



# Merchant Shipping Act 1894

1894 CHAPTER 60 57 and 58 Vict

## PART VI

### SPECIAL SHIPPING INQUIRIES AND COURTS

#### Modifications etc. (not altering text)

C1 [Pt. VI](#) applied with modifications by [S.I. 1975/116](#), reg. 20, [Sch. 4](#)

**464**— ..... F1  
**476**

#### Textual Amendments

F1 [Ss. 464–476, 479](#) repealed by [Merchant Shipping Act 1970](#) (c. 36, SIF 111), ss. 100, 101(4), [Sch. 5](#)

**477** ..... F2

#### Textual Amendments

F2 [Ss. 477, 491](#), repealed by [Merchant Shipping Act 1970](#) (c. 36), s. 100, [Sch. 5](#)

**478** **Authority for colonial court to make inquiries into shipping casualties and conduct of officers.**

- (1) The legislature of any British possession may authorise any court or tribunal to make inquiries as to shipwrecks, or other casualties affecting ships, or as to charges of incompetency, or misconduct on the part of masters, mates, or engineers of ships, in the following cases; namely,—

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- (a) Where a shipwreck or casualty occurs to a British ship on or near the coasts of the British possession or to a British ship in the course of a voyage to a port within the British possession:
  - (b) Where a shipwreck or casualty occurs in any part of the world to a British ship registered in the British possession:
  - (c) Where some of the crew of a British ship which has been wrecked or to which a casualty has occurred, and who are competent witnesses to the facts, are found in the British possession:
  - (d) Where the incompetency or misconduct has occurred on board a British ship on or near the coasts of the British possession, or on board a British ship in the course of a voyage to a port within the British possession:
  - (e) Where the incompetency or misconduct has occurred on board a British ship registered in the British possession:
  - (f) When the master, mate, or engineer of a British ship who is charged with incompetency or misconduct on board that British ship is found in the British possession.
- (2) A court or tribunal so authorised shall have the same jurisdiction over the matter in question as if it had occurred within their ordinary jurisdiction, but subject to all provisions, restrictions, and conditions which would have been applicable if it had so occurred.
- (3) An inquiry shall not be held under this section into any matter which has once been the subject of an investigation or inquiry and has been reported on by a competent court or tribunal in any part of Her Majesty's dominions, or in respect of which the certificate of a master, mate, or engineer has been cancelled or suspended by a naval court.
- (4) Where an investigation or inquiry has been commenced in the United Kingdom with reference to any matter, an inquiry with reference to the same matter shall not be held, under this section, in a British possession.
- (5) The court or tribunal holding an inquiry under this section shall have the same powers of cancelling and suspending certificates, and shall exercise those powers in the same manner as a court holding a similar investigation or inquiry in the United Kingdom.
- (6) The Board of Trade may order the re-hearing of any inquiry under this section in like manner as they may order the re-hearing of a similar investigation or inquiry in the United Kingdom, but if an application for re-hearing either is not made or is refused, an appeal shall lie from any order or finding of the court or tribunal holding the inquiry to the High Court in England:
- Provided that an appeal shall not lie—
- (a) from any order or finding on an inquiry into a casualty affecting a ship registered in a British possession, or
  - (b) from a decision affecting the certificate of a master, mate, or engineer, if that certificate has not been granted either in the United Kingdom or in a British possession, under the authority of this Act.
- (7) The appeal shall be conducted in accordance with such conditions and regulations as may from time to time be prescribed by rules made in relation thereto under the powers contained in this Part of this Act.

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#### Textual Amendments

**F3** Ss. 464–476, 479 repealed by [Merchant Shipping Act 1970 \(c. 36, SIF 111\)](#), ss. 100, 101(4), [Sch. 5](#)

### *Naval Courts on the High Seas and Abroad*

#### [<sup>F4</sup>480] **Cases in which naval courts may be summoned.**

A court (in this Act called a naval court) may be summoned by any officer in command of any of Her Majesty's ships on any foreign station, or, in the absence of such an officer, by any consular officer, in the following cases; (that is to say,)

- (i) Whenever a complaint which appears to that officer to require immediate investigation is made to him by the master of any British ship, or by a certificated mate, or by any one or more of the seamen belonging to any such ship;
- (ii) Whenever the interest of the owner of any British ship or of the cargo thereof appears to that officer to require it; and
- (iii) Whenever any British ship is wrecked, abandoned, or otherwise lost at or near the place where that officer may be, or whenever the crew or part of the crew of any British ship which has been wrecked, abandoned or lost abroad arrive at that place.]

