premises of the Department.

(3) A vessel removed under subsection (2) may be kept until payment is made to the Department of all of the reasonable expenses of removal and storage (including, but not limited to, the reimbursement of all monies spent on advertising and all time costs incurred by way of administration) together with all dues and other charges owing to the Department under this Act by the person who is responsible for their payment.

(4) If the expenses, dues and other charges referred to in subsection (3) are not paid within 14 days of removal the Department may sell the vessel.

(5) Section 25 has effect in relation to a vessel to be sold under this section.

(6) The following provisions have effect in respect of the sale of a vessel —

- (a) the sale shall be authorised by order of the Department and shall not take place unless the Department by order so directs;
- (b) the order operates so as to entitle the Department to transfer title to the vessel in the same manner and to the same extent as if it were the registered owner of the vessel;
- (c) the sale operates to vest the vessel in the purchaser freed of all mortgages, liens, charges or other interests in it, and the purchaser shall not require any other evidence of title to the vessel than a copy, certified by the Department, of the order;
- (d) where —

(i) the vessel is registered under Parts I to III of the Merchant Shipping Registration Act 1991; and [c.15]

(ii) the purchaser is qualified to be the owner of the vessel under that Act,

on production of the order or a copy of the order certified by the Department, the Department of Trade and Industry shall register the bill of sale effecting the transfer in the same manner as if the Department were the registered owner of the vessel immediately prior to the transfer.

(7) In the event of a vessel being destroyed or otherwise disposed of under section 25, the Department shall give notice of such destruction or disposal to the Department of Trade and Industry.

(8) In this section, “vessel” includes the equipment of the vessel.

Obstructions and abandoned property

23. (1) The Department may raise, remove or destroy an obstruction which is — Removal of obstructions

(a) within harbour limits; or

(b) within Manx waters.

XIX p.538/16

(2) An obstruction raised or removed may be sold or otherwise disposed of by the Department.

(3) Section 25 has effect in relation to any article to be sold under this section.

(4) Unless payment is specifically waived by written notice of the Department, the reasonable expenses incurred by the Department in connection with the raising, removal or destruction of the obstruction shall, so far as not recovered under subsection (2), be paid to the Department by the owner of the obstruction or, at the option of the Department, by any former owner of the obstruction and, in default of payment, may be recovered as a debt due to the Department.

(5) Except for the purpose of removing an obstruction, nothing in this section entitles the Department to remove any wreck (as defined in section 38(1) of the Wreck and Salvage (Ships and Aircraft) Act 1979, including that provision as construed in [c.24]

accordance with section 37(c) of that Act) to the prejudice or in derogation of the rights of the receiver of wreck under that Act.

(6) If the Department removes a wreck it shall (without limiting the rights of sale conferred by this section) hold and dispose of it and any surplus of the proceeds of sale of it in accordance with any directions given to it by the receiver.

(7) The powers conferred upon the Department by this section are in addition to any other powers exercisable by it concerning the removal of wrecks.

(8) Except where it considers the circumstances to be an emergency, the Department shall, as early as practicable prior to raising, removing or destroying an obstruction under this section, give to any relevant public telecommunications operator and to the owner or operator of any infrastructure likely to be affected by such raising, removal or destruction written notice of its intention to do so.

Property left
without
permission

XIX p.538/
16A

24. (1) This section applies if property remains within a harbour, except as may be permitted by —

- (a) the harbour master;
- (b) this Act; or
- (c) any other statutory provision.

(2) Where this section applies, the harbour master may remove the property to any premises of the Department and keep it until payment is made to the Department of all of the reasonable expenses of removal and storage (including, but not limited to, the reimbursement of all monies spent on advertising and all time costs incurred by way of administration) together with all dues and other charges owing to the Department under the Act by the person who is responsible for their payment.

(3) If the expenses, dues and other charges referred to in subsection (2) are not paid within 14 days of removal the Department may sell the property.

(4) Section 25 has effect in relation to property to be sold under this section.

(5) Property which remains unsold shall, with the consent of the Treasury and provided that all customs and excise duties and value added tax payable in respect of that property have been paid, be delivered, on demand, to the person appearing to the Department to be entitled to the property.

(6) In this section “property” includes goods, plant, cargo, machinery, fishing gear, nets, ship’s equipment and any other thing which the harbour master considers to be property for the purposes of this section.

Disposals

25. (1) Subject to subsection (2), a sale shall not be made under sections 22, 23 or 24 unless —

Sales or disposals under sections 22, 23 and 24

- (a) in the case of an intended sale under section 22, not less than 21 days’ notice in writing of the intended sale is given to the owner of the vessel (but if the whereabouts of the owner are not known, notice given in accordance with paragraph (b) shall be sufficient); and
- (b) in the case of any intended sale, not less than 21 days’ notice of the intended sale is given by advertisement in a newspaper published and circulating in the Island and in any such other manner as the Department considers appropriate.

(2) Notwithstanding subsection (1), property which is of a perishable nature or which would deteriorate in value by delay may be sold at any time.

(3) The proceeds of a sale carried out under sections 22, 23 or 24 shall be applied by the Department in paying the following charges in the following order —

- (a) any customs or excise duties or any value added tax payable in respect of the vessel, property or article sold;
- (b) any dues or other charges payable to the Department under the Act;
- (c) any expenses incurred by the Department under sections 22, 23 or 24.

(4) Where the proceeds of sale have been applied in accordance with subsection (3) —

- (a) if any surplus remains it shall be paid on demand to the person appearing to the Department to be entitled to it; and
- (b) if any expenses incurred by or on behalf of the Department under sections 22, 23 or 24 remain unpaid, they may be recovered as a debt due to the Department from the former owner of the vessel, article or property sold.

(5) Where, in the opinion of the Department, it is inadvisable to offer a vessel, article or property for sale under sections 22, 23 or 24, or where the vessel, article or property remains unsold, the Department may destroy or otherwise dispose of the vessel, article or property, subject to complying with subsection (7), after giving 21 days' notice of the intended destruction or disposal by advertisement in a newspaper published and circulating in the Island and in such other manner as the Department considers appropriate.

(6) If a vessel, article or property is destroyed or otherwise disposed of under subsection (5), the reasonable expenses incurred in the destruction or disposal are recoverable as a debt due to the Department from the former owner of the vessel, article or property.

(7) Where any customs or excise duties or any value added tax are payable or any prohibition or restriction on importation applies in respect of a vessel, article or property, the destruction or disposal of the vessel, article or property is subject to the prior written consent of the Treasury and to compliance with any conditions imposed by the Treasury.

(8) The Department shall not sell under sections 22, 23 or 24 any article or property for use in the Island or the United Kingdom if any prohibition or restriction on importation applies or if the price which would be obtained is less than the amount of customs or excise duties or value added tax payable in respect of the article or property.

(9) Anything liable to forfeiture under the Customs Acts or under any statutory provision relating to merchant shipping shall not be sold or disposed of under sections 22, 23 or 24.

Restriction of works

Works
detrimental
to navigation
or use of
vessels

XIX p.538/15
(1) to (4)

26. (1) No person may without the written consent of the Department —

- (a) construct, alter or improve any works on, under or over any part of the foreshore or seabed;
- (b) deposit any object or materials in Manx waters or on any part of the foreshore or seabed; or
- (c) remove any object or materials from any part of the foreshore or seabed,

so that obstruction or danger to navigation or to the lawful use of vessels is caused or is likely to result.

- (2) An application to the Department for consent under this section —
- (a) shall be made in such manner as may be prescribed in regulations made by the Department under subsection (9); and
 - (b) shall include such plans and particulars and be verified by such evidence as may be required by regulations or by direction given by the Department under those regulations in respect of that application.
- (3) An application for consent may relate to —
- (a) proposed operations particularised in the application;
 - (b) proposed operations which are not particularised in the application but which are to be, or which may be, carried out pursuant to the provisions of any agreement, scheme or other arrangement, the terms of which have been notified to the Department;
 - (c) operations carried out before the date of the application.
- (4) Where an application for consent is made to the Department, the Department may —
- (a) grant consent, either unconditionally or subject to such conditions as it considers appropriate; or
 - (b) refuse consent.
- (5) Without limiting subsection (4)(a), conditions may be imposed on the grant of consent —
- (a) requiring the person who is to carry out the operations, or cause the operations to be carried out, to give to the Department written notice, within a specified period before commencing the operations —
 - (i) that the person intends to carry out the operations;
 - (ii) describing the operations; and
 - (iii) specifying the time when and the place where the operations are to be carried out;
 - (b) requiring the notification specified in paragraph (a) but dispensing with the requirement that notice is given before commencing the operations where —

- (i) the operations are necessary to prevent death or serious injury to persons or serious damage to property or to the environment; and
 - (ii) written notice of them is given to the Department as soon as practicable after they commence;
 - (c) regulating the operations to which the consent relates or the use of the seabed, foreshore or Manx waters or requiring the carrying out of works on the seabed, foreshore or in Manx waters;
 - (d) requiring the removal of any object, materials or works authorised by the consent, or the discontinuance of any use of the seabed, foreshore or Manx waters so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of the seabed, foreshore or Manx waters at the end of that period.
- (6) A person who has a legal or equitable interest in the seabed, foreshore or Manx waters in respect of which consent has been granted subject to conditions may apply to the Department for the variation or discharge of the conditions; and on such application the Department may —
- (a) vary or discharge the conditions; and
 - (b) add new conditions consequential on the variation or discharge.
- (7) In dealing with an application for consent under this section or an application under subsection (6), the Department shall have regard to the nature and extent of the obstruction or danger to navigation and the lawful use of vessels.
- (8) A consent of the Department under this section may be given so as to continue in force, unless renewed, only if the operation for which the consent is given is started or completed within the period specified in the consent; and any renewal of the consent may be limited in the same manner.
- (9) The Department shall by regulations provide for —
- (a) the procedure for the determination of applications for consent under this section and applications under subsection (6);
 - (b) the exercise of functions in relation to the determination of such applications, and appeals against decisions in relation to such determinations;

