

VIRGIN ISLANDS

MERCHANT SHIPPING (AMENDMENT) ACT, 2020

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Section 2 amended.
3. Sections 115A to 115J inserted.
4. Section 171 amended.
5. Section 172 replaced.
6. Section 173 amended.
7. Section 173A inserted.
8. Section 174 amended.
9. Section 184 amended.
10. Section 186 amended.
11. Section 205A inserted.
12. Section 337 amended.
13. Section 393 amended.
14. Section 396 replaced.
15. Section 401 amended.
16. Section 413A inserted.
17. Section 414 amended.
18. Section 425A inserted.
19. Heading amended.
20. Section 459 amended.
21. Section 464 repealed and re-enacted.
22. Section 467 replaced.

I Assent
Governor
(Sgd.) Augustus J. U. Jaspert,
Governor.
19th March, 2020

VIRGIN ISLANDS

No. 2 of 2020

An Act to amend the Merchant Shipping Act 2001 (No. 13 of 2001) in order to give effect to provisions of the Nairobi Wreck Removal Convention and the Standards of Training, Certification and Watch keeping for Seafarers Convention in the Virgin Islands; to introduce powers to enable effect to be given in the Virgin Islands to other maritime conventions by subsidiary legislation; to amend liability limits relating to oil pollution and maritime claims; and to make provision for connected matters.

[Gazetted 26th March, 2020]

ENACTED by the Legislature of the Virgin Islands as follows:

- Short title. **1.** This Act may be cited as the Merchant Shipping (Amendment) Act, 2020.
- Section 2 amended. **2.** The Merchant Shipping Act, 2001 (referred to in this Act as “the principal Act”) is amended
- (a) in section 2(1) by inserting the following definitions in their proper alphabetical order:
- “Chief Marine Accident Investigator” means the person appointed by the Governor under section 425A(1);
- “convention” means an international treaty, convention or agreement;
- “drug” includes any intoxicant other than alcohol;

“marine accident investigator” means a person appointed by the Chief Marine Accident Investigator under section 425A(2);

“Virgin Islands Shipping Registry” means the department responsible for Maritime Administration and Shipping”;

- (b) by replacing the definition of “Ports Authority”, with the following:

““Ports Authority” means the British Virgin Islands Ports Authority established under the British Virgin Islands Ports Authority Act, 1990;”.

No. 12 of 1990

- (c) by inserting after subsection (2), the following new subsection:

“(3) In this Act a reference to a convention includes a reference to

- (a) a provision or Part of a convention;
- (b) any protocol, appendix, Annex or other addition to a convention; and
- (c) any resolution, code, scheme or other instrument which has effect under or by virtue of a convention.”.

3. The principal Act is amended by inserting immediately after section 115 the following new sections:

Sections 115A to 115J inserted.

“Offences relating to alcohol and drugs

Offences

Professional seafarers on duty.

115A. (1) This section applies to

- (a) a professional master of a ship;
- (b) a professional pilot of a ship; and
- (c) a professional seafarer in a ship while on duty.

(2) A person to whom this section applies commits an offence if his ability to carry out his duties are impaired because of drink or drugs.

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

(4) For the purposes of this section, a master, pilot or seafarer is professional if he acts as master, pilot or seafarer, as the case may be, in the course of a business or employment.

(5) Where 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 his duties, it is a defence for the person to show that

(a) he took the drug for a medicinal purpose on, and in accordance with, medical advice; or

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

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

(7) In this section, "pilot" has the meaning given by section 2(1) of the British Virgin Islands Ports Authority Act, 1990.

No. 12 of 1990

Professional staff
off duty.

115B. (1) This section applies to a professional seafarer in a ship at a time when

(a) the seafarer is not on duty; but

(b) in the event of an emergency the seafarer would or might be required by the nature or terms of their engagement or employment to take action to protect the safety of passengers.

(2) A person to whom this section applies commits an offence if his 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 his breath, blood or urine exceeds the prescribed limit.

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

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

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

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

Other persons
responsible for
navigation.

115C. (1) This section applies to a person who

- (a) is on board a ship which is under way;
- (b) is exercising, or purporting or attempting to exercise, a function in connection with the navigation of the ship; and
- (c) is not a person to whom section 115A or 115B applies.

(2) A person to whom this section applies commits an offence if the person's ability to exercise the function 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 the person's breath, blood or urine exceeds the prescribed limit.

(4) The Governor may make regulations providing for subsection (3) not to apply in specified circumstances.

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

- (a) to the power of a motor;
- (b) to the size of a ship; and
- (c) to location.

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

(7) In this regulation a reference to the navigation of a ship includes a reference to the control or direction, or participation in the control or direction, of the course of a ship.