#### Textual Amendments

**F4** S. 480 repealed (*prosp.*) by [Merchant Shipping Act 1970 \(c. 36\)](#), ss. 100, 101(4), [Sch. 5](#)

#### [<sup>F5</sup>481] **Constitution of naval courts.**

- (1) A naval court shall consist of not more than five and not less than three members, of whom, if possible, one shall be an officer in the naval service of Her Majesty not below the rank of lieutenant, one a consular officer, and one a master of a British merchant ship, and the rest shall be either officers in the naval service of Her Majesty, masters of British merchant ships, or British merchants, and the court may include the officer summoning the same, but shall not include the master or consignee of the ship to which the parties complaining or complained against belong.
- (2) The naval or consular officer in the court, if there is only one such officer, or, if there is more than one, the naval or consular officer who, according to any regulations for settling their respective ranks for the time being in force, is of the highest rank, shall be the president of the court.]

#### Textual Amendments

**F5** S. 481 repealed (*prosp.*) by [Merchant Shipping Act 1970 \(c. 36\)](#), ss. 100, 101(4), [Sch. 5](#)

#### [<sup>F6</sup>482] **Functions of naval courts.**

- (1) A naval court shall hear the complaint or other matter brought before them under this Act, or investigate the cause of the wreck, abandonment, or loss, and shall do so in

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such manner as to give every person against whom any complaint or charge is made an opportunity of making a defence.

- (2) A naval court may, for the purpose of the hearing and investigation, administer an oath, summon parties and witnesses, and compel their attendance and the production of documents.]

#### Textual Amendments

**F6** S. 482 repealed (*prosp.*) by Merchant Shipping Act 1970 (c. 36), ss. 100, 101(4), Sch. 5

#### [<sup>F7</sup>483 Powers of naval courts.

- (1) Every naval court may, after hearing and investigating the case, exercise the following powers; (that is to say,)
- (a) The court may, if unanimous that the safety of the ship or crew or the interest of the owner absolutely requires it, remove the master, and appoint another person to act in his stead; but no such appointment shall be made without the consent of the consignee of the ship if at the place where the case is heard:
  - (b) The court may, in cases in which they are authorised by this Act and subject to the provisions of this Act, cancel or suspend the certificate of any master, mate, or engineer:
  - (c) The court may discharge a seaman from his ship:
  - (d) The court may order the wages of a seaman so discharged or any part of those wages to be forfeited, and may direct the same either to be retained by way of compensation to the owner, or to be paid into the Exchequer, in the same manner as fines under this Act:
  - (e) The court may decide any questions as to wages or fines or forfeitures arising between any of the parties to the proceedings:
  - (f) The court may direct that all or any of the costs incurred by the master or owner of any ship in procuring the imprisonment of any seaman or apprentice in a foreign port, or in his maintenance whilst so imprisoned, shall be paid out of and deducted from the wages of that seaman or apprentice, whether then or subsequently earned:
  - (g) The court may exercise the same powers with regard to persons charged before them with the commission of offences at sea or abroad as British consular officers can under the Thirteenth Part of this Act:
  - (h) The court may punish any master of a ship or any of the crew of a ship respecting whose conduct a complaint is brought before them for any offence against this Act, which, when committed by the said master or member of the crew, is punishable on summary conviction, and shall for that purpose have the same powers as a court of summary jurisdiction would have if the case were tried in the United Kingdom:

Provided that—

- (i) .....<sup>F8</sup>
  - (ii) copies of all sentences passed by any naval court summoned to hear any such complaint as aforesaid, shall be sent to the commander-in-chief or senior naval officer of the station:
- (j) The court may, if it appears expedient, order a survey of any ship which is the subject of investigation to be made, and such survey shall accordingly

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be made, in the same way, and the surveyor who makes the same shall have the same powers as if such survey had been directed by a competent court in pursuance of the Fifth Part of this Act, in the course of proceedings against a seaman or apprentice for the offence of desertion:

- (k) The court may order the costs of the proceedings before them, or any part of those costs, to be paid by any of the parties thereto, and may order any person making a frivolous or vexatious complaint to pay compensation for any loss or delay caused thereby; and any costs or compensation so ordered to be paid shall be paid by that person accordingly, and may be recovered in the same manner in which the wages of seamen are recoverable, or may, if the case admits, be deducted from the wages due to that person.
- (2) All orders duly made by a naval court under the powers hereby given to it, shall in any subsequent legal proceedings be conclusive as to the rights of the parties.
- (3) All orders made by any naval court shall, whenever practicable, be entered in the official log-book of the ship to which the parties to the proceedings before the court belong, and signed by the president of the court.]