- (c) the giving of notice of any application for consent or application under subsection (6) to any person (other than the applicant) who has a legal interest in the seabed, foreshore or Manx waters to which the application relates; and
 - (d) the publicity to be given, and the consultations to be carried out, in connection with the determination of applications for consent and applications under subsection (6).
- (10) Regulations under subsection (9) may make provision for —
- (a) the conduct of proceedings relating to such applications;
 - (b) the making of orders for the payment of costs in connection with such proceedings;
 - (c) the refusal by the Department of an application for consent or an application under subsection (6) where a similar application has been refused within such period (not exceeding 5 years), ending with the date on which the application is made, as is specified in the regulations;
 - (d) the grant of consent with the reservation for subsequent approval by the Department of matters not particularised in the application; and
 - (e) the procedure for the determination of applications for such approval as is mentioned in paragraph (d) or any other approval required by a condition imposed on the grant of consent.
- (11) Regulations under subsection (9) may provide that, where an application for consent relates to operations for which the approval, consent or licence of the Governor in Council, the Council of Ministers or any Department is required under any enactment other than this section, any proceedings in connection with the application may be taken concurrently with any proceedings to be taken under that enactment.
- (12) Regulations under subsection (9) shall not come into operation unless they are approved by Tynwald.

27. (1) If it appears to the Council of Ministers that an application to the Department for consent under section 26(1) or an application under section 26(6) —

Reference
to Council
of Ministers

- (a) raises considerations of general importance to the Island; or

- (b) for some other reason ought not to be determined by the Department,

it may direct that the application shall be referred to and determined by it.

(2) Where the Council of Ministers grants consent on an application referred to it under subsection (1) —

- (a) the decision of the Council of Ministers shall be laid before Tynwald, and shall not have effect until the end of the next sitting following that before which the decision is first laid; and
- (b) Tynwald may, at either of those sittings, resolve that the decision be annulled, whereupon the application shall be deemed to have been refused.

(3) In relation to an application subject to a direction under subsection (1), references in sections 26 and 29 to the Department shall, where the context requires, be construed as references to the Council of Ministers.

Appeals

28. (1) For the purposes of section 26, there is to be a tribunal known as the Harbour Works Tribunal (“the Tribunal”).

(2) The Tribunal shall consist of —

- (a) a chairman appointed in accordance with the Tribunals Act 2006; and
- (b) 2 members selected in accordance with regulations made under section 9(b) of the Tribunals Act 2006 from a panel appointed in accordance with that Act.

[c.1]

(3) A person who is aggrieved by a decision of the Department to —

- (a) refuse consent under section 26(4);
- (b) grant consent subject to conditions under section 26(4);
- (c) vary, discharge or add new conditions under section 26(6); or
- (d) refuse to vary, discharge or add new conditions under section 26(6),

may appeal, in accordance with rules made under section 8 of the Tribunals Act 2006, to the Tribunal.

(4) On the determination of an appeal under this section the Tribunal shall confirm, vary or revoke the decision in question.

(5) The variation or revocation of a decision does not affect the previous operation of that decision or anything duly done or suffered under it.

(6) Without prejudice to subsection (7), a decision of the Tribunal on an appeal under this section is binding on the Department and the applicant.

(7) An appeal from a decision of the Tribunal lies to the court, in accordance with rules of court, on a question of law.

29. (1) A person who —

(a) contravenes section 26(1); or

(b) fails to comply with a condition subject to which the consent of the Department was given under section 26(4),

commits an offence.

(2) A person guilty of an offence under subsection (1) is liable —

(a) on conviction on information to custody for up to 2 years, or a fine, or both; or

(b) on summary conviction to custody for up to 6 months, or a fine of up to £5,000, or both.

(3) Without affecting any proceedings under subsection (1), the Department may serve a notice on a person referred to in subsection (1) requiring that person, within such period (being not less than 30 days) as may be specified in the notice —

(a) to remove the works or to make such alterations as may be specified; or

(b) to remove the object or materials,

and, if it appears to the Department urgently necessary to do so, it may itself remove or alter the works or remove the object or materials.

(4) If the person upon whom the notice is served fails to comply with it within the period specified in it, the Department may remove or alter the works or remove the object or materials specified in the notice.

Unauthorised
works

XIX p.538/15(5)
to (10)

(5) Where under subsections (3) or (4) the Department removes or alters any works or removes any object or materials, the Department may recover its reasonable expenses for so doing from the person by whom the works were constructed, altered or improved, or the object or materials was or were deposited.

(6) An article removed by the Department under this section may be sold or otherwise disposed of by the Department.

(7) An article shall not be sold for use in the Island or the United Kingdom if any prohibition or restriction on importation applies in respect of that article or where the price which would be obtained is less than the amount of any customs or excise duties or any value added tax payable in respect of the article.

(8) If an article is sold, the Department shall apply the proceeds of sale in paying the following charges in the following order —

- (a) any customs or excise duties and any value added tax payable in respect of the article sold;
- (b) any dues and other charges payable to the Department under this Act; and
- (c) any reasonable expenses incurred by the Department in connection with —
 - (i) the sale or disposal;
 - (ii) the removal or alteration of the works or the removal of the object or materials; and
 - (iii) if the article is part of any works, object or materials, any sale or other disposal or destruction of any other part of those works, object or materials,

and, if any surplus remains, it shall be paid, on demand, to the person appearing to the Department to be entitled to it.

(9) A sale shall not (except in the case of property which is of a perishable nature or which would deteriorate in value by delay) be made under subsection (6) until at least 21 days' notice of the intended sale has been given by advertisement in a newspaper circulating in the Island and in any such other manner as the Department considers appropriate.

(10) Anything liable to forfeiture under the Customs Acts or under any statutory provision relating to merchant shipping shall not be sold or disposed of under this section.

Safety of harbour

- 30.** (1) If the Department considers it necessary for any of the following purposes —
- Designation
of restricted
area
- (a) public safety;
 - (b) avoiding or reducing danger to —
 - (i) navigation;
 - (ii) persons engaged in and vessels and equipment used for fishing;
 - (iii) any structure or apparatus (including a submarine pipeline or cable); or
 - (iv) marine flora or fauna; or
 - (c) avoiding or reducing interference with fishing or the exploitation of mineral resources,

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the Department may by order designate the whole or any part of a harbour as a restricted area.

(2) The whole or any part of a harbour may be designated as a restricted area, or part of a restricted area, for specified days or times of day only or for an indefinite period of time.

(3) An order under subsection (1) shall be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting fails to approve it, it shall cease to have effect.

- 31.** (1) No person shall —
- Unauthorised
presence in
restricted area
- (a) go, with or without a vessel or vehicle, into a restricted area of a harbour except with the permission of the Department or an officer of the Department and in accordance with any conditions subject to which that permission is granted; or
 - (b) remain in a restricted area after being requested to leave by the Department or an officer of the Department.

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(2) Subsection (1)(a) does not apply unless it is proved that, at the material time, notices stating that the area concerned was a restricted area were displayed so as to be readily seen and read by persons entering the restricted area.

(3) A person who contravenes subsection (1) without lawful authority or reasonable excuse commits an offence and is liable on summary conviction to a fine of up to £5,000.

Power to
require vessel
to be moved

XIX p.538/27

32. (1) For the purpose of carrying out any repairs or cleaning operations or for any other purpose arising in relation to a harbour, the harbour master may require the master or owner of a vessel which is at a place within harbour limits to move the vessel from that place to another place within harbour limits as the harbour master directs.

(2) If the master or owner of a vessel fails to comply with a requirement made under subsection (1) or if the harbour master cannot, after making reasonable enquiries, find the master or owner of a vessel in relation to which the harbour master wishes to make a requirement under this section —

- (a) the harbour master may carry out the requirement and do all things necessary for or incidental to that purpose; and
- (b) the reasonable expenses incurred in carrying out the requirement shall be paid by the master or owner of the vessel to the Department and, in default of payment, may be recovered as a debt due to the Department.

(3) A master or owner who fails to comply with a requirement under subsection (1) commits an offence and is liable on summary conviction to a fine of up to £2,500.

Breaking up
or dismantling
of vessel

XIX p.538/29

33. (1) No vessel or other property shall be broken up or dismantled within harbour limits without the prior written consent of the harbour master.

(2) When giving a written consent under subsection (1), the harbour master shall specify in the consent a period during which the breaking up or dismantling shall be completed and such other conditions as the harbour master considers proper.

(3) If a person breaks up or dismantles a vessel within harbour limits without having obtained the written consent of the harbour master or, having obtained such consent, fails to complete the breaking up or dismantling of the vessel within the period specified in that consent, the Department may treat the vessel as a vessel laid up as unfit for sea service and apply the provisions of section 22 (unfit vessels) in respect of the vessel.

(4) In this section, “property” includes goods, plant, cargo, machinery, fishing gear, nets, ship’s equipment or any other thing

which the harbour master considers to be property for the purposes of this section.

34. (1) No person shall extinguish a light positioned for the purpose of lighting a harbour or aiding navigation into or within a harbour or otherwise positioned within Manx waters without the prior written consent of the harbour master.