Prescribed limit. **115D.** (1) The prescribed limit of alcohol for the purposes of this Part is

- (a) in the case of breath, 25 microgrammes of alcohol in 100 millilitres;
- (b) in the case of blood, 50 milligrammes of alcohol in 100 millilitres; and
- (c) in the case of urine, 67 milligrammes of alcohol in 100 millilitres.

(2) The Governor may by Order amend subsection (1).

Enforcement

Police to produce seafarer or other person before Government Medical Officer under certain circumstances.

115E. (1) Where a police officer has reasonable grounds to suspect that a person is committing an offence under section 115A, 115B or 115C, the officer shall take the person before a Government Medical Officer for examination and require the person to provide a specimen of blood or urine for a laboratory test.

(2) A police officer shall on requiring any person under subsection (1) to provide a specimen of blood or urine for a laboratory test warn him or her that failure to provide a specimen of blood or urine may make him or her liable to imprisonment or a

fine and if the police officer fails to do so, the court before which that person is charged with an offence under this section may direct an acquittal.

(3) A person who fails without reasonable excuse to provide a specimen of blood or urine under subsection (1) commits an offence, and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months; and in the case of a subsequent conviction either to a fine not exceeding one thousand dollars or to twelve months imprisonment or both.

(4) A police officer may arrest without a warrant a person who commits an offence under subsection (3).

Certificate of analyst and doctor admissible in evidence.

115F. (1) Subject to subsections (2) and (3), a certificate purporting to be signed by an authorised analyst certifying that the proportion of alcohol or drugs in the specimen of blood or urine is over the prescribed limit and the certificate from the medical practitioner who took the specimen of blood or urine from the defendant are admissible in evidence in any prosecution under this Act.

(2) No certificate shall be received in evidence unless the prosecution has served a copy on the defendant not less than fourteen days before the trial.

(3) In a prosecution under this Act, the defendant may, not less than fourteen days before the trial, serve notice on the prosecution requiring the attendance of the analyst or the medical practitioner to give evidence at such trial.

Detention pending arrival of police.

115G. (1) A marine official may detain a ship if he reasonably suspects that a person who is or may be on board the ship

(a) is committing an offence under section 115A, 115B or 115C; or

(b) has committed an offence under section 115A, 115B or 115C.

(2) The power of detention under subsection (1)

(a) is conditional upon the marine official making a request, either before the detention

or as soon as possible after its commencement, for a police officer to attend; and

- (b) lapses when a police officer has decided whether or not to exercise a power by virtue of section 115E and has informed the marine official of his or her decision.

(3) In this section “marine official” means

- (a) a person authorised by the Ports Authority;
- (b) the Director;
- (c) a surveyor appointed under section 414(1)(b); and
- (d) an inspector appointed under section 414(5).

Arrest without warrant.

115H. (1) A police officer may arrest a person without a warrant if the police officer reasonably suspects that the person

- (a) is committing an offence under section 115A(2), 115B(2) or 115C(2); or
- (b) has committed one of those offences and is still under the influence of drink or drugs.

(2) But a person may not be arrested under this section while he 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 a ship.

Right of entry.

115I. (1) A police officer may board a ship if the police officer reasonably suspects that he may wish to exercise a power by virtue of section 115E or under section 115H in respect of a person who is or may be on the ship.

(2) A police officer may enter any place if the police officer reasonably suspects that he may wish to exercise a power by virtue of section 115E or under section 115H in respect of a person who is or may be in that place.

(3) For the purposes of boarding a ship or entering a place under this section a police officer

(a) may use reasonable force;

(b) may be accompanied by one or more persons.

Application to seafarers on warships etc.

115J. (1) Sections 115A to 115I shall not apply to a seafarer or other person serving on board

(a) a warship;

(b) a naval auxiliary; or

(c) another ship owned or operated by a State and used, for the time being, only on governmental non-commercial service,

where the seafarer or other person belongs to a State that has similar provisions for discipline.”.

4. (1) Section 171 of the principal Act is amended as follows:

Section 171 amended.

