

1989 No. 1334

MERCHANT SHIPPING

The Merchant Shipping Act 1988 (Bermuda) Order 1989

<i>Made - - - -</i>	<i>2nd August 1989</i>
<i>Laid before Parliament</i>	<i>10th August 1989</i>
<i>Coming into force</i>	<i>1st September 1989</i>

At the Court at Buckingham Palace, the 2nd day of August 1989

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 56 of the Merchant Shipping Act 1988(a), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. This Order may be cited as the Merchant Shipping Act 1988 (Bermuda) Order 1989 and shall come into force on 1st September 1989.

2. Subject to the modifications specified in Schedule 1 to this Order, the provisions of sections 1-8, 30-32, 34-35, 44, 46, 48, 50, 51, 54, 57 and 58 of the Merchant Shipping Act 1988 and Schedule 4 to that Act shall extend to Bermuda as part of the law thereof.

3. Subject to the modifications specified in Schedule 1 to this Order, Schedule 5 to the Merchant Shipping Act 1988 in so far as it relates to the Merchant Shipping Act 1894(b), and the Merchant Shipping (Oil Pollution) Act 1971(c) shall extend to Bermuda as part of the law thereof.

4. Schedule 6 to the Merchant Shipping Act 1988 in so far as it relates to the Merchant Shipping Act 1894 shall extend to Bermuda as part of the law thereof.

5. Subject to the modifications specified in Schedule 1 to this Order, Schedule 7 to the Merchant Shipping Act 1988 in so far as it relates to the Merchant Shipping Act 1894, the Merchant Shipping (Oil Pollution) Act 1971 and the Merchant Shipping Act 1974(d) shall extend to Bermuda as part of the law thereof.

6. Subject to the modifications specified in Schedule 2 to this Order, section 10 of the Merchant Shipping Act 1988 and Schedule 1 to that Act shall extend to Bermuda as part of the law thereof.

(a) 1988 c.12.

(b) 1894 c.60.

(c) 1971 c.59.

(d) 1974 c.43.

7. The provisions as extended and modified shall come into force on such day as the Governor in Council may appoint by order, and different days may be appointed for different provisions or for different purposes of the same provision.

G. I. de Deney
Clerk of the Privy Council

SCHEDULE 1

Articles 2 to 5

MODIFICATIONS IN THE EXTENSION TO BERMUDA OF SECTIONS 1-8, 30-32, 34-35, 44, 46, 48, 50, 51, 54, 57 AND 58 OF AND SCHEDULE 4 AND PARTS OF SCHEDULES 5 AND 7 TO THE MERCHANT SHIPPING ACT 1988

General

1. Any reference to the Merchant Shipping Acts shall be construed as a reference to those Acts as they extend to or apply in Bermuda, including the Bermuda Shipping Act 1979 as amended^(a), and any reference to the Merchant Shipping Act 1894 or to provisions thereof shall be construed as a reference to that Act or to those provisions as it extends or they extend to Bermuda as amended by the said Bermuda Merchant Shipping Act.

2. In any case for the words "British Islands" or "British" there shall be substituted the words "Bermuda", with the following exceptions:-

- (a) in section 1(1)(a) and (b);
- (b) in section 3(1)(a) to (e);
- (c) in section 20(3)(a) of the Merchant Shipping (Oil Pollution) Act 1971 as substituted by paragraph 14 of Part I of Schedule 4 and in section 15(6)(a) of the Merchant Shipping Act 1974 as substituted by paragraph 15 of Part II of Schedule 4.

3. For any reference to the Registrar General of Shipping and Seamen there shall be substituted a reference to the Registrar of Shipping.

4. In any case for the words "United Kingdom" there shall be substituted the word "Bermuda", with the following exceptions:-

- (a) in section 3(1)(f) where, after the words "United Kingdom", in both cases where they occur, there shall instead be substituted the words "or in Bermuda";
- (b) in section 20(3)(a) of the Merchant Shipping (Oil Pollution) Act 1971 as substituted by paragraph 14 of Part I of Schedule 4 and in section 15(6)(a) of the Merchant Shipping Act 1974 as substituted by paragraph 15 of Part II of Schedule 4.

5. For any reference to the "Secretary of State" or to the "Treasury" there shall be substituted a reference to the "Governor in Council".