Restriction on extinguishing of lights
XIX p.538/48

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of up to £5,000.

35. (1) When a moving or movable bridge under the control of the Department is being or is about to be opened or closed, an officer of the Department may require any person who is on or near the bridge to withdraw to or to remain behind the safety barriers for that bridge until the opening or closing is completed.

Opening and closing bridges
XIX p.538/51 and 52

(2) No person shall open or close any movable bridge under the control of the Department unless that person is an officer of the Department.

(3) A person who fails to comply with a requirement under subsection (1) or contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of up to £2,500.

(4) It is a defence for a person charged under this section to show that the action was taken so as to prevent loss of life or injury to any person or damage to property.

36. (1) The master or owner of a vessel which is within the limits of a harbour shall ensure that the vessel has at all times moorings which are appropriate for that vessel in that harbour.

Vessels to have appropriate moorings

XIX p.538/53

(2) The harbour master may direct the master or owner of a vessel to fix and otherwise to secure appropriate moorings to that vessel.

(3) A person who fails to comply with a direction given under subsection (2) commits an offence and is liable on summary conviction to a fine of up to £2,500.

37. (1) A person (other than the harbour master or, if the harbour master is not present, an officer of the Department) who wilfully cuts, breaks or destroys the mooring or fastening of any vessel in a harbour or in the vicinity of a harbour commits an offence and is liable on summary conviction to a fine of up to £5,000.

Penalty for wilfully cutting moorings

XIX p.538/54

(2) It is a defence for a person charged under this section to show that the action was taken so as to prevent loss of life or injury to any person or damage to property.

PART 2

CHARGING POWERS

General provisions

Power to charge

XIX p.538/55

38. (1) The Department may charge such dues in respect of vessels, passengers and goods as are prescribed by it in regulations.

(2) The Department may make such other charges in respect of facilities provided by it for vessels, passengers (other than officers of Customs and Excise) and goods as are prescribed by it in regulations.

(3) Regulations under subsections (1) or (2) shall not come into operation unless they are approved by Tynwald.

Power to waive, exempt from, compound or discount

XIX p.538/61

39. Regulations under section 38 may make provision for —

- (a) the waiver of dues and other charges;
- (b) the exemption from dues and other charges;
- (c) the compounding or discounting in respect of dues and other charges,

in each case, either wholly or partially, absolutely or conditionally.

Agreements for payment

XIX p.538/68

40. The Department may make and carry out an agreement with a person liable to pay dues or other charges to the Department for the purpose of —

- (a) giving credit to that person for dues and other charges;
- (b) receiving security from that person for dues and other charges;
- (c) authorising the Department to take a deposit on account of dues and other charges; and
- (d) the provision by that person of particulars to the Department (otherwise than in accordance with this Part) in connection with the matters in respect of which dues or other charges are payable.

41. (1) Upon payment of the appropriate dues and other charges, the Department shall make berths available to vessels in a harbour at locations determined by the harbour master.

Berths available on payment of dues

XIX p.538/58

(2) The Department is not obliged to offer berthing or other harbour facilities to —

(a) any vessel in respect of which default has been made in the payment to the Department of any dues or other charges under this Act; or

(b) any other vessel which is in common ownership, management, charter or control with the vessel mentioned in paragraph (a).

(3) This section is subject to section 11 (limitation of use of harbour).

42. The Department shall maintain and keep available for inspection by the public free of charge at its principal office a list of the dues and other charges levied by it under this Act.

List of dues and charges

XIX p.538/59

Payment and recovery of dues

43. Dues are payable by the master or owner of the vessel to which the dues relate.

Liability to pay dues

XIX p.538/64

44. Dues shall be paid to the Department in the manner and time prescribed by regulations made under section 38.

Payment of dues

XIX p.538/65

45. (1) Subject to subsection (3), if goods are to be unshipped within harbour limits, the master of the vessel containing the goods shall —

Goods being unshipped or shipped

XIX p.538/66

(a) as soon as practicable and, in any event, no later than 24 hours after the arrival of the vessel —

(i) notify to an officer of the Department the name of the consignee of the goods or, if the goods are to be delivered to some other person, the name of that person; and

(ii) deliver to an officer of the Department written particulars of the goods and produce, if required by the Department, such manifests, bills of lading or other documents relating to the goods that show the true nature, quantity and weight of the goods;

(b) if required by the Department, give 12 hours' or such shorter notice as the Department may specify to the Department of the time at which it is intended to unship the goods; and

(c) pay all dues payable in respect of the goods.

(2) Subject to subsection (3), if goods are to be shipped within or outside harbour limits, the master of the vessel into which the goods are to be shipped shall —

(a) as soon as practicable and, in any event before loading the goods —

(i) deliver to an officer of the Department written particulars of the goods; and

(ii) if required by the Department, procure a permit from the Department to ship the goods, and

(b) as soon as practicable after loading the goods and, in any event, before sailing —

(i) produce, if required by the Department, all manifests, bills of lading or other documents relating to the goods that show the true nature, quantity and weight of the goods; and

(ii) pay all dues payable in respect of the goods.

(3) The Department may by written instrument specify alternative periods of time to those set out in subsections (1) and (2) which allow further time for compliance with the requirements of subsections (1) and (2) and these alternative periods shall apply in determining whether an offence has been committed under subsection (5)(b).

(4) The master of a vessel may delegate in respect of that vessel the obligations contained in this section to an agent (who may be, but need not be, the owner of the vessel) but, unless the delegation is approved in advance by the Department, the master remains liable for any breaches of this section.

(5) A person who —

(a) gives particulars or produces documents in the course of a verification under this section which are false or misleading in any material particular; or;

(b) otherwise fails to comply with any requirements of this section,

commits an offence and is liable on summary conviction to a fine of up to £2,500.

46. (1) In order to ascertain the dues payable in respect of a vessel or any goods in or on the vessel, an officer of the Department may —

Ascertainment of dues payable on vessels and goods

(a) enter the vessel within harbour limits; or

XIX p.538/69

(b) cause the goods to be weighed before shipment or after landing.

(2) If a dispute arises between the officer and the master of any vessel or the owner of any goods concerning the weight or quantity of the goods, the officer may cause the goods to be weighed or measured and for that purpose may detain the vessel containing the goods.

(3) Where any goods are weighed or measured under subsection (2) —

(a) if the weight or quantity of the goods is greater than that shown by the documents or the account or statement of goods delivered under this Part, the expenses of the weighing or measuring shall be paid to the Department and are recoverable as if they were in respect of dues charged on the goods;

(b) if the weight or quantity of the goods is the same or less than that shown by the documents, account or statement, the expenses of the weighing or measuring, and any other expenses occasioned by the weighing or measuring or by the detention of the vessel for that purpose, shall be paid by the Department.

47. (1) The master of a vessel liable to pay dues in respect of its passengers or, if the Department so permits, an agent on behalf of the master, shall deliver to an officer of the Department, as soon as is reasonably practicable, a declaration, in a form approved by the Department, as to the number of passengers carried by the vessel and embarked or disembarked within harbour limits.

Ascertainment of dues payable on passengers

XIX p.538/70

(2) A master or agent who —

(a) fails to deliver a declaration under subsection (1);

(b) delivers any declaration which is false in any material particular; or

- (c) in any other way obstructs the delivery of a true declaration in a timely manner,

commits an offence.

(3) An officer of the Department may at all reasonable times inspect and examine and, if required, take copies of or extracts from all books, tickets, documents and other records (in any form) showing the number of passengers carried by a vessel liable to pay passenger dues.

(4) Information obtained by an inspection under subsection (3) is not admissible in evidence in any prosecution or other proceedings against any person for carrying an excessive number of passengers on any voyage of the vessel.

(5) A person in possession or charge of any books, tickets, documents or records (in any form) relating to a vessel who fails to produce them to an officer of the Department, or to permit the officer to inspect, examine or take copies of them or extracts from them, commits an offence.

(6) A person guilty of an offence under subsection (2) or (5) is liable on summary conviction to custody for up to 6 months, or a fine of up to £5,000, or both.

(7) It is a defence for a person charged with an offence under subsection (2) or (5) to show that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Penalty for evading payment

XIX p.538/71

48. (1) A person who evades or attempts to evade payment of dues or other charges under this Part commits an offence and is liable on summary conviction to a fine of up to £5,000.

(2) Liability under subsection (1) does not affect any proceedings or steps taken or to be taken to recover the dues or other charges outstanding.

Remedies for non-payment of dues on vessels and passengers

XIX p.538/72

49. (1) This section applies where default is made in the payment to the Department of dues in respect of —

- (a) any vessel which is owned, managed or chartered by or is otherwise under the control of a person; or
- (b) in respect of the passengers of such vessel.

(2) Where this section applies, an officer of the Department may enter that vessel or any other vessel within harbour limits

which is owned, managed or chartered by or is otherwise under the control of that person, and unless the dues are paid immediately, may arrest the vessel and its equipment.