(a) by inserting the following definitions in their proper alphabetical order:

““Antarctic area” means the sea area south of latitude 60 degrees south;

“Arctic waters” means those waters which are located north of a line from the latitude 58°00'.0 N and longitude 042°00'.0 W to latitude 64°37'.0 N, longitude 035°27'.0 W and thence by a rhumb line to latitude 67°03'.9 N, longitude 026°33'.4 W and thence by a rhumb line to the latitude 70°49'.56 N and longitude 008°59'.61 W (Sørkapp, Jan Mayen) and by the southern shore of Jan Mayen to 73°31'.6 N and 019°01'.0 E by the Island of Bjørnøya, and thence by a great circle line to the latitude 68°38'.29 N and longitude 043°23'.08 E (Cap Kanin Nos) and hence

by the northern shore of the Asian Continent eastward to the Bering Strait and thence from the Bering Strait westward to latitude 60° N as far as Il'pyrskiy and following the 60th North parallel eastward as far as and including Etolin Strait and thence by the northern shore of the North American continent as far south as latitude 60° N and thence eastward along parallel of latitude 60° N, to longitude 056°37'.1 W and thence to the latitude 58°00'.0 N, longitude 042°00'.0 W;

“Polar waters” means Arctic waters or the Antarctic area or both;”.

- (b) by replacing the definition of ““Cargo Ship Safety Construction Certificate”, “Cargo Ship Safety Equipment Certificate”, “Cargo Ship Safety Radio Certificate” and “Passenger Ship Safety Certificate” means the certificates of those names issued pursuant to section 186;” with the following:

““Cargo Ship Safety Construction Certificate”, “Cargo Ship Safety Equipment Certificate”, “Cargo Ship Safety Radio Certificate”, “Passenger Ship Safety Certificate” and “Polar Ship Certificate” means the certificates of those names issued pursuant to section 186;”.

- (c) in the definition of “Safety Convention”, by replacing the words “its Protocol of 1978”, with the words “its Protocols of 1978 and 1988”.
- (d) in the definition of “Safety Convention Certificate”, by replacing the words “Safety Certificate, Safety Construction Certificate, Safety Equipment Certificate, Safety Radio Certificate” with the words “Passenger Ship Safety Certificate, Cargo Ship Safety Construction Certificate, Cargo Ship Safety Equipment Certificate, Cargo Ship Safety Radio Certificate and Polar Ship Certificate”.

Section 172 replaced.

5. Section 172 of the principal Act is replaced with the following:

“Prevention of pollution from ships etc.

172. (1) The Governor may by regulations make such provision as he considers appropriate for the purpose of giving effect to any provisions of any of the following international conventions which have been ratified or acceded to by the United

Kingdom on behalf of the Virgin Islands

- (a) the International Convention for the Prevention of Pollution from Ships 1973 as amended by the Protocols of 1978 and 1997;
- (b) the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 and its Protocol of 1973 relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil;
- (c) the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990;
- (d) the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001; and
- (e) the Nairobi International Convention on the Removal of Wrecks 2007.

(2) The Governor may by Order add to the list of conventions in subsection (1) any international agreement not mentioned in subsection (1) which relates to the prevention, reduction or control of pollution of the sea or other waters by matter from ships.

(3) The Governor may by regulations make provision

- (a) to prevent, reduce or control pollution of the sea or other waters by the discharge of harmful substances from Virgin Islands ships and from other ships while they are in Virgin Islands waters;
- (b) to prevent, reduce or control pollution of the environment by the discharge of harmful substances from Virgin Islands ships and from other ships while they are in Virgin Islands waters;
- (c) to prevent, reduce or control pollution, danger to health or to navigation, or hazards

to the environment or to natural resources in relation to the transfer of cargo, stores, bunker fuel, ballast or other harmful substances between ships while within Virgin Islands waters;

- (d) to require records relating to the carriage or discharge of harmful substances to be maintained;
- (e) to require the discharge of harmful substances in Virgin Islands waters to be reported; and
- (f) in relation to the provision at ports in the Virgin Islands of facilities for the reception of waste from ships and the use of such waste reception facilities.

(4) Regulations made under this section may, in particular, include provision

- (a) specifying areas of sea as waters within which the jurisdiction and rights of the Virgin Islands are exercisable in accordance with Part XII of the United Nations Convention on the Law of the Sea (Protection and Preservation of the Marine Environment); and
- (b) varying the areas which may be specified under paragraph (a).

(5) In this section, a reference to the discharge of a harmful substance from a ship, place or thing, includes a reference to the escape of a harmful substance, as the case may be, or to its escaping, from that ship, place or thing.

Section 173 amended.

6. (1) Section 173 of the principal Act is amended

- (a) by inserting after subsection (1), the following new subsection:

“(1A) Subject to and in accordance with the provisions of this section and sections 174 to 205, the

Safety Convention, including all its instruments, shall have the force of law in the Virgin Islands.”.

- (b) by inserting after subsection (11), the following new subsections:

“(12) In this section, a reference to an instrument includes a reference to

- (a) any protocol, appendix, annex or other addition to the Safety Convention; and
- (b) any IMO resolution, code, scheme or other instrument which has effect under or by virtue of the Safety Convention.

