

**MERCHANT SHIPPING (DETENTION OF SHIPS) ACT 1979**

As amended by the following, amendments indicated by *bold italics*:-

- (1) The Shipping Casualties (Inquiries, Investigations and Reports) Act 1979;
- (2) The Merchant Shipping Act 1985
- (3) The Fines Act 1985;
- (4) The Department of Highways, Ports and Properties Order 1986 (G.C. 190/86);
- (5) The Merchant Shipping Registration Act 1991;
- (6) The Statute Law Revision Act 1992;
- (7) The Department of Transport Order 1994 (SD 486/94);
- (8) The Transfer of Functions (Marine Administration) Order 1997 (SD 51/97).

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**MERCHANT SHIPPING (DETENTION OF SHIPS) ACT 1979****Arrangement of Sections**

## Section

1. Power to detain unsafe ships and procedure for detention.
2. Application to foreign ships of provisions as to detention.
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Schedule - Enactments Repealed

Isle of Man to Wit

Signed in Tynwald : 20<sup>th</sup> February 1979  
Received Royal Assent : 14<sup>th</sup> March 1979  
Announced to Tynwald : 15<sup>th</sup> May 1979  
Passed : 15<sup>th</sup> May 1979

## AN ACT

to provide for the detention of ships in certain cases and for connected purposes.

WE, your Majesty's most dutiful and loyal subjects, the Lieutenant Governor, Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lieutenant Governor, Council and Keys in Tynwald assembled, and by authority of the same, as follows (that is to say):-

### **Power to detain unsafe ships and procedure for detention.**

[P1894/60/459 XIV p.312/3]

1. (1) Where a British ship, being in any place in the Island, is an unsafe ship, that is to say, is by reason of the defective condition of her hull, equipments or machinery, or by reason of undermanning, or by reason of overloading or improper loading, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended, that ship may be provisionally detained for the purpose of being surveyed, or for ascertaining the sufficiency of her crew, and either finally detained or released as follows -

- (a) The *Department of Trade and Industry* (in this Act referred to as the "*the Department*"), if it has reason to believe, on complaint or otherwise, that a British ship is unsafe, may order the ship to be provisionally detained as an unsafe ship for the purpose of being surveyed;
- (b) when a ship has been provisionally detained, there shall be forthwith served on the master of the ship a written statement of the grounds of her detention, and *the Department* may, if it thinks fit, appoint some competent person or persons to survey the ship and report thereon to *the Department*;
- (c) *the Department* on receiving the report, may either order the ship to be released or, if in its opinion the ship is unsafe, may order her to be finally detained, either absolutely, or until the performance of such conditions with respect to the execution of repairs or alterations, or the unloading or reloading of cargo, or the manning of the ship, as *the Department* thinks necessary for the protection of human life, and *the Department* may vary or add to any such order;

- (d) before the order for final detention is made a copy of the report shall be served upon the master of the ship, and within seven days after that service, the owner or master of the ship may appeal to the court of survey;
- (e) where a ship has been provisionally detained, the owner or master of the ship, at any time before the person appointed under this section to survey the ship makes that survey, may require that he shall be accompanied by such person as the owner or master may select out of the list of assessors for the court of survey, and in that case if the surveyor and assessor agree, *the Department* shall cause the ship to be detained or released accordingly, but if they differ, *the Department* may act as if the requisition had not been made, and the owner and master shall have the like appeal touching the report of the surveyor as is hereinbefore provided;
- (f) where a ship has been provisionally detained, *the Department* may at any time, if it thinks expedient, refer the matter to the court of survey;
- (g) *the Department* may at any time, if satisfied that a ship detained under this section is not unsafe, order her to be released either upon or without any conditions.

(2) Any person appointed by *the Department* for the purpose (in this Act referred to as a “detaining officer”) shall have the same power as *the Department* has under this section of ordering the provisional detention of a ship for the purpose of being surveyed and of appointing a person or persons to survey her; and if he thinks that a ship so detained by him is not unsafe may order her to be released.

(3) A detaining officer shall forthwith report to *the Department* any order made by him for the detention or release of a ship.

(4) An order for the detention of a ship, provisional or final, and an order varying the same, shall be served as soon as may be on the master of the ship.

(5) A ship detained under this section shall not be released by reason of her British register being subsequently closed.

(6) A detaining officer and a person authorised to survey a ship under this section shall for that purpose have the same power as a person appointed by a court of survey to survey a ship, and the provisions of this Act *of any statutory provision relating to merchant shipping* and of the Merchant Shipping Acts with respect to a person so appointed shall apply accordingly.

*(Subsection (6) amended by the Merchant Shipping Act 1985)*

### **Application to foreign ships of provisions as to detention.**

[P1894/60/462; Vol XIV p312/4]

2. Where a foreign ship at a place in the Island, is unsafe by reason of the defective condition of her hull, equipments or machinery, or by reason of overloading or improper loading or by reason of undermanning, the provisions of this Act with respect to the detention of ships shall apply to that foreign ship as if she were a British ship, with the following modifications -

- (a) a copy of the order for the provisional detention of the ship shall be forthwith served on the consular officer for the country to which the ship belongs at or nearest to that place;
- (b) where a ship has been provisionally detained, the consular officer, on the request of the owner or master of the ship, may require that the person appointed by *the Department* to survey the ship shall be accompanied by such person as the consular officer may select, and in that case, if the surveyor and that person agree, *the Department* shall cause the ship to be detained or released accordingly, but if they differ, *the Department* may act as if the requisition had not been made, and the owner and master shall have the like appeal to a court of survey touching the report of the surveyor as is hereinbefore provided in the case of a British ship;
- (c) where the owner or master of the ship appeals to the court of survey, the consular officer, on his request, may appoint a competent officer to be assessor in the case in lieu of the assessor who, if the ship were a British ship, would be appointed otherwise than by *the Department*.