- (3) A vessel or equipment arrested under this section may —
- (a) be detained until the dues in respect of which the arrest was made are paid or until security for payment is given; or
 - (b) if the dues are not paid within 14 days after the arrest, be sold by the Department in accordance with the provisions of this section.
- (4) The following provisions have effect in respect of the sale of a vessel arrested under this section —
- (a) the sale shall be authorised by order of the Department and shall not take place unless the Department by order so directs;
 - (b) the order operates so as to entitle the Department to transfer title to the vessel in the same manner and to the same extent as if the Department were the registered owner of the vessel;
 - (c) the sale operates to vest the vessel in the purchaser freed of all mortgages, liens, charges and other interests in it, and the purchaser shall not require any other evidence of title to the vessel than a copy, certified by the Department, of the order;
 - (d) where —
 - (i) the vessel is registered under Parts I to III of the Merchant Shipping Registration Act 1991; and [c.15]
 - (ii) the purchaser is qualified to be the owner of the vessel under that Act,on production of the order or a copy of the order certified by the Department, the Department of Trade and Industry shall register the bill of sale effecting the transfer in the same manner as if the Department were the registered owner of the vessel immediately prior to the transfer.
- (5) The Department shall not sell any property or article under this section for use in the Island or the United Kingdom if any prohibition or restriction on importation applies or if the price

which would be obtained is less than the amount of customs or excise duties or value added tax payable in respect of the property or article.

(6) If a sale is carried out under this section, the sale proceeds shall be applied in paying the following charges in the following order —

- (a) any customs or excise duties or any value added tax payable in respect of any property or article sold; and
- (b) any dues in respect of which the sale was carried out, and any reasonable expenses of and incidental to the sale,

and any surplus shall be paid to the person who the Department considers to be entitled to it.

(7) Where —

- (a) the Department is unable or deems it inexpedient to make an arrest under this section; or
- (b) the proceeds of a sale under this section are not sufficient to pay all the dues payable to the Department and the reasonable expenses of and incidental to the sale,

the dues due and the amount of the deficiency may be recovered as a debt due to the Department.

(8) If a vessel or equipment arrested under this section has been offered for sale under this section but remains unsold, the vessel or equipment may be disposed of by the Department in such manner as the Department determines.

(9) Anything liable to forfeiture under the Customs Acts or under any statutory provision relating to merchant shipping shall not be arrested, sold or otherwise disposed of under this section.

Remedies for
non-payment
of dues on
goods

XIX p.538/73

50. (1) If default is made in the payment to the Department of any dues on goods, an officer of the Department may enter the vessel or other place (being within harbour limits) in which the goods in respect of which the dues were charged are kept and arrest the goods.

(2) If the goods have been removed from harbour limits, the officer may enter any vessel or other place within harbour limits and arrest any other goods found on or in such vessel or place belonging to the person in default.

(3) Goods arrested by the Department under this section may be sold by the Department.

(4) A sale under this section shall not (except in the case of goods which are of a perishable nature or which would deteriorate in value by delay) be made under subsection (3) until at least 21 days' notice of the intended sale has been given by advertisement in a newspaper circulating in the Island and in any such other manner as the Department considers appropriate.

(5) Goods shall not be sold for use in the Island or the United Kingdom where any prohibition or restriction on importation applies in respect of such goods or where the price which would be obtained is less than the amount of any customs or excise duties or any value added tax payable in respect of those goods.

(6) Where goods are sold under this section, the Department shall apply the proceeds of sale in paying the following charges in the following order —

- (a) any customs or excise duties or any value added tax payable in respect of the goods sold;
- (b) any dues payable in respect of the goods; and
- (c) the reasonable expenses of and incidental to the sale.

(7) Where the proceeds of sale have been applied under subsection (6), if any surplus remains, it shall be paid to the person appearing to the Department to be entitled to it.

(8) If any dues payable on the goods and the reasonable expenses of and incidental to the sale remain unpaid, the balance may be recovered as a debt due to the Department.

(9) Any goods which are not sold shall, provided that all customs or excise duties and value added tax payable in respect of the goods have been paid, be delivered, on demand, to the person appearing to the Department to be entitled to them.

(10) Where the Department is unable or considers it inexpedient to recover dues on goods by arrest and sale under this section, it may recover the dues as a debt due to the Department.

(11) Anything liable to forfeiture under the Customs Acts or any statutory provision relating to merchant shipping shall not be arrested, sold or otherwise disposed of under this section.

51. The harbour master may refuse to give permission for a vessel to leave harbour limits until —

Refusal of
permission
to leave harbour

- (a) the master of the vessel has produced to the harbour master a certificate signed by an officer of the Department stating that all the dues and other charges payable to the Department in respect of the vessel, its passengers and its cargo have been paid; or
- (b) the harbour master has received notification from an officer of the Department that satisfactory security for the payment of dues and other charges has been received by the Department.

Detention
of vessel
pending
payment

XIX p.538/32

52. Subject to any contrary provision in a written agreement to which the Department is party or is otherwise bound, the harbour master may detain a vessel which has entered within harbour limits until the harbour master is satisfied that all dues and all other charges owing to the Department under this Act in respect of the vessel, its passengers and cargo, have been paid or sufficient security has been given for their payment.

PART 3

PLEASURE CRAFT AND CERTAIN OTHER VESSELS

Application
of this Part
1974/21/1

53. (1) Subject to subsection (2), this Part applies to a craft or vessel which is ordinarily based in the Island or Manx waters and which is —

- (a) a pleasure craft less than 24 metres in length;
- (b) a commercial vessel less than 24 metres in length; or
- (c) a vessel owned by a Department.

(2) This Part does not apply to a craft or vessel which is —

- (a) registered under the laws of a country outside the Island;
or
- (b) registered or is required to be registered under the Merchant Shipping Registration Act 1991;
- (c) a lifeboat;
- (d) detained or seized by any Department;
- (e) used exclusively as a pilot vessel; or
- (f) exempted under subsection (3) from the operation of this Part.

[c.15]

(3) The Department may by order exempt craft, vessels, classes of craft and classes of vessels from the operation of this Part.

(4) An order under subsection (3) shall be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is made or at the next following sitting fails to approve it, the order shall cease to have effect.

(5) Proof of registration under subsection (2)(a) and (b) shall be provided to the satisfaction of the Department in such manner as the Department considers appropriate.

54. (1) The Department may make regulations requiring the registration and governing the operation and safety of craft or vessels to which this Part applies and generally for matters connected with such registration, operation and safety.

Regulations
for registration
and operation

1974/21/2

(2) Without limiting subsection (1), regulations under this section may —

- (a) provide for the affixing of registration marks on such craft or vessels;
- (b) prescribe the fees to be charged for the registration of such craft or vessels;
- (c) prescribe provisions governing the registration, operation and safety of such craft or vessels; and
- (d) prescribe maximum penalties on summary conviction, of up to £5,000, for the contravention of the regulations.

(3) Regulations under this section shall not come into operation unless they are approved by Tynwald.

55. (1) No person shall use any craft or vessel as a permanent home within the limits of any harbour —

Prohibition
on living on
board

- (a) without the written permission of the Department; and
- (b) otherwise than in compliance with any written conditions imposed by the Department when granting permission.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of up to £1,000.

[c.9] (3) Nothing in this section affects the Town and Country Planning Act 1999 or any enactment amending or construed with that Act, whether passed before or after this Act.

PART 4

COMPULSORY INSURANCE

Regulations requiring compulsory insurance or security

56. (1) The Department may make regulations requiring that, in cases which are prescribed by such regulations, while a vessel is in Manx waters, there must be in force in respect of the vessel —

P1997/28/16;
P1995/21/
192A

- (a) a contract of insurance insuring such persons as may be specified by the regulations against such liabilities as may be so specified and satisfying such other requirements as may be so specified; or
- (b) such other security relating to those liabilities as satisfies requirements specified by or under the regulations.

(2) Regulations under this section do not apply in relation to —

- (a) a foreign ship while it is exercising —
 - (i) the right of innocent passage; or
 - (ii) the right of transit passage through straits used for international navigation;
- (b) a warship; or
- (c) a vessel used other than for commercial purposes by the government of any State.

[c.21] (3) Regulations under this section may not require insurance or security to be maintained in respect of a vessel in relation to any liability in any case where an obligation to maintain insurance or security in respect of that vessel in relation to that liability is imposed by the Merchant Shipping Act 1995 (of Parliament) as it has effect in the Island.

(4) Regulations under this section may require that, where a person is obliged to have in force in respect of a vessel a contract of insurance or other security, such documentary evidence as may be specified of the existence of the contract of insurance or other security must be carried on board the vessel and produced on demand, by such persons as may be specified to such persons as may be so specified.

- (5) Regulations under this section may provide —
- (a) that, in such cases as are prescribed, a vessel which contravenes the regulations is liable to be detained; and
 - (b) that contravention of the regulations is an offence punishable —
 - (i) on summary conviction by a fine of up to £5,000; or
 - (ii) on conviction on information by a fine.
- (6) Regulations under this section may make provision in terms of any document which the Department or any person considers relevant.
- (7) Regulations under this section shall not come into operation unless they are approved by Tynwald.

PART 5

RESTRICTIONS ON ALCOHOL AND DRUGS

- 57.** (1) This section applies to —
- (a) a professional master of a vessel;
 - (b) a professional pilot of a vessel; and
 - (c) a professional seaman on board a vessel while on duty.
- (2) A person to whom this section applies commits an offence if that person's ability to carry out his or her duties is impaired because of drink or drugs.
- (3) A person to whom this section applies commits an offence if the proportion of alcohol in that person's breath, blood or urine exceeds the limit prescribed in section 60.
- (4) For the purposes of this section a master, pilot or seaman is professional if (and only if) such person acts as master, pilot or seaman in the course of a business or employment.
- (5) If a person is charged with an offence under this section in respect of the effect of a drug on that person's ability to carry out duties on a fishing vessel, it is a defence to show that —
- (a) he or she took the drug for a medicinal purpose on, and in accordance with, medical advice; or

Professional
staff on duty
P2003/20/78

- (b) he or she took the drug for a medicinal purpose and had no reason to believe that it would impair his or her ability to carry out his or her duties.