(13) In any provision of the Safety Convention or its instruments which is given the force of law in the Virgin Islands by this section, unless the context clearly indicates otherwise

- (a) a reference to the Administration of a State, the Administration or to the Flag State is to be read
 - (i) in relation to a Virgin Islands ship, the Virgin Islands or Virgin Islands waters, as a reference to the Government; and
 - (ii) in relation to a foreign ship, to the maritime administration of the ship’s Flag State or, if none, the Government of the Flag State; and
- (b) a reference to a Contracting Government or a Party is to be read as a reference to

- (i) in relation to the Virgin Islands or Virgin Islands waters, the Government; and
- (ii) in relation to any other State or the waters of any other State, the Government of that State if it is a Party,

and references to a duty or requirement imposed on, or undertakings given by, an Administration or Contracting Government are to be read accordingly.

(14) Where any conflict arises between the provisions of this Act or any regulations made under it and the Safety Convention or its instruments, the provisions of the Safety Convention and its instruments take precedence.”.

Section 173A inserted.

7. The principal Act is amended by inserting after section 173 the following new section:

“Regulations relating to the safety of ships.

- 173A. (1)** The Governor may by regulations provide for
- (a) securing the safety of Virgin Islands ships and persons on them, and for protecting the health of persons on Virgin Islands ships;
 - (b) securing the safety of other ships and persons on them while they are within Virgin Islands waters and for protecting the health of persons on foreign ships while they are within Virgin Islands waters.
- (2) Except as provided by subsection (3), regulations made under subsection (1) shall not apply in relation to
- (a) a qualifying 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; or

- (b) persons on such a ship while it is exercising any such right.

(3) Regulations shall apply in relation to a qualifying foreign ship, and persons on such a ship, even though the ship is exercising a right mentioned in subsection (2)(a), to the extent that the regulations give effect to any provisions of a convention ratified by the United Kingdom and applied to the Virgin Islands in so far as it relates to the safety of ships or persons on them or to the protection of the health of persons on ships.

(4) Regulations may make provision with respect to any of the following matters:

- (a) the design, construction, maintenance, repair, alteration, inspection, surveying and marking of ships and their machinery and equipment;
- (b) the packaging, marking, loading, placing, moving, inspection, testing and measuring of cargo and anything on a ship which is not cargo, machinery or equipment;
- (c) the carrying out of any operation involving a ship;
- (d) the use of the machinery and equipment of a ship and of anything on a ship which is not cargo, machinery or equipment;
- (e) the manning of ships, including the employment on ships of persons qualified to attend to the health and safety of persons on the ships;
- (f) the arrangements for ensuring communication between persons in different parts of a ship and between persons in the ship and other persons;
- (g) the access to, presence in and egress from a ship, and different parts of it, of persons of any description;

- (h) the ventilation, temperature and lighting of different parts of a ship;
- (i) the steps to be taken to prevent or control noise, vibration and radiation in and from a ship and the emission in or from a ship of smoke, gas and dust;
- (j) the steps to be taken to prevent, detect and deal with outbreaks of fire on a ship;
- (k) the steps to be taken to prevent any collision involving a ship and in consequence of any collision involving a ship;
- (l) the steps to be taken, in a case where a ship is in distress or stranded or wrecked, for the purpose of saving the ship and its machinery, equipment and cargo and the lives of persons on or from the ship, including the steps to be taken by other persons for giving assistance in such a case;
- (m) the removal, by jettisoning or otherwise, of its equipment and of other things from a ship for the purpose of avoiding, removing or reducing danger to persons or property;
- (n) the steps to be taken, in a case where danger of any kind occurs or is suspected on a ship, for removing or reducing the danger and for warning persons who are not on the ship of the danger or suspected danger;
- (o) the making of records and the keeping of documents relating to ships and the keeping and use on a ship of information to facilitate the navigation of the ship;
- (p) the keeping of registers and the issue, withdrawal, suspension or revocation of certificates in cases for which registration or a certificate is required by virtue of the regulations; and
- (q) the furnishing of information;

but the mention of specific matters in this subsection shall not be construed as restricting the generality of the power conferred by subsection (1)(a) or (b).

(5) The power to make regulations conferred by subsection (1) shall extend also to the making of regulations for the prevention of collisions between seaplanes on the surface of water and between ships and seaplanes and subsection (4)(k) has effect accordingly.

(6) The Governor may make regulations prescribing safety requirements and providing for the issue of local certificates in respect of

- (a) fishing vessels;
- (b) pleasure vessels; and
- (c) such other classes of ship as may be specified in the regulations.”.