Fines

6. In section 5(6) for the words "the third level on the standard scale", there shall be substituted the words "seven hundred and fifty dollars".

7. In section 8(1)(i) and in section 27(5)(a) of the Merchant Shipping Act 1970 as substituted by section 32 for the words "the statutory maximum", there shall be substituted the words "three thousand, five hundred dollars".

8. In sections 30(4)(a) and 31(3)(a) and in section 10(6) of the Merchant Shipping (Oil Pollution) Act 1971 as amended by Schedule 5 for the words "£50,000", there shall be substituted the words "eighty-five thousand dollars".

^(a) Act No. 16 of 1979 of Bermuda.

9. In section 35(3) for the words “£25,000”, in each case there shall be substituted the words “forty-five thousand dollars”.

10. In section 44(3)(b) for the words “£1,000”, there shall be substituted the words “one thousand, seven hundred and fifty dollars”.

Other Modifications

11. For section 2, there shall be substituted the following provision:—

“2. A ship shall be a Bermudan ship for the purposes of the Merchant Shipping Acts if the ship is registered in Bermuda under Part I of the 1894 Act.”

12. In section 3:

- (a) in subsection (2) the words “Subject to subsection (3) below,” shall be omitted; and
- (b) subsection (3) shall be omitted.

13. In section 4, subsections (6) and (8) shall be omitted.

14. In section 5:

- (a) subsection (3) shall be omitted; and
- (b) in subsection (4) for the words “registrar to whom the application is made”, “registrar of the ship’s port of registry” and “registrar in question” there shall be substituted in each case the words “Registrar of Shipping”.

15. In section 6, in subsections (2) and (3) for the words “registrars of British ships generally a direction requiring them” there shall be substituted in each case the words “the Registrar of Shipping a direction requiring him”.

16. In section 7:

- (a) in subsection (5) for the words “registrar of the ship’s port of registry” there shall be substituted the words “Registrar of Shipping”; and
- (b) in subsection (6) for the words “registrar of the ship’s former port of registry” there shall be substituted the words “Registrar of Shipping”.

17. In section 30(5)(a) the words “(or, in Scotland, which are libelled in the complaint, petition or indictment)” shall be omitted.

18. In sections 30(8) and 31(5) for all after the word “instituted” there shall be substituted in each case the words “except by or with the consent of the Attorney-General”.

19. In section 34(2) for the references to Her Majesty and to an Order in Council there shall be substituted references to the Governor and to an order.

20. In section 44:

- (a) in subsection (4) for the words “clerk of the court”, there shall be substituted the words “Magistrates Court Clerk”; and
- (b) subsection (5) shall be omitted.

21. For section 48, there shall be substituted the following provision:—

“48. Schedule 5 to this Act in so far as it relates to the Merchant Shipping Act 1894 and the Merchant Shipping (Oil Pollution) Act 1971 shall have effect.”

22. In section 50:

- (a) in subsection (1) for the words “30, 31 and 33”, there shall be substituted the words “30 and 31”; and
- (b) in subsection (2) the words “or section 33(2)(a)(ii)” shall be omitted.

23. In section 54:

- (a) in subsections (1) and (2) the words “or II” shall be omitted in each case;
- (b) in subsection (2) the words “or registered fishing vessel” and the words between “served” and “on any” exclusive shall be omitted;
- (c) subsection (3) shall be omitted; and

- (d) in subsection (4) the definitions of "the appropriate register" and of "registered fishing vessel" and the words "or Part II of this Act" in the definition of "registered owner" shall be omitted.

24. In section 57:

- (a) in subsection (2) as it relates to the definition of "relevant overseas territory" for the words "any colony", there shall be substituted the words "any other colony of the United Kingdom", and the definition of "modifications" shall be omitted;
- (b) subsection (3) shall be omitted;
- (c) for subsection (4) there shall be substituted the following provision:—

“(4) The Merchant Shipping Act 1894 shall have effect subject to the minor and consequential amendments specified in Schedule 6;” and
- (d) for subsection (5) there shall be substituted the following provision:—

“(5) The Merchant Shipping Acts 1894 and 1974 and the Merchant Shipping (Oil Pollution) Act 1971 are hereby repealed to the extent specified in the third column of Schedule 7.”