### **Liability for costs and damages.**

[P1894/60/460(1)-(3); Vol. XIV p312/5(1)-(3)]

3. (1) If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of a ship under this Act as an unsafe ship, *the Department* shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

(2) If a ship is finally detained under this Act, or if it appears that a ship provisionally detained was, at the time of that detention, an unsafe ship within the meaning of this Act, the owner of the ship shall be liable to pay to *the Department* its costs of and incidental to the detention and survey of the ship, and those costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

(3) For the purpose of this section, the costs of and incidental to any proceeding before a court of survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of *the Department*, shall be part of the costs of the detention and survey of the ship, and any dispute as to the amount of those costs may be referred to a Deemster who shall, on the request of *the Department* ascertain and certify the proper amount of those costs.

*Power to require security for costs*  
[P1894/60/461]

3A. (1) *Subject to subsection (2), where a complaint is made to the Department or a detaining officer that a British ship is unsafe, the Department or detaining officer may, if it or, as the case may be, he thinks fit, require the complainant to give security to the satisfaction of the Department for the costs and compensation which the complainant may become liable to pay under subsection (3).*

(2) *Security shall not be required under subsection (1) where the complaint is made by one-fourth, not being less than 3 of the seamen belonging to the ship and is not in the opinion of the Department frivolous or vexatious; and the Department or detaining officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps for ascertaining whether the ship ought to be detained.*

(3) *Where a ship is detained in consequence of any complaint and the circumstances are such that the Department is liable under section 3 to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to the Department all such costs and compensation as the Department incurs or is liable to pay in respect of the detention and survey of the ship*

*(Section 3A inserted by the Merchant Shipping Act 1985 - Schedule 1)*

**Enforcing detention of ship**

4. *(Repealed by the Merchant Shipping Registration Act 1991 - Schedule 6).*

**Ship's draught of water to be recorded.**

[P1894/60/436(1), (2), (4) and (5)

Vol. XIV p312/7(1), (2), (4) and (5)]

5. (1) *The Department* may in any case or class of cases in which it thinks expedient to do so, direct any person appointed by it for the purpose, to record in such manner and with such particulars as it directs, the draught of water of any sea-going ship, as shown on the scale on her stem and stern post, and the extent of her freeboard, upon her leaving any place for the purpose of proceeding to sea, and the person so appointed shall thereupon keep that record and shall forward a copy thereof to *the Department*.

(2) The record or copy mentioned in subsection (1) shall, if produced out of the custody of *the Department* be admissible in evidence in the manner provided by section 695 of the 1894 Act.

(3) The master of a sea-going ship shall, upon the request of any person appointed to record the ship's draught of water, permit that person to enter the ship and to make such inspections and take such measurements as may be requisite for the purpose of the record; and, if any master fails to do so, or impedes or suffers anyone under his control to impede any person so appointed in the execution of his duty, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding **£1,000**.

(4) In this section, "freeboard" means -

- (a) in the case of a ship which is marked with a deck line, the height from the water to the upper edge of the deck line; and
- (b) in the case of any other ship, the height amidships from the water to the upper edge of the deck from which the depth of hold as stated in the register is measured.

### **Interpretation.**

6. In this Act -

**“the 1894 Act Act”** has the meaning assigned to it by section 25 of the Merchant Shipping (Passenger Ships’ Survey) Act 1979;

**“the Board”** (*Definition repealed by GC 190/86*)

**“court of survey”** means a court of survey constituted under section 14 of the said Act of 1979;

**“the Department”** means the Department of Trade and Industry; (*Definition inserted by GC 190/86 and amended by SD 51/97*);

**“the Merchant Shipping Acts”** means the Merchant Shipping Acts of Parliament for the time being in force, as those Acts have effect in the Island.

### **Amendments.**

7. (1) In section 4(4) of the Fishing Vessels (Safety Provisions) (Isle of Man) Act 1974, for the words from “section 460(2)” to “Parliament)” there shall be substituted the words “section 3(2) of the Merchant Shipping (Detention of Ships) Act 1979”.

(2) (*Repealed by the Shipping Casualties (Inquiries, Investigations and Reports) Act 1979 - Schedule*).

### **Repeals**

8. (*Repealed by the Statute Law Revision Act 1992 - Schedule 2*).

### **Short title and commencement.**

9. This Act may be cited as the Merchant Shipping (Detention of Ships) Act 1979 and shall come into operation on the same day as the Merchant Shipping (Passenger Ship’s Survey) Act 1979.

**SCHEDULE**

**ENACTMENTS REPEALED**

*(Repealed by the Statute Law Revision Act 1992 - Schedule 2).*