8. Section 174 of the principal Act is amended by repealing subsections (5) and (6). Section 174 amended.

9. Section 184 of the principal Act is amended by repealing subsections (4) and (5). Section 184 amended.

10. Section 186 of the principal Act is amended Section 186 amended.

(a) by inserting after paragraph (a) the following new paragraph:

“(aa) in the case of a passenger ship engaged on international voyages which operates in Polar waters, a Polar Ship Certificate;”;

(b) by inserting after paragraph (d) the following new paragraph:

“(e) in the case of a cargo ship of 500 gross tons or more engaged on international voyages which operates in Polar waters, a Polar Ship Certificate;”.

11. The principal Act is amended by inserting after section 205 the following new section: Section 205A inserted.

“Approval of equipment by an Administration.

205A. (1) This section applies where a provision of the Safety Convention or its instruments refers to any equipment requiring the approval of the Administration.

(2) Where this section applies, any equipment placed on board

(a) a Virgin Islands ship shall be of a type that has been approved by the Director; and

(b) a foreign ship shall be of a type approved in accordance with the provisions of the Safety Convention or its instruments by the Administration of the ship’s Flag State.

(3) For the purpose of subsection (2)(a), equipment will be approved if

(a) subject to subsection (4), it is of a type which has been approved by the Director and is included in a list of type approved equipment maintained by the Director and published by the Virgin Islands Shipping Registry;

(b) it is of a type which has been approved by

(i) the Secretary of State for Transport of the United Kingdom; or

(ii) any other maritime administration or recognised organisation which

(aa) in the Director’s opinion, applies the same or equivalent standards to the approval of equipment as the Secretary of State for Transport; and

(bb) is included in a list of administrations or organisations maintained and published from time to time published by the Virgin Islands Shipping Registry; or

(c) it does not fall within a type approved under subsection (a) or (b) but is, subject to subsection (4), approved specifically by the Director.

(4) Before approving

(a) a type of equipment under subsection (3)(a);
or

(b) an individual piece of equipment under subsection (3)(c),

the Director shall be satisfied that the equipment complies with the provisions of the Safety Convention or its instruments which are applicable to the equipment and the type, size and date of construction of the ship on which it is to be placed.

(5) When considering whether to grant approval, the Director shall have regard to any relevant

(a) IMO guidelines; and

(b) guidance issued or adopted by the Director.

(6) Any approval given under this section shall

(a) be in writing;

(b) specify the date on which it takes effect;

(c) specify the date, if any, on which the approval expires; and

(d) specify the terms, if any, on which it is granted.

(7) The Director may on giving reasonable notice cancel or alter the terms of any approval.

(8) Equipment marked with an expiry date ceases to be approved for the purposes of this section on the expiry date.”.

12. Section 337(2) of the principal Act is amended

Section 337
amended.

- (a) in paragraph (a), by replacing the words “3,000,000 special drawing rights” with the words “4.51 million special drawing rights”;
- (b) in paragraph (b), by replacing
 - (i) the words “3,000,000 special drawing rights” with the words “4.51 million special drawing rights”;
 - (ii) the words “420 special drawing rights” with the words “631 special drawing rights”; and
 - (iii) the words “59,700,000 special drawing rights” with the words “98.77 million special drawing rights”.

Section 393 amended.

13. Section 393 of the principal Act is amended in paragraph (a) by inserting after the words “section 302” the words “, including, if applicable, any claim for special compensation under article 14 of the International Convention on Salvage 1989, as amended,”.

Section 396 replaced.

14. The principal Act is amended by replacing section 396 with the following:

“Limitation calculations.

“396. (1) The limits of liability for claims, other than those provided for in section 401, arising on any distinct occasion, shall be calculated as follows:

- (a) in respect of claims for loss of life or personal injury
 - (i) 3.02 million special drawing rights for a ship with a tonnage not exceeding 2,000 tons;
 - (ii) for a ship with a tonnage in excess of 2,000 tons, the following amount in addition to that mentioned in (i)
 - (aa) for each ton from 2,001 to 30,000 tons, 1,208 special drawing rights;

- (bb) for each ton from 30,001 to 70,000 tons, 906 special drawing rights; and
- (cc) for each ton in excess of 70,000 tons, 604 special drawing rights;
- (b) in respect of any other claims
 - (i) 1.51 million special drawing rights for a ship with a tonnage not exceeding 2,000 tons;
 - (ii) for a ship with a tonnage in excess of 2,000 tons the following amount in addition to that mentioned in (i)
 - (aa) for each ton from 2,001 to 30,000 tons, 604 special drawing rights;
 - (bb) for each ton from 30,001 to 70,000 tons, 453 special drawing rights; and
 - (cc) for each ton in excess of 70,000 tons, 302 special drawing rights.