Professional
staff off duty
P2003/20/79

58. (1) This section applies to a professional seaman on board a vessel at a time when —

- (a) that person is not on duty; but
- (b) in the event of an emergency that person would or might be required by the nature or terms of his or her engagement or employment to take action to protect the safety of the vessel, its passengers and cargo.

(2) A person to whom this section applies commits an offence if that person's ability to take the action mentioned in subsection (1)(b) is impaired because of drink or drugs.

(3) A person to whom this section applies commits an offence if the proportion of alcohol in that person's breath, blood or urine exceeds the limit prescribed in section 60.

(4) For the purposes of this section a seaman is professional if (and only if) he or she acts as seaman in the course of a business or employment.

(5) If a person is charged with an offence under this section in respect of the effect of a drug on that person's ability to take action it is a defence for such person to show that —

- (a) he or she took the drug for a medicinal purpose on, and in accordance with, medical advice; or
- (b) he or she took the drug for a medicinal purpose and had no reason to believe that it would impair his or her ability to take the action.

Non-
professionals
P2003/20/80

59. (1) This section applies to a person who —

- (a) is on board a vessel which is under way;
- (b) is exercising, or purporting or attempting to exercise, a function in connection with the navigation or operation of the vessel; and
- (c) is not a person to whom section 57 or 58 applies.

(2) A person to whom this section applies commits an offence if that person's ability to exercise the function mentioned in subsection (1)(b) is impaired because of drink or drugs.

(3) Unless regulations provide otherwise, a person to whom this section applies commits an offence if the proportion of alcohol in that person's breath, blood or urine exceeds the limit prescribed in section 60.

(4) Regulations under subsection (3) may make provision by reference, in particular —

- (a) to the power of a motor;
- (b) to the size of a vessel; or
- (c) to location.

(5) Regulations under subsection (3) shall not come into operation unless they are approved by Tynwald.

60. (1) The prescribed limit of alcohol for the purposes of this Part is —

Prescribed
limit
P2003/20/81

- (a) in the case of breath, 35 microgrammes of alcohol in 100 millilitres;
- (b) in the case of blood, 80 milligrammes of alcohol in 100 millilitres; and
- (c) in the case of urine, 107 milligrammes of alcohol in 100 millilitres.

(2) The Department may make regulations amending subsection (1).

(3) Regulations under subsection (2) shall not come into operation unless they are approved by Tynwald.

61. A person guilty of an offence under this Part is liable —

Penalty
P2003/20/82

- (a) on conviction on information to custody for up to 2 years, or a fine, or both; or
- (b) on summary conviction to a fine of up to £5,000.

62. (1) The provisions specified in the first column of the table set out in Schedule 2, with the modifications specified in the third column and any other necessary modifications, have effect in relation to an offence under this Part.

Specimens
P2003/20/83
and 87

(2) Consequently, but without limiting subsection (1), a person who, without reasonable excuse, fails to provide a specimen

when required to do so under a provision specified in the first column of the table commits an offence under that provision.

(3) For the purpose of the application by subsection (1) of a provision listed in the table, a reference to the provision shall be treated, unless the context otherwise requires, as including a reference to the provision as applied.

(4) The Department may by regulations amend the table referred to in subsection (1) so as —

- (a) to add a provision relating to an offence which concerns alcohol or drugs in relation to road traffic;
- (b) to add, remove or amend a modification (whether or not in connection with an amendment of a provision specified in the table).

(5) Regulations under subsection (4) shall not come into operation unless they are approved by Tynwald.

Detention
pending
arrival of
police

P2003/20/84

63. (1) The harbour master may detain a vessel if the harbour master reasonably suspects that a person who is or may be on board the vessel is committing or has committed an offence under section 57, 58 or 59.

- (2) The power of detention under subsection (1) —
 - (a) is conditional upon the harbour master making a request, either before the detention or as soon as possible after its commencement, for a constable in uniform to attend; and
 - (b) lapses when a constable in uniform has decided whether or not to exercise a power by virtue of section 62 and has informed the harbour master of that decision.

Arrest without
warrant

P2003/20/85

64. (1) A constable may arrest a person without a warrant if the constable reasonably suspects that the person —

- (a) is committing an offence under section 57(2), 58(2) or 59(2); or
- (b) has committed one of those offences and is still under the influence of drink or drugs.

(2) A person may not be arrested under this section while that person is at a hospital as a patient.

(3) In subsection (2) “hospital” means an institution which —

- (a) provides medical or surgical treatment for in-patients or out-patients; and
- (b) is not on board a vessel.

(4) Arrest under this section shall be treated as arrest for an offence for the purposes of Part IV (detention) of the Police Powers and Procedures Act 1998.

[c.9]

65. (1) A constable in uniform may enter a vessel in order to check whether or not to exercise his or her powers under sections 62 or 64 in respect of a person who is or may be on the vessel.

Right of entry

P2003/20/86

(2) A constable in uniform may enter any place in order to check whether or not to exercise his or her powers under sections 62 or 64 in respect of a person who is or may be in that place.

(3) For the purposes of entering a vessel or place under this section a constable —

- (a) may use reasonable force;
- (b) may be accompanied by one or more persons.

66. (1) This Part shall not apply to a member of any of Her Majesty's forces, within the meaning of the Armed Forces Act 2006 (of Parliament) as it has effect in the Island, while acting in the course of that person's duties.

Crown application

P2003/20/90

[c.52]

(2) Subject to subsections (1) and (3), this Part shall apply to a person in the service of the Crown.

(3) Section 63 does not have effect in relation to a vessel which —

- (a) is being used for a purpose of Her Majesty's forces; or
- (b) forms part of the Royal Fleet Auxiliary Service.

(4) This Part does not apply to —

- (a) a member of a visiting force; or
- (b) a member of a civilian component of a visiting force,

while acting in the course of that person's duties,

(5) In subsection (4), "visiting force" has the same meaning as in section 3 of the Visiting Forces Act 1952 (of Parliament) as it has effect in the Island by virtue of section 12(1) of that Act.

[c.67]

Territorial
application
P2003/20/91

67. This Part has effect in relation to any vessel within Manx waters whether registered or unregistered and, if registered, wherever registered.

PART 6

MISCELLANEOUS AND SUPPLEMENTAL

Legal
proceedings
XIX p.538/75

68. The Department or the Chief Constable may take proceedings for offences under this Act.

Offences by
bodies
corporate

69. (1) Subsection (2) applies if an offence under this Act is committed by a body corporate and it is proved that an officer of the body authorised, permitted, participated in, or failed to take all reasonable steps to prevent the commission of, the offence.

(2) The officer, as well as the body, commits the offence and is liable to the penalty provided for the offence.

(3) In this section, “officer” includes —

- (a) a director, secretary or other similar officer;
- (b) a person purporting to act as director, secretary or other similar officer;
- (c) if the affairs of the body are managed by its members, a member;
- (d) if the body has a registered agent, the registered agent.

Lighthouses
XIX p.538/76

70. For the purposes of Part VIII of the Merchant Shipping Act 1995 (of Parliament) —

[c.21]

- (a) the Northern Lighthouse Board is the general lighthouse authority for the Island; and
- (b) the Department is the local lighthouse authority for the Island.

Pilots
XIX p.538/77

71. (1) The Department shall provide such pilotage services as it considers need to be provided to secure the safety of vessels navigating in, or within the approaches to, a harbour.

(2) The Department may by regulations make such provision as it considers appropriate —

- (a) in relation to the examining and licensing of pilots; and

- (b) to prevent unlicensed persons acting as pilots in Manx waters.
- (3) Regulations under this section —
 - (a) may empower the harbour master, in specified circumstances or for specified purposes, to give directions;
 - (b) may make provision for their enforcement, including the creation of offences punishable —
 - (i) on conviction on information with custody for up to 2 years, or a fine, or both; or
 - (ii) on summary conviction with custody for up to 6 months, or a fine of up to £5,000;
 - (c) may make provision with respect to the liability of officers and others in respect of offences committed by a body corporate;
 - (d) may make provision for the review of decisions and actions of the Department in respect of applications for examination or licensing;
 - (e) may make provision for —
 - (i) applications for examination or licensing;
 - (ii) the conditions subject to which a pilot may be licensed;
 - (iii) certifying the successful completion of examination and the licensing of the pilot and the effect of such certification.
- (4) Regulations under this section shall not come into operation unless they are approved by Tynwald.

72. (1) The Department may compulsorily acquire property to which this section applies for the purpose of any of its functions. Compulsory purchase of property

(2) Subject to such exceptions, modifications and adaptations as the Council of Ministers may by order specify, the Acquisition of Land Act 1984 applies to the compulsory acquisition of property under subsection (1) as it applies to the compulsory acquisition of land. XIX p.538/4A
[c.9]

(3) An order under subsection (2) shall not come into operation unless it is approved by Tynwald.

(4) This section applies to —

- (a) property (other than land) which is within, or is constructed, adapted or intended for use within, a harbour; and
- (b) any right or interest attaching or relating to that property.

Running dry
and lowering
of water level

XIX p.538/14

73. (1) The Department may run dry or lower the water level in any harbour.

(2) Where practicable, at least 3 clear days before the Department runs dry or lowers the water level in any harbour it shall give notice of its intention to do so —

- (a) by affixing a notice in a conspicuous place both at its principal office and at the harbour affected;
- (b) in a newspaper published and circulating in the Island; and
- (c) in any other manner the Department considers appropriate.