#### Textual Amendments

- F7** S. 483 repealed (*prosp.*) by [Merchant Shipping Act 1970 \(c. 36\)](#), ss. 100, 101(4), [Sch. 5](#)  
**F8** S. 483(1)(h) proviso (i) repealed by [Merchant Shipping Act 1950 \(c. 9\)](#), s. 3(8)

#### Modifications etc. (not altering text)

- C2** S. 483 amended by [Merchant Shipping Act 1906 \(c. 48\)](#), s. 67(1)  
**C3** S. 483(2) amended by [Merchant Shipping Act 1906 \(c. 48\)](#), s. 68(2)

### [<sup>F9</sup>484 Report of proceedings of naval courts.

- (1) Every naval court shall make a report to the Board of Trade containing the following particulars; (that is to say,
  - (a) A statement of the proceedings of the court, together with the order made by the court, and a report of the evidence;
  - (b) An account of the wages of any seaman or apprentice who is discharged from his ship by the court;
  - (c) If summoned to inquire into a case of wreck or abandonment, a statement of the opinion of the court as to the cause of that wreck or abandonment, with such remarks on the conduct of the master and crew as the circumstances require.
- (2) Every such report shall be signed by the president of the court, and shall be admissible in evidence in manner provided by this Act.]

#### Textual Amendments

- F9** S. 484 repealed (*prosp.*) by [Merchant Shipping Act 1970 \(c. 36\)](#), ss. 100, 101(4), [Sch. 5](#)

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**[<sup>F10</sup>485 Penalty for preventing complaint or obstructing investigation.**

If any person wilfully and without due cause prevents or obstructs the making of any complaint to an officer empowered to summon a naval court, or the conduct of any hearing or investigation by any naval court, he shall for each offence be liable to a fine not exceeding [<sup>F11</sup>fifty pounds][<sup>F11</sup>level 3 on the standard scale], or be liable to imprisonment, . . . <sup>F12</sup> for any period not exceeding twelve weeks.]

**Textual Amendments**

- F10** S. 485 repealed (*prosp.*) by Merchant Shipping Act 1970 (c. 36), ss. 100, 101(4), **Sch. 5**
- F11** Words “level 3 on the standard scale” substituted (E.W.S.) for “fifty pounds” by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c.21, SIF 39:1), ss. 289F, 289G
- F12** Words omitted by virtue of (E.W.) Criminal Justice Act 1948 (c. 58), s. 1(2) and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21), s. 221(2) and repealed (N.I.) by Criminal Justice Act (Northern Ireland) 1953 (c. 14), s. 1(2)

**[<sup>F13</sup>486 Application of provisions as to naval courts.**

- (1) The provisions of this Part of this Act with regard to naval courts on the high seas and abroad shall apply to all sea-going ships registered in the United Kingdom (with the exception, . . . <sup>F14</sup> of fishing boats exclusively employed in fishing on the coasts of the United Kingdom) and to all ships registered in a British possession, when those ships are out of the jurisdiction of their respective governments, and where they apply to a ship, shall apply to the owners, master, and crew of that ship.
- (2) For the purpose of the said provisions an unregistered British ship shall be deemed to have been registered in the United Kingdom.]

**Textual Amendments**

- F13** S. 486 repealed (*prosp.*) by Merchant Shipping Act 1970 (c. 36), ss. 100, 101(4), **Sch. 5**
- F14** Words repealed by Merchant Shipping (Scottish Fishing Boats) Act 1920 (c. 39), **Sch.**

*Courts of Survey*

**487 Constitution of court of survey.**

- (1) A court of survey for a port or district shall consist of a judge sitting with two assessors.
- (2) The judge shall be such person as may be summoned for the case in accordance with the rules made under this Act with respect to that court, out of a list approved for the port or district by a Secretary of State, of wreck commissioners appointed under this Act, stipendiary or metropolitan police magistrates, judges of county courts, and other fit persons; but in any special case in which the Board of Trade think it expedient to appoint a wreck commissioner, the judge shall be such wreck commissioner.
- (3) The assessors shall be persons of nautical, engineering, or other special skill and experience; subject to the provisions of the Fifth Part of this Act as regards foreign ships, one of them shall be appointed by the Board of Trade, either generally or in each case, and the other shall be summoned, in accordance with the rules made as aforesaid,

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by the registrar of the court, out of a list of persons periodically nominated for the purpose . . . <sup>F15</sup> by a body of local shipowners or merchants approved for the purpose by a Secretary of State, or, if there is no such list, shall be appointed by the judge: If a Secretary of State thinks fit at any time, on the recommendation of the government of any British possession or any foreign country, to add any persons to any such list, those persons shall, until otherwise directed by the Secretary of State, be added to the list, and if there is no such list shall form the list.