25. In section 58:

- (a) subsections (2), (3) and (5) shall be omitted; and
- (b) in subsection (4) the words "The transitional provisions and savings contained in Schedule 8 to this Act shall have effect; and" and "made by statutory instrument" shall be omitted.

26. In Schedule 4 in section 1(8) of the Merchant Shipping (Oil Pollution) Act 1971 as substituted by paragraph 1 of Part I for the words between "Act" where it first appears and "1948" inclusive there shall be substituted the words "Section 3 of the Law Reform (Liability in Tort) Act 1951."

27. In Schedule 4 of section 4 of the Merchant Shipping (Oil Pollution) Act 1971 as substituted by paragraph 4 of Part I:

- (a) in subsection (2) the words "made by statutory instrument" shall be omitted; and
- (b) in subsection (4) the words "by statutory instrument" onwards shall be omitted.

28. In Schedule 4 in section 20 of the Merchant Shipping (Oil Pollution) Act 1971 as substituted by paragraph 14 of Part I:

- (a) in subsection (1) for the definition of "the court" there shall be substituted the words "“the court” means the Supreme Court;”
- (b) in subsection (3) there shall be inserted before paragraph (a) a paragraph as follows:—

“(aa) in the case of Bermuda, any area within the fishery limits set by the Proclamation Extending the Limits of the Fishery Zone of Bermuda 1977;”

29. In Schedule 4 in section 1(6) of the Merchant Shipping Act 1974 as substituted by paragraph 15 of Part II there shall be inserted before paragraph (a) a paragraph as follows:—

- “(aa) in the case of Bermuda any area within the fishery limits set by the Proclamation Extending the Limits of the Fishery Zone of Bermuda 1977;”

30. In Schedule 5 as it relates to the Merchant Shipping Act 1894 paragraphs 2 to 12 shall be omitted.

31. In the third column of Schedule 7:

- (a) in the entry relating to the Merchant Shipping Act 1894 all the references shall be omitted except that to section 695(2)(a), and there shall be added a reference to section 457;
- (b) in the entry relating to the Merchant Shipping Act 1974 the reference to section 23(2) shall be omitted.

SCHEDULE 2

Article 6

MODIFICATIONS IN THE EXTENSION TO BERMUDA OF SECTION 10 OF AND SCHEDULE 1 TO THE MERCHANT SHIPPING ACT 1988

1. In section 10:

- (a) for subsection (1) there shall be substituted the following provision:—

“10.—(1) Part I of the Merchant Shipping Act 1894 and Part II of the First Schedule thereto shall have effect as modified and set out in Schedule 1 to this Act.”;

- (b) in subsection (2):

- (i) for the words “1894 Act” and “United Kingdom” there shall be substituted respectively the words “Merchant Shipping Act 1894” and “Bermuda”; and
(ii) paragraph (b) shall be omitted.

2. For Schedule 1 there shall be substituted the following provisions:—

SCHEDULE 1

Section 10

PART I OF MERCHANT SHIPPING ACT 1894 AND PART II OF THE FIRST SCHEDULE THERETO

PART I

REGISTRY

Procedure for Registration

4.—(1) The Registrar of Shipping of Bermuda shall be such person as may from time to time be appointed for the purpose by the Governor in Council.

Registrar of
Shipping.

(3) The Registrar of Shipping shall not be liable to damages or otherwise for any loss accruing to any person by reason of any act done or default made by him in his character of Registrar, unless the same has happened through his neglect or wilful act.

5. The Registrar of Shipping shall keep a register of ships (referred to in this Part of this Act as “the register”), and entries in the register shall be made in accordance with the following provisions:—

Register.

- (i) The property in a ship shall be divided into sixty-four shares:
(ii) Subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than sixty-four individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial title of any number of persons or of any company represented by or claiming under or through any registered owner or joint owner:
(iii) A person shall not be entitled to be registered as owner of a fractional part of a share in a ship; but any number of persons not exceeding five may be registered as joint owners of a ship or of any share or shares therein:
(iv) Joint owners shall be considered as constituting one person only as regards the persons entitled to be registered, and shall not be entitled to dispose in severalty of any interest in a ship, or in any share therein in respect of which they are registered:
(v) A corporation may be registered as owner by its corporate name.