(2) The Governor may by Order make such modifications to or amendments of subsection (1) as he considers appropriate for the purpose of giving effect to any amendment of a relevant limit which is adopted in accordance with article 8 of the 1996 Protocol to the International Convention on Limitation of Maritime Claims 1976.”

15. Section 401 of the principal Act is amended by

Section 401 amended.

- (a) replacing subsection (1) with the following:

“(1) In respect of claims on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the ship owner shall be an amount of 175,000 special drawing rights multiplied by the number of

passengers which the ship is authorised to carry according to the ship's certificate.”.

(b) inserting after subsection (3), the following new subsection:

“(4) The Governor may by Order make such modifications to or amendments of subsection (1) as he considers appropriate for the purpose of giving effect to any amendment of a relevant limit which is adopted in accordance with article 8 of the 1996 Protocol to the International Convention on Limitation of Maritime Claims 1976.”.

Section 413A
inserted.

16. The principal Act is amended by inserting immediately after section 413 the following new section:

“Compulsory
insurance or
security.

413A. (1) Subject to subsections (2) and (3), the Governor may make regulations requiring that, in such cases as may be prescribed by the regulations, while a ship is in Virgin Islands waters, there shall be in force in respect of the ship

- (a) a contract of insurance insuring such person or 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 shall not apply in relation to

- (a) a qualifying 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) any warship; or

- (c) any ship for the time being used by the Government of any State for other than commercial purposes.

(3) Regulations under this section may not require insurance or security to be maintained in respect of a ship in relation to any liability in any case where an obligation to maintain insurance or security in respect of that ship in relation to that liability is imposed by section 343.

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

17. Section 414 of the principal Act is amended by

Section 414
amended.

- (a) replacing subsection (2) with the following:

“(2) Subject to subsections (2A) to (5) and any regulations made under subsection (7) and such conditions as the Director may impose, surveys and inspections of ships under this Act may be carried out by any corporation or society for the survey and classification of ships recognised and authorised by the Director (“a recognised organisation”), and in such instances the terms “surveyor” and “surveyor of ships” shall be construed to include such recognised organisation.”.

- (b) inserting after subsection (2), the following new subsection:

“(2A) A recognised organisation authorised under subsection (2) shall

- (a) comply with the relevant provisions of the Safety Convention, any other relevant convention and the RO Code; and
- (b) when carrying out any survey or function which it is authorised to

carry out, act in accordance with the RO Code.”.

- (c) inserting after subsection (7), the following new subsections:

“(8) The Governor may by regulations

- (a) provide for the authorisation of recognised organisations;
- (b) restrict by reference to a list maintained by the Director or any other person, the recognised organisations that may be authorised;
- (c) require as a condition of authorisation, that a recognised organisation enter into an agreement with the Director and provide for the terms and conditions to be included in such an agreement;
- (d) impose limitations on any authorisation relating to
 - (i) individual ships;
 - (ii) classes of ships; and
 - (iii) the extent of any survey to be carried out by that person;
- (e) without prejudice to the generality of the power of the Director to impose conditions under subsection (2), prescribe terms and conditions that shall be included in any authorisation.

(9) In this section, “RO Code” means the Code for Recognised Organisations (RO Code) as adopted by the Marine Environment Protection Committee of the IMO by resolution MEPC.237(65) on 17 May 2013.”.

18. The principal Act is amended by inserting after section 425 the following new section:

“Investigation
of marine
accidents.

425A. (1) The Governor shall, for the purpose of the investigation of any accident mentioned in subsection (3), appoint a person as the Chief Marine Accident Investigator.

(2) The Chief Marine Accident Investigator shall appoint such number of suitably qualified persons as he may determine to be marine accident investigators.

(3) The accidents referred to in subsection (1) are

(a) any accident involving a ship or ship’s boat where, at the time of the accident

(i) the ship is a Virgin Islands ship; or

(ii) the ship, or (in the case of an accident involving a ship’s boat) that boat, is within Virgin Islands waters; and

(b) such other accidents involving ships or ships’ boats as the Governor may specify in regulations.

(4) The Governor may by regulations make such provision as he considers appropriate with respect to the investigation of any such accidents as are mentioned in subsection (3).