Navigational
aids

XIX p.538/19

74. (1) The Department may, with the prior approval of the Northern Lighthouse Board —

- (a) place and maintain lights, buoys, beacons or seamarks within harbours and within Manx waters;
- (b) remove or discontinue any such light, buoy, beacon or seamark; or
- (c) vary the character of any such light, buoy, beacon or seamark or the mode of exhibiting lights in any such, buoy, beacon or seamark or in any lighthouse.

(2) The Department may provide, install, maintain and operate wireless, radar and other navigational aids to vessels using a harbour unless, in so doing, it would contravene any other statutory provision.

Facilities for
aircraft

XIX p.538/81

75. The Department may provide facilities for aircraft using harbours and may make charges for such facilities in accordance with regulations made under section 38.

Restriction on
disposal of
land

XIX p.538/83
and 83A

76. (1) The Department shall not dispose of any land within harbour limits or forming part of the foreshore of the Island.

(2) Subsection (1) does not apply to —

- (a) the letting of any land for a term of 21 years or less;
- (b) the letting of any part of the foreshore to a local authority for a term of 21 years or less;
- (c) the disposal of any part of the foreshore to a Department or to the Manx Museum and National Trust;
- (d) a disposal made with the approval of Tynwald; or
- (e) the grant of easement, wayleave or *profit à prendre*.

(3) This section is additional to paragraph 1 of Schedule 1 to the Government Departments Act 1987.

[c.13]

77. (1) Subject to subsection (2), an officer of the Isle of Man Constabulary or officer of Customs and Excise, whilst acting in the execution of his or her duty, has the right, with or without a vehicle, to enter or leave any part of a harbour.

Right to enter
or leave harbour
XIX p.538/86

(2) Unless regulations under subsection (3) otherwise provide, an officer mentioned in subsection (1) shall notify the harbour master as soon as is reasonably practicable after the officer enters or leaves the harbour (or part of it).

(3) The Department may by regulations provide for officers mentioned in subsection (1) to be subject to notification arrangements in place of those specified in subsection (2), the terms of which shall be set out in the regulations.

(4) Regulations under subsection (3) may also prescribe circumstances where the requirement under subsection (2) to notify does not apply.

(5) Before making regulations under subsection (3), the Department must consult with the Chief Constable and the Collector of Customs and Excise.

(6) Regulations under subsection (3) shall not come into operation unless they are approved by Tynwald.

78. An officer of Customs and Excise may, for the purpose of obtaining information necessary for the performance of his or her duties in relation to —

Production
of books and
documents

XIX p.538/87

- (a) a vessel which has arrived or departed from within harbour limits; or
- (b) the cargo on that vessel,

require the Department to produce for the officer's inspection all books and documents relating to the vessel or cargo as that officer reasonably requires and to permit the officer to take copies of or extracts from those books and documents.

Application of
Community
instruments

1987/10/11A

[c.14]

79. (1) The Department may by order apply to the Island as part of the law of the Island, subject to such exceptions, adaptations and modifications as may be specified in the order, any provision of a Community instrument (within the meaning of section 1(1) of the European Communities (Isle of Man) Act 1973) which has effect in the United Kingdom and concerns, directly or indirectly —

- (a) harbours;
- (b) harbour use;
- (c) harbour management and control;
- (d) harbour safety;
- (e) harbour security;
- (f) navigation within harbours;
- (g) harbour works and operations; or
- (h) environmental matters affecting harbours.

(2) An order under subsection (1) may include provision repealing or amending any provision of any enactment (other than this section) which is inconsistent with, or is unnecessary or requires modification in consequence of any Community instrument applied to the Island by the order.

(3) An order under subsection (1) may set out the Community instrument applied by the order, incorporating the exceptions, adaptations and modifications subject to which it applies to the Island.

(4) The Department shall, as soon as is practical after the coming into operation of an order to which subsection (3) applies cause a text to be prepared of the Community instrument applied by the order, incorporating the exceptions, adaptations and modifications specified in the order.

(5) The Department shall supply a copy of the text prepared under subsection (4) to any person requesting it, at such reasonable charge as the Department determines.

(6) An order under subsection (1) shall not come into operation unless it is approved by Tynwald.

80. (1) Where a provision of a Community instrument has been applied to the Island under section 79, the Department has the same power to make regulations in respect of that provision as the Council of Ministers has by virtue of the power conferred under section 2B of the European Communities (Isle of Man) Act 1973 for the purposes of implementing an instrument applied to the Island under section 2A of that Act.

Implementation
of Community
obligations

[c.14]

(2) Regulations under subsection (1) shall be laid before Tynwald as soon as practicable after they are made and if Tynwald, at the sitting at which the regulations are laid or at the next following sitting, resolves that they are to be annulled, they cease to have effect.

81. (1) The Department may by order apply to the Island as part of the law of the Island, subject to such exceptions, adaptations and modifications as may be specified in the order, any legislation of the United Kingdom which concerns, directly or indirectly —

Application of
United Kingdom
legislation

1987/10/11

- (a) harbours;
- (b) harbour use;
- (c) harbour management and control;
- (d) harbour safety;
- (e) harbour security;
- (f) navigation within harbours;
- (g) harbour works and operations; or
- (h) environmental matters affecting harbours.

(2) An order under subsection (1) may include provision repealing or amending any provision of any enactment (other than this section) which is inconsistent with, or is unnecessary or requires modification in consequence of any legislation of the United Kingdom applied to the Island by the order.

(3) An order under subsection (1) may set out the legislation of the United Kingdom applied by the order, incorporating the exceptions, adaptations and modifications subject to which it applies to the Island.

(4) The Department shall, as soon as practical after the coming into operation of an order to which subsection (3) applies, cause a text to be prepared of the legislation of the United Kingdom applied by the order, incorporating the exceptions, adaptations and modifications specified in the order.

(5) The Department shall supply a copy of the text prepared under subsection (3) to any person requesting the same, at such reasonable charge as the Department may determine.

(6) An order made under subsection (1) shall not come into operation unless it is approved by Tynwald.

Public
documents

82. Bye-laws, orders and regulations made under this Act may include such consequential, incidental, supplementary, transitional, saving and other provisions as appear to the Department appropriate for the purposes of giving effect to them.

Interpretation
XIX p.538/1

83. (1) In this Act, except where the context otherwise requires —

“aircraft” includes seaplanes, helicopters, gliders and balloons;

“charges” means any charges payable under this Act;

“craft” means every description of craft or vessel (whether with or without means of propulsion of any kind), and includes anything constructed or used to carry persons by water;

[c.34]

“Customs Acts” means the Customs and Excise Management Act 1986 and any other enactment relating to customs or excise;

“dangerous goods” means goods classified as such by the Department in accordance with section 16;

“Department” means the Department of Transport;

“drug” includes any intoxicant other than alcohol;

“dues” means any dues chargeable under this Act, including dues in respect of vessels, goods or passengers;

“equipment” in relation to a vessel includes the tackle, apparel and furniture of such vessel;

“fishing vessel” for the purposes of section 57(5) means a vessel for the time being used for or in connection with

fishing for sea fish, other than a vessel used for fishing otherwise than for profit;

“foreign ship” for the purposes of section 56(2) means a ship which is not a Manx ship for the purposes of the Merchant Shipping Registration Act 1991; [c.15]

“foreshore” means the foreshore between the mean high water mark and the mean low water mark of ordinary spring tides;

“former owner” —

- (a) in relation to an obstruction, means a former owner who relinquished or transferred his or her interest in the obstruction after, in the case of a vessel, the vessel was laid up or became wrecked or derelict or, in the case of any other obstruction, it was found to be within the harbour limits or the approaches to a harbour or on any part of the foreshore or within Manx waters;
- (b) in relation to a vessel, property or article which is sold or disposed of under this Act, means the person who was the owner of the vessel, property or article immediately prior to its sale or disposal;

“goods” includes substances, materials or articles and anything in or on which goods are carried;

“harbour” includes any —

- (a) port;
- (b) marina;
- (c) banks and foreshore;
- (d) harbour basin;
- (e) land, premises, structures and facilities (including piers, quays, wharves, ways, bridges and docks);
- (f) waters; and
- (g) every point,

within the limits of the harbour as determined in accordance with section 1 (whether or not it would otherwise fall within the limits of that harbour);

“harbour master” means the person appointed by the Department under section 5(1) and includes a delegate under section 5(2);

“harbour services” include the provision of —

- (a) vessels (including dredgers, tug boats and ferries);
- (b) land and buildings (including slipways, berths, wharves, warehouses, sheds, silos, stores and other structures);
- (c) plant and machinery (including winches, cranes, weighing and measuring equipment and tools);
- (d) vehicles;
- (e) fire-fighting equipment;
- (f) ballast; and
- (g) such other things or matters as the Department considers to comprise harbour services;

“harbour user” means a person who uses the facilities and services of a harbour;

“infrastructure” means any infrastructure lawfully installed within harbour limits or within the approaches to a harbour or on the foreshore including, but not limited to —

- [c.5] (a) a cable (as defined in section 11 of the Submarine Cables Act 2003);
- [c.7]
[c.17] (b) a pipeline (as defined in either section 4 of the Mineral Workings (Offshore Installations) Act 1988 or in Part III of the Petroleum Act 1998 (an Act of Parliament), as it has effect in the Island);
- [c.5] (c) a fixed platform (as defined in section 9 of the Maritime Security Act 1995); and
- [c.14] (d) a marine structure (as defined in section 26 of the Water Pollution Act 1993);