6. Every ship shall before registry be surveyed by a surveyor of ships and her tonnage ascertained in accordance with the tonnage regulations of this Act, and the surveyor shall grant his certificate specifying the ship's tonnage and build, and such other particulars descriptive of the identity of the ship as may for the time being be required by the Governor in Council and such certificate shall be delivered to the Registrar of Shipping before registry.

Survey and
measurement
of ship.

7.—(1) Every ship shall before registry be marked permanently and conspicuously to the satisfaction of the Governor in Council as follows:—

Marking of
ship.

- (a) Her name shall be marked on each of her bows, and her name and the name of her port of registry must be marked on her stern, on a dark ground in white or yellow

letters, or on a light ground in black letters, such letters to be of a length not less than one decimeter, and of proportionate breadth:

- (b) Her official number and the number denoting her registered tonnage shall be cut in on her main beam:
- (c) In the case of every such ship registered before the 1st day of January 1974 a scale of feet denoting her draught of water shall be marked on each side of her stem and of her stern post in Roman capital letters or in figures, not less than six inches in length, the lower line of such letters or figures to coincide with the draught line denoted thereby, and those letters and figures must be marked by being cut in and painted white or yellow on a dark ground, or in such other way as the Governor in Council approves.
- (d) In the case of every such ship registered on or after that date, a scale of decimetres, or of metres and decimetres, denoting a draught of water shall be marked on each side of her stem and of her stern post—
 - (i) in figures at two-decimetre intervals, if the scale is in decimetres; and
 - (ii) in figures at each metre interval and at intervening two-decimetre intervals, if the scale is in metres and decimetres,the capital letter "M" being placed after each metre figure; the top figure of the scale showing both the metre and (except where it marks a full metre interval) the decimetre figure; the lower line of the figures, or figures and letters (as the case may be), coinciding with the draught line denoted thereby; the figures and letters being not less than one decimeter in length and being marked by being cut in and painted white or yellow on a dark ground, or in such other way as the Governor in Council approves.
- (e) In the case of every ship registered after that date but before 31st day of December 1974 a scale shall be marked either in accordance with paragraph (c) of this sub-section, or in accordance with paragraph (d) of this sub-section.

(2) The Governor in Council may exempt any class of ships from all or any of the requirements of this section.

(3) If the scale showing the ship's draught of water is in any respect inaccurate, so as to be likely to mislead, the owner of the ship shall be liable to a fine not exceeding seven hundred and fifty dollars.

(4) The marks required by this section shall be permanently continued, and no alteration shall be made therein, except in the event of any of the particulars thereby denoted being altered in the manner provided by this Act.

(5) If an owner or master of a registered ship neglects to keep his ship marked as required by this section, or if any person conceals, removes, alters, defaces, or obliterates or suffers any person under his control to conceal, remove, alter, deface, or obliterate any of the said marks, except in the event aforesaid, or except for the purpose of escaping capture by an enemy, that owner, master, or person shall for each offence be liable to a fine not exceeding seven hundred and fifty dollars, and on a certificate from a surveyor of ships that a ship is insufficiently or inaccurately marked the ship may be detained until the insufficiency or inaccuracy has been remedied.

Application for registry.

8. An application for registry of a ship shall be made in the case of individuals by the person requiring to be registered as owner, or by some one or more of the persons so requiring if more than one, or by his or their agent, and in the case of corporations by their agent, and the authority of the agent shall be testified by writing, if appointed by individuals, under the hands of the appointers, and, if appointed by a corporation, under the common seal of that corporation.

Declaration of ownership on registry.