(5) Regulations may, in particular, make provision

(a) with respect to the definition of “accident” for the purposes of this section and the regulations;

(b) imposing requirements as to the reporting of accidents;

(c) prohibiting, pending investigation, access to or interference with any ship or ship’s boat involved in an accident;

- (d) authorising any person, so far as may be necessary for the purpose of determining whether an investigation should be carried out, to have access to, examine, remove, test, take measures for the preservation of, or otherwise deal with, any such ship or boat or any other ship or ship's boat;
- (e) specifying, with respect to the investigation of accidents, the functions of the Chief Marine Accident Investigator (which may include the function of determining whether, and if so by whom, particular accidents should be investigated), the functions of other marine accident investigators, and the manner in which any such functions are to be discharged;
- (f) for the appointment by the Chief Marine Accident Investigator, in such circumstances as may be specified in the regulations, of persons to carry out investigations under this section who are not marine accident investigators;
- (g) for the appointment by the Governor of persons to review any findings or conclusions of a person carrying out an investigation under this section;
- (h) for the procedure to be followed in connection with investigations or reviews under this section;
- (i) for conferring on persons discharging functions under the regulations all or any of the powers conferred on an inspector by sections 415 to 417;
- (j) for the submission to the Governor, and the publication, of reports of investigations or reviews under this section; and
- (k) for the publication by the Chief Marine Accident Investigator of reports and other information relating to accidents.

(6) Regulations may provide for any provision of the regulations to apply to any specified class or description of incidents or situations which involve, or occur on board, ships or ships' boats but are not accidents for the purposes of the regulations, being a class or description framed by reference to any of the following, namely

- (a) the loss or destruction of or serious damage to any ship or structure;
- (b) the death of or serious injury to any person;
or
- (c) environmental damage,

whether actually occurring or not, and (subject to such modifications as may be specified in the regulations) for those provisions to apply in relation to any such incidents or situations as they apply in relation to accidents.

(7) The Chief Marine Accident Investigator, or (as the case may be) marine accident investigators generally, shall discharge such functions in addition to those conferred by or under the preceding provisions of this section as the Governor may determine.

(8) Any marine accident investigator shall, for the purpose of discharging any functions conferred on the investigator by or under this section, have the powers conferred on an inspector by sections 415 to 417.

(9) Nothing in this section shall limit the powers of the Ports Authority.

(10) In this section

- (a) references to an accident involving a ship or ship's boat include references to an accident occurring on board a ship or ship's boat (and any reference to a ship or ship's boat involved in an accident shall be construed accordingly); and
- (b) "ship's boat" includes a life-raft."

Heading amended.

19. The heading appearing immediately after section 424 of the principal Act is replaced with the following:

**“PART XVII
Formal Investigations Into Marine Accidents”.**

Section 459 amended.

20. Section 459 of the principal Act is amended

- (a) in subsection (1),
 - (i) by replacing the words “as the Council considers” with the words “as the Governor considers”; and
 - (ii) in paragraph (c), by inserting after the words “health of persons on other ships” the words “or the protection or the marine environment”.
- (b) by replacing subsection (3) with the following:

“(3) Regulations may

 - (a) make provision which applies generally or only in relation to specified classes or descriptions of ships or other specified cases or circumstances;
 - (b) make different provision in relation to different classes or descriptions of ships or different cases or circumstances;
 - (c) provide for specified provisions to apply with modifications, or not to apply, in relation to specified classes or description of ships or in other specified cases or circumstances;
 - (d) provide in terms of any document which the Governor considers relevant from time to time;
 - (e) provide for the granting by the Governor, Minister or another person, on such terms (if any) as they may specify
 - (i) of exemptions from specified provisions of the regulations for

classes of cases or individual cases;
and

- (ii) for the alteration or cancellation of exemptions granted in pursuance of the regulations;
 - (f) provide in terms of approvals given by the Governor or the Minister or another person; and may provide for the cancellation of an approval given in pursuance of the regulations and for the alteration of the terms of such an approval;
 - (g) without prejudice to any other provision of this Act, provide for giving full effect in the law of the Virgin Islands to a relevant Convention;
 - (h) apply or replicate (with or without modifications) a provision of any enactment relating to
 - (i) shipping;
 - (ii) maritime pollution;
 - (iii) the marine environment;
 - (iv) other kinds of pollution;
 - (v) regulation or enforcement in relation to any of those matters;
 - (i) confer legal capacity, privileges, rights and immunities on a body established under a Convention; and
 - (j) include consequential, incidental, supplemental or transitional provision;”;
- (c) by inserting after subsection (3) with the following new subsections:
- “(4) Regulations may provide for

- (a) the authorisation or designation of officers (by any title specified in the regulations) or any other person for the purposes of exercising functions in the Act or regulations made under the Act, including enforcing any provisions of the Act or such regulations;
- (b) the authorisation or designation to be
 - (i) personal or by reference to classes or description of persons;
 - (ii) indefinite or for a specified period;
 - (iii) absolute or conditional;
 - (iv) by reference to membership of, or accreditation, employment or engagement by or on behalf of, a specified society, institute or other organisation;
 - (v) by reference to a professional qualification or occupation;
 - (vi) by reference to holding a specified office or responsibility under an enactment; and
 - (vii) of a class or description of person holding an office or responsibility in another specified jurisdiction or class or description of jurisdiction; and
- (c) the conferral on officers or other persons of powers
 - (i) of inspection including powers of entry to premises and ships;
 - (ii) powers to seize and retain articles and substances; and
 - (iii) powers to arrange for the detention of ships.