“lifeboat” means a vessel used or to be used solely for rescue or assistance at sea, whether or not owned by the Royal National Lifeboat Institution;

“Manx waters” means any waters within the seaward limits of the territorial sea adjacent to the Island;

“master” means a person having command or charge of the vessel in relation to which that word is used, but does not include a pilot;

“navigation” includes the control or direction, or participation in the control or direction, of the course of a vessel;

“Northern Lighthouse Board” means the Commissioners of Northern Lighthouses constituted by section 193 of the Merchant Shipping Act 1995 (of Parliament); [c.21]

“obstruction” includes —

- (a) a vessel laid up as unfit for sea service, its equipment and goods;
- (b) a wrecked or derelict vessel, its equipment and goods;
- (c) any other article or object which the harbour master reasonably considers to be an obstruction;

“officer of Customs and Excise” has the same meaning as the word “officer” in the Customs and Excise Management Act 1986; [c.34]

“officer of the Department” means an employee or agent of the Department and includes the harbour master;

“owner” —

- (a) in relation to goods, includes any consignor, consignee, shipper or agent for the sale or custody of the goods;
- (b) in relation to a vessel which is registered in the Island or elsewhere, means the registered owner of the vessel;
- (c) in relation to an obstruction, means, in the case of a vessel, the owner of the vessel at the time the vessel was laid up or became wrecked or derelict or, in the case of any other obstruction, the owner at the time the obstruction was found to be within harbour limits or the approaches to the harbour or on any part of the foreshore or within Manx waters;

“pilot” means a person not belonging to a vessel who has control of the vessel;

“pleasure craft” means any craft used for pleasure purposes or hired out for reward to be used for those purposes;

[c.11] “public telecommunication system” has the same meaning as in the Telecommunications Act 1984, and “operator”, in relation to a public telecommunication system, means the person authorised by the relevant licence under section 5 of that Act to run the system;

“relevant public telecommunications operator” means the operator of a public telecommunication system, for the purposes of which any telecommunication apparatus is kept installed in the harbour or the approaches to the harbour or on part of the foreshore in the harbour.

“seabed” means the land seaward of the mean low water of ordinary spring tides comprising the seabed beneath Manx waters;

“seaman” includes every person (except a master or a pilot) employed or engaged in any capacity on board any vessel;

[c.11] “telecommunication apparatus” has the same meaning as in the Telecommunications Act 1984;

“vessel” means a ship, boat, rig, raft or water craft of any description (whether with or without means of propulsion of any kind) and includes personal water craft, pleasure craft, non-displacement craft, hovercraft, other amphibious vehicles, seaplanes and other aircraft, any other thing constructed or adapted for floating on or being submerged in water (whether permanently or temporarily) and anything constructed or used to carry persons by water.

(2) A reference in this Act to harbour limits shall be construed as a reference to the limits of a harbour determined in accordance with section 1.

Savings,
transitional
provisions,
amendments
and repeals

84. (1) The savings and transitional provisions in Schedule 3 have effect.

(2) The enactments in Schedule 4 are amended in accordance with that Schedule.

(3) The enactments in Schedule 5 are repealed in accordance with that Schedule.

Short title and
commencement

85. (1) This Act may be cited as the Harbours Act 2010.

(2) This Act, other than this section, shall come into operation on such day or days as the Department may by order

appoint and different days may be appointed for different provisions and for different purposes.

(3) An order under subsection (2) may make such transitional and saving provisions as the Department considers necessary or expedient.

Section 1(4) and 4

SCHEDULE 1

PURPOSES FOR WHICH BYE-LAWS MAY BE MADE

Part 1

General

1. For regulating the use of harbours and harbour facilities.
2. For regulating the exercise of the powers of the harbour master and other harbour officials.
3. For regulating the admission of vessels into harbour limits or the vicinity of such limits and their removal from such limits or vicinity, and for the good order and government of vessels within harbour limits.
4. For regulating the shipping and unshipping, loading, warehousing, stowing, depositing and removal of goods within harbour limits.
5. For regulating the cleaning and maintenance of harbours and their approaches.
6. For regulating the duties and conduct of all persons employed within harbour limits other than officers of the Isle of Man Constabulary or officers of Customs and Excise acting in exercise of their duty.
7. For regulating harbour safety.
8. For regulating the use of lights in harbours.
9. For preventing the obstruction of and interference with traffic within harbour limits.
10. (1) For regulating the provision of harbour services by the Department and others in such manner and upon such terms as the Department considers proper.

(2) For licensing such persons as the Department considers proper to provide harbour services.
11. For preventing vessels being used by incompetent persons in harbours or in Manx waters.
12. For preventing damage to property belonging to, or under the control of, the Department.

13. For regulating and enforcing the collection and payment of dues and other charges under this Act. SCH. 1

14. For prescribing the fees to be charged upon the issue of any licence, permit or authority under bye-laws.

15. (1) In respect of vessels to which this paragraph applies —

- (a) for requiring the marking of fishing gear, nets and other equipment;
- (b) for requiring the marking of equipment, other than fixtures, used on board such vessels; and
- (c) for prescribing requirements as to the method of marking such gear, nets and equipment.

(2) This paragraph applies to —

- (a) fishing vessels registered in the Isle of Man under Part III of the Merchant Shipping Registration Act 1991; and [c.15]
- (b) such other vessels as the Department may specify.

Part 2

Navigation

16. For providing that the master or owner of a vessel within harbour limits shall regulate the vessel according to the directions of the harbour master.

17. For providing that when a vessel enters within harbour limits, the master or owner of the vessel shall inform the harbour master of any intention to dismantle, break up or carry out major modifications to the vessel and for providing that the harbour master may give directions as to how, when and where that work is to be carried out.

18. For requiring vessels entering into or departing from harbour limits to keep to the proper and usual side of any navigable channel.

19. For regulating the speed of vessels within harbour limits or within any specified portion of such limits or in any special circumstances.

20. For requiring vessels within harbour limits to stop or slow their engines at specified times or places and for regulating the taking on board, landing or putting down of passengers.

21. For the berthing and removing of vessels lying within harbour limits.

SCH. 1

22. For regulating the conduct and behaviour of harbour users and other persons within harbour limits, with different regulations capable of being applied —

- (a) within harbour limits; and
- (b) between those areas of a harbour to which the public has access without the permission of the Department and those areas to which the public does not have such access.

23. For specifying the time and conditions (including the employment of persons and other resources and the compliance with operational safety measures as the harbour master considers appropriate) under which vessels may be manoeuvred within harbour limits and for preventing other vessels from casting loose or from manoeuvring in any navigable channel or other place within harbour limits.

24. For requiring vessels that may happen to take the ground in a navigable channel within harbour limits to adopt and exercise all reasonable precautions by the stationing of a look-out, the use of flags and appropriate signals and otherwise to the satisfaction of the harbour master or as may be specified.

25. For requiring the master or owner of a vessel casting anchor within harbour limits to cause a buoy to be fastened to the anchor so that it is plainly seen where the anchor is cast.

26. For providing that no vessel or other thing may be attached to a buoy within harbour limits or otherwise within Manx waters other than to a designated mooring buoy.

Part 3

Control of harbour

27. For preventing and removing obstructions or impediments within harbour limits.

28. For regulating the movement of persons, vehicles and animals within harbour limits.

29. For requiring the master or owner of a vessel within harbour limits to moor, unmoor, place or remove the vessel according to the directions of the harbour master or, if there is no person on board the vessel, to attend to such directions, for authorising the harbour master to cause the vessel to be moored, unmoored, placed or removed as the harbour master considers appropriate.

30. For providing that a vessel, except with the permission of the harbour master, shall not lie or be moored —

- (a) within harbour limits;

- (b) outside harbour limits but within the vicinity of a harbour; SCH. 1
- (c) at and around the entrance to a harbour (whether or not within harbour limits).

31. For requiring vessels to be furnished with such gangways, planks, hand rails and other appliances as the harbour master may consider necessary.

32. For providing that the master or owner of a vessel entering harbour limits for the purpose of discharging or loading cargo shall cause the vessel to be discharged or loaded as soon as practicable after entry and shall, after discharging or loading, remove the vessel to such part of any harbour as the harbour master may direct.

33. For specifying the time during which goods unshipped or waiting to be shipped may remain within harbour limits, and providing for the removal or disposal of goods which are not removed after the expiration of that time.

34. For specifying how goods are to be placed within harbour limits.

35. For prohibiting goods being placed within harbour limits so as to interfere with the mooring or berthing of vessels or so as to impede traffic.

36. For preventing unauthorised cutting, breaking and destroying of the moorings or fastenings of vessels within harbour limits.

37. For preventing the unauthorised opening or shutting of swing bridges (or other moving or movable bridges), dock gates, or sluices within harbour limits.

38. For prohibiting, without the prior consent of the harbour master, the building or repairing of any vessel within harbour limits.

39. For providing that the harbour master may remove loiterers, disorderly persons and nuisances from within harbour limits.

40. For specifying conditions (to be in addition to and not in derogation of the provisions of any enactment) under which dangerous goods (including dangerous or combustible substances) shall be brought, shipped, handled, deposited, kept or transported within harbour limits.

41. For specifying conditions (to be in addition to and not in derogation of the provisions of any enactment) under which any mineral hydrocarbon light oils shall be brought, shipped, handled, deposited, kept or transported within harbour limits.

42. For regulating the use of tramways and sidings within harbour limits and any associated works and for preventing obstruction, interference, injury or damage to any passing traffic.