- (4) The county court registrar or such other fit persons as a Secretary of State may from time to time appoint shall be the registrar of the court, and shall, on receiving notice of an appeal or a reference from the Board of Trade, immediately summon the court to meet forthwith in manner directed by the rules.
- (5) The name of the registrar and his office, together with the rules made as aforesaid, relating to the court of survey, shall be published in the manner directed by the rules.
- (6) In the application of this section to Scotland the expression “judge of a county court” means a sheriff, and the expression “county court registrar” means sheriff clerk.
- (7) In the application of this section to Ireland the expression “stipendiary magistrate” includes . . . <sup>F16</sup> any resident magistrate.
- (8) In the application of this section to the Isle of Man, the expression “judge of a county court” means the water bailiff, the expression “stipendiary magistrate” means the high bailiff, the expression “registrar of a county court” means a clerk to a deemster or a clerk to justices of the peace.

#### Textual Amendments

**F15** Words repealed by [Merchant Shipping Act 1970 \(c. 36\), s. 100, Sch. 5](#)

**F16** Words omitted under authority of [Statute Law Revision Act 1927 \(c. 42\), s. 3](#)

#### Modifications etc. (not altering text)

**C4** Reference to Ireland to be construed as exclusive of Republic of Ireland: S.R. & O. 1923/405 (Rev. X, p. 298: 1923, p. 400), art. 2

### 488 Power and procedure of court of survey.

- (1) The court of survey shall hear every case in open court.
- (2) The judge and each assessor of the court may survey the ship, and shall have for the purposes of this Act all the powers of a Board of Trade inspector [<sup>F17</sup>under section 27 of the <sup>M1</sup>Merchant Shipping Act 1979].
- (3) The judge of the court may appoint any competent person or persons to survey the ship and report thereon to the court.
- (4) The judge of the court, any assessor of the court, and any person appointed by the judge of the court to survey a ship, may go on board the ship and inspect the same and every part thereof, and the machinery, equipments, and cargo, and may require the unloading or removal or any cargo, ballast, or tackle, and any person who wilfully impedes such judge, assessor, or person in the execution of the survey, or fails to comply with any requisition made by him, shall for each offence be liable to a fine not exceeding [<sup>F18</sup>[<sup>F19</sup>£1,0]] [<sup>F18</sup>]level 5 on the standard scale].

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- (5) The judge of the court shall have the same power as the Board of Trade have to order the ship to be released or finally detained, but, unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.
- (6) The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Board of Trade, may attend at any inspection or survey made in pursuance of this section.
- (7) The judge of the court shall send to the Board of Trade such report as may be directed by the rules, and each assessor shall either sign the report or report to the Board of Trade the reasons for his dissent.

#### Textual Amendments

- F17** Words substituted by [Merchant Shipping Act 1979 \(c. 39\), s. 28\(7\)\(a\)](#)
- F18** Words “level 5 on the standard scale” substituted (E.W.S) for “£1000” by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 46](#) and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\), s. 289G](#)
- F19** Word substituted by virtue of [Merchant Shipping Act 1979 \(c. 39\), s. 43\(1\), Sch. 6 Pt. IV](#)

#### Marginal Citations

- M1** [1979 c. 39.](#)

### 489 Rules for procedure of court of survey, &c.

The Lord Chancellor may (with the consent of the Treasury so far as relates to fees) make general rules to carry into effect the provisions of this Act with respect to a court of survey, and in particular with respect to the summoning of, and procedure before, the court, the requiring on an appeal security for costs and damages, the amount and application of fees, and the publication of the rules, . . . <sup>F20</sup>

#### Textual Amendments

- F20** Words repealed by [Statute Law \(Repeals\) Act 1986 \(c. 12\), s. 1\(1\), Sch. 1 Pt. XII](#)

### *Scientific Referees*

### 490 Reference in difficult cases to scientific persons.

- (1) If the Board of Trade are of opinion that an appeal to a court of survey involves a question of construction or design or of scientific difficulty or important principle, they may refer the matter to such one or more out of a list of scientific referees from time to time approved by a Secretary of State, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Board of Trade and the appellant, or in default of any such agreement by a Secretary of State, and thereupon the appeal shall be determined by the referee or referees, instead of by the court of survey.
- (2) The Board of Trade, if the appellant in any appeal so requires and gives security to the satisfaction of the Board to pay the costs of and incidental to the reference, shall refer that appeal to a referee or referees so selected as aforesaid.



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(3) The referee or referees shall have the same powers as a judge of the court of survey.

**491** .....<sup>F21</sup>

.....  
**Textual Amendments**

**F21** Ss. 477, 491, repealed by Merchant Shipping Act 1970 (c. 36), s. 100, **Sch. 5**

**Status:**

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**Changes to legislation:**

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