- (5) Regulations may provide for
- (a) the imposition of penalties by the Governor, Minister or a specified person or authority;
 - (b) interest or surcharges to be charged in specified circumstances;
 - (c) the enforcement of penalties;
 - (d) penalties or other sanctions in relation to non-compliance;
 - (e) the conferral of rights of appeal or review;
 - (f) the creation of civil liability and, in particular
 - (i) the imposition of liability in respect of costs incurred by a public authority or other specified class of person in respect of non-compliance with this Act, a Convention or the regulations;
 - (ii) conferral of jurisdiction on a specified court or tribunal;
 - (iii) arbitration;
 - (iv) conferral of jurisdiction on the Minister or any other specified public authorities;
 - (v) establishment of a tribunal;
 - (vi) conferral of rights of appeal or review;
 - (vii) the recognition and enforcement of foreign judgements and orders in the Virgin Islands; and
 - (viii) the recognition and enforcement of judgments and orders of the courts or

authorities of the Virgin Islands in other States; and

- (g) in such cases as are prescribed by the regulations, that a ship shall be liable to be detained and that provisions of this Act relating to the detention of ships shall have effect, with such modifications (if any) as are prescribed by the regulations, in relation to the ship.

(6) Where regulations give effect to a Convention, the regulations may provide for the Convention to have effect as amended from time to time; and the regulations may

- (a) make transitional provision in respect of rights or liabilities arising before the date on which an amendment takes effect;
- (b) require the Minister or another specified public authority to publicise an amendment by notice in the *Gazette*, by oral or written statement to the House of Assembly or in another specified way;
- (c) include a Schedule setting out the text of the Convention in the form in which it has effect when the regulations are made;
- (d) provide for publication of the text of the Convention in another specified way, as it has effect when the regulations are made and with or without provision for re-publication of the text of the Convention as it has effect from time to time; and
- (e) authorise a person publishing a text of the regulations (whether under authority or not) to substitute, for any version of the Convention set out in a Schedule to the regulations, the version having effect from time to time in accordance with the regulations.

(7) Regulations may

- (a) require or permit the Minister or another specified authority to issue or adopt guidance about the application of the Act, a Convention or the regulations;
- (b) in particular
 - (i) require a specified class of person to have regard to guidance issued; and
 - (ii) specify the consequences of a failure to have regard to guidance issued, which may include permitting a court to draw inferences as to compliance with the Act, a Convention or the regulations.”;
- (d) by re-designating the existing subsection (4) as subsection (8).

21. follows:

Section 464 of the principal Act is repealed and re-enacted as

Section 464 repealed and re-enacted.

“Application of United Kingdom Enactment.

464. (1) The Governor may, after consultation with the Secretary of State for Transport of the United Kingdom, by Order apply to the Virgin Islands as part of the law of the Virgin Islands, subject to such exceptions, adaptations and modifications as may be specified in the Order, any enactment of the United Kingdom to which this section applies.

(2) An Order under subsection (1) may include provisions amending any provision of any enactment, other than this section, which applies or enables the application of any enactment of the United Kingdom relating to merchant shipping, which is inconsistent with, or is unnecessary or requires modification in consequence of this section, the Order or any enactment of the United Kingdom applied to the Virgin Islands by the Order.

(3) The Minister shall, as soon as is practicable after the coming into operation of an Order under subsection (1), cause a text to be prepared of the enactment of the United Kingdom applied by the Order incorporating the exceptions, adaptations and modifications specified in the Order.”.

22.

Section 467 of the principal Act is replaced with the following:

Section 467 replaced.

“Regulations and Orders subject to affirmative resolution.

467. (1) Regulations made by the Governor under this Act shall be subject to an affirmative resolution of the House of Assembly.

(2) An Order made by the Governor under sections 115D, 172 (2), 337(2), 396(2), 401(4) and 464 (1) shall be subject to an affirmative resolution of the House of Assembly.”.

Passed by the House of Assembly this 27th day of February, 2020.

(Sgd.) Julian Willock,
Speaker.

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