SCH. 1

43. For regulating the ballasting of vessels within harbour limits or within Manx waters and the order and manner in which vessels shall be supplied with ballast and the discharging, removal and disposal of ballast.

44. For preventing or otherwise regulating smoking in or on any vessel within harbour limits or in any specified place within harbour limits.

Section 62

SCHEDULE 2

RESTRICTIONS ON ALCOHOL AND DRUGS

<i>Provision</i>	<i>Description</i>	<i>Modification</i>
Road Traffic Act 1985 [c. 23]		
Section 5B	Breath tests	<p>In place of subsections (1) and (2), the power to require a person to provide a specimen of breath for a breath test shall apply where —</p> <p>(a) a constable in uniform reasonably suspects that the person is committing an offence under section 57, 58 or 59;</p> <p>(b) a constable in uniform reasonably suspects that the person has committed an offence under section 57, 58 or 59 and still has alcohol or a drug in his or her body or is still under the influence of a drug; or</p> <p>(c) an accident occurs owing to the presence of a ship in a public place and a constable reasonably suspects that the person was at the time of the accident a person to whom section 57, 58 or 59 applied.</p>
Section 6	Provision of specimens	<p>In subsection (1), the reference to an offence under section 3A, 5 or 5A of the 1985 Act shall be treated as a reference to an offence under section 57, 58 or 59 of this Act.</p> <p>In subsection (3)(d), the reference to an offence under section 3A or 5 of the 1985 Act shall be treated as a reference to an offence under section 57(2), 58(2) or 59(2) of this Act.</p>
Section 7	Choice of specimen of breath	
Section 7A	Protection for hospital patient	
Section 7B	Detention of person affected by alcohol or a drug	<p>In subsection (1) —</p> <p>(a) the reference to driving or attempting to drive a mechanically propelled vehicle on a road shall be treated as a reference to exercising a function in connection with the navigation or operation of a ship, and</p>

SCH. 2

(b) the reference to an offence under section 5 or 5A of the 1985 Act shall be treated as a reference to an offence under section 57, 58 or 59 of this Act.

In subsection (2), the reference to driving a mechanically propelled vehicle shall be treated as a reference to exercising a function in connection with the navigation or operation of a ship.

In subsection (3), the reference to driving properly shall be treated as a reference to exercising a function in connection with the navigation or operation of a ship.

Section 7C Use of specimens

In subsection (1), the reference to an offence under section 3A, 5 or 5A of the 1985 Act shall be treated as a reference to an offence under section 57, 58 or 59 of this Act.

The relevant time for the consumption of alcohol for the purpose of subsection (3)(a) shall be before providing the specimen and after the time of the alleged offence.

In subsection (3)(b), the reference to driving shall be treated as a reference to exercising a function in connection with the navigation or operation of a ship.

Section 7D Documentary evidence

Section 7DA Specimens of blood taken from persons incapable of consenting

Subsection (1)(b) does not apply.

Section 7E Interpretation

For the definition of “the prescribed limit”, substitute the definition given in section 60 of this Act.

Section 84(1)

SCHEDULE 3

SAVINGS AND TRANSITIONAL PROVISIONS

(1) Nothing in this Act affects any interest, jurisdiction, right, power or remedy of the Crown except where this Act expressly otherwise provides.

(2) Bye-laws made under the Isle of Man Harbour Acts, 1872 to 1911 (of Parliament), the Harbours (Douglas Bridge) Act 1894 or the Harbours (Isle of Man) Act 1961 which were in operation immediately before the passing of this Act remain in operation and are deemed to have been made under this Act. [VI p.553] [XIX p.538]

(3) Nothing in this Act affects —

(a) the provisions of the Customs and Excise Management Act 1986 and any enactment amending or construed with that Act, whether passed before or after this Act; [c.34]

(b) the exercise by the Department or any person authorised by the Department of any of the powers conferred on it under the Oil Pollution Act 1986; [c.12]

(c) the performance by a receiver of wreck or by any officer or person who acts for a receiver of wreck of any of the functions conferred on such person under the Wreck and Salvage (Ships and Aircraft) Act 1979; or [c.24]

(d) any statutory provision relating to merchant shipping.

(4) The Department continues to have the functions it had immediately before the commencement of this Act.

Section 84(2)

SCHEDULE 4

CONSEQUENTIAL AMENDMENTS

Sea-Fisheries Act 1971 (c.18)

1. In section 8C(5), for “section 15 of the Harbours (Isle of Man) Act 1961” substitute “section 26 of the Harbours Act 2010”.

Merchant Shipping (Detention of Ships) Act 1979 (c.13)

2. After section 2, insert —

“Provisions concerning harbour master **2A.** (1) Where the harbour master (within the meaning of the Harbours Act 2010) considers that a ship is unsafe (within the meaning of section 1) and should be detained, the harbour master shall notify the Department as soon as reasonably practicable after forming such opinion.

(2) The harbour master may be appointed by the Department as a detaining officer for the purposes of section 1.”

Shipping Casualties (Inquiries, Investigations and Reports) Act 1979 (c.18)

3. In section 1(9), for “sections 16 and 16B of the Harbours (Isle of Man) Act 1961 (removal of obstructions and vessel)” substitute “sections 22 (unfit vessels) and 23 (removal of obstructions) of the Harbours Act 2010”.

Merchant Shipping (Safety Provisions)(Application) Order 1985 (G.C. 38/85)

4. In Part II of Schedule 12, for “section 1 of the Harbours (Isle of Man) Act 1961” substitute “section 83 of the Harbours Act 2010”.

Oil Pollution Act 1986 (c.12)

5. In section 3, for “section 16 of the Harbours (Isle of Man) Act 1961” substitute “section 23 of the Harbours Act 2010”.

Department of Highways, Ports and Properties Order 1986 (G.C. 190/86)

6. In Schedule 2, for “Harbours (Isle of Man) Act 1961 (XIX p.538)” substitute “Harbours Act 2010”.

Merchant Shipping (Prevention of Oil Pollution) (Reception Facilities) Order 1986 (G.C. 215/86)

7. In article 1(2), in the definition of “harbour”, for “Harbours (Isle of Man) Act 1961” substitute “Harbours Act 2010”.

High Court Act 1991 (c.12)

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8. In Schedule 1, paragraph 20, for “Harbours (Isle of Man) Act 1961” substitute “Harbours Act 2010”.

Post Office Act 1993 (c.20)

9. In section 32(2), for “section 55 of the Harbours (Isle of Man) Act 1961” substitute “section 38 of the Harbours Act 2010”.

Maritime Security Act 1995 (c.5)

10. (1) In section 10(3), for “Harbours (Isle of Man) Act 1961” substitute “Harbours Act 2010”.

(2) In section 26, in the definition of “harbour”, for “Harbours (Isle of Man) Act 1961” substitute “Harbours Act 2010”.

Police Powers and Procedures Act 1998 (c.9)

11. In section 6(11), for “Harbours (Isle of Man) Act 1961” substitute “Harbours Act 2010”.

Merchant Shipping (Weighing of Goods Vehicles and Other Cargo) Regulations 2001 (S.D. 813/01)

12. In regulation 2, in the definition of “harbour”, for “Harbours (Isle of Man) Act 1961” substitute “Harbours Act 2010”.

Tribunals Act 2006 (c.1)

13. After entry 10 of Part 2 of Schedule 2 insert —

“**11.** The Harbour Works Tribunal established under section 28 of the Harbours Act 2010”.

Section 84(3)

SCHEDULE 5

CONSEQUENTIAL REPEALS

<i>Reference</i>	<i>Short Title</i>	<i>Extent of repeal</i>
XIX p.538	Harbours (Isle of Man) Act 1961.	The whole Act.
1974 c.21	Registration of Pleasure Craft Act 1974.	The whole Act.
1974 c.25	Harbours (Isle of Man) (Amendment) Act 1974.	The whole Act.
1979 c.24	Wreck and Salvage (Ships and Aircraft) Act 1979.	Schedule 1.
1984 c.6	Harbours (Amendment) Act 1984.	The whole Act.
1984 c.11	Telecommunications Act 1984.	In Schedule 2, paragraph 2 and the cross-heading.
1985 c.25	Treasury Act 1985.	In Schedule 2, paragraphs 130 to 136 and the cross-heading.
1986 c.34	Customs and Excise Management Act 1986.	In Schedule 4, paragraph 4 and the cross-heading.
G.C. 190/86	Department of Highways, Ports and Properties Order 1986	In Schedule 2, the entry relating to the Registration of Pleasure Craft Act 1974. In Schedule 5, paragraphs 13 and 27 and the respective cross-headings.
G.C. 55/88	Transfer of Functions (Governor in Council) Order 1988	In Schedule 2, paragraph 8 and the cross-heading.
1989 c.6	Statute Law Revision Act 1989.	In Schedule 1, paragraph 49(j).
1989 c.9	Harbours (Amendment) Act 1989.	The whole Act.
1990 c.8	Civil Service Act 1990.	In Schedule 3, paragraph 4 and the cross-heading.
G.C. 155/91	Transfer of Functions (Governor in Council) Order 1991	In Schedule 2, paragraph 15 and the cross-heading.
1994 c.12	Harbours (Amendment) Act 1994.	The whole Act.

1996 c.1	Value Added Tax Act 1996.	In Schedule 15, the entry relating to the Harbours (Isle of Man) Act 1961.	SCH. 5
1997 c.4	Statute Law Revision Act 1997.	In Schedule 1, paragraph 28 and the cross-heading.	