9. A person shall not be entitled to be registered as owner of a ship or of a share therein until he, or in the case of a corporation the person authorised by this Act to make declarations on behalf of the corporation, has made and signed a declaration of ownership, referring to the ship as described in the certificate of the surveyor, and containing the following particulars:—

- (i) A statement of his qualification to own a Bermudan ship, or in the case of a corporation, of such circumstances of the constitution and business thereof as prove it to be qualified to own a Bermudan ship;
- (ii) A statement of the time when and the place where the ship was built, or, if the ship is foreign built, and the time and place of building unknown, a statement that she is foreign built, and that the declarant does not know the time or place of her building; and, in addition, thereto, in the case of a foreign ship, a statement of her foreign name, or, in the case of a ship condemned, a statement of the time place and court at and by which she was condemned;
- (iv) A statement of the number of shares in the ship the legal title to which is vested in him or (as the case may be) the corporation, whether alone or jointly with any other person or persons:

- (v) A declaration that, to the best of his knowledge and belief, a majority interest in the ship is owned by persons qualified to be owners of Bermudan ships, and the ship is otherwise entitled to be registered:

In the application of this section to a ship which is not wholly owned by persons qualified to be owners of Bermudan ships, paragraph (i) above shall have effect only in relation to persons who are so qualified.

10.—(1) On the first registry of a ship the following evidence shall be produced in addition to the declaration of ownership:—

Evidence on first registry.

- (a) In the case of a British-built ship a builder's certificate, that is to say, a certificate signed by the builder of the ship, and containing a true account of the proper denomination and of the tonnage of the ship, as estimated by him, and of the time when and the place where she was built, and of the name of the person (if any) on whose account the ship was built, and if there has been any sale, the bill of sale under which the ship, or a share therein, has become vested in the applicant for registry:
- (b) In the case of a foreign-built ship, the same evidence as in the case of a British-built ship, unless the declarant who makes the declaration of ownership declares that the time and place of her building are unknown to him, or that the builder's certificate cannot be procured, in which case there shall be required only the bill of sale under which the ship, or a share therein, became vested in the applicant for registry:
- (c) In the case of a ship condemned by any competent court, an official copy of the condemnation.

(2) The builder shall grant the certificate required by this section, and such person as the Governor in Council recognises as carrying on the business of the builder of a ship, shall be included, for the purposes of this section, in the expression "builder of the ship".

(3) If the person granting a builder's certificate under this section wilfully makes a false statement in that certificate he shall for each offence be liable to a fine not exceeding one thousand, seven hundred and fifty dollars.

11. As soon as the requirements of this Act preliminary to registry have been complied with the Registrar of Shipping shall enter in the register the following particulars respecting the ship:—

Entry of particulars in register.

- (a) The name of the ship and the name of the port to which she belongs:
- (b) The details comprised in the surveyor's certificate:
- (c) The particulars respecting her origin stated in the declaration of ownership: and
- (d) The name and description of her registered owner or owners, and if there are more owners than one, the proportions in which they are interested in her.

12. On the registry of a ship the Registrar of Shipping shall retain in his possession the following documents; namely, the surveyor's certificate, the builder's certificate, any bill of sale of the ship previously made, the copy of the condemnation (if any), and all declarations of ownership.

Documents to be retained by Registrar of Shipping.

13. The port of Hamilton shall be deemed the port of registry of a ship registered and the port to which she belongs.

Port of registry.

Certificate of Registry

14. On completion of the registry of a ship, the Registrar of Shipping shall grant a certificate of registry comprising the particulars respecting her entered in the register in pursuance of section 11 of this Act.

Certificate of registry.

15.—(1) The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge, or interest whatever had or claimed by any mortgagee, or other person to, on, or in the ship.

Custody of certificate.

(2) If any person, whether interested in the ship or not, refuses on request to deliver up the certificate of registry when in his possession or under his control to the person entitled to the custody thereof for the purposes of the lawful navigation of the ship, or to the Registrar of Shipping, any officer of customs, or other person entitled by law to require such delivery, any justice by warrant under his hand and seal, or any court capable of taking cognizance of the matter, may summon the person so refusing to appear before such justice or court, and to be examined touching such refusal, and unless it is proved to the satisfaction of such justice or court that there was reasonable cause for such refusal, the offender shall be liable to a fine not exceeding seven hundred and fifty dollars, but if it is shown to such justice or court that the certificate is lost, the person summoned shall be discharged, and the justice or court shall certify that the certificate of registry is lost.

(3) If the person so refusing is proved to have absconded so that the warrant of a justice or process of a court cannot be served on him, or if he persists in not delivering up the certificate, the justice or court shall certify the fact, and the same proceedings may then be taken as in the case of a certificate mislaid, lost, or destroyed, or as near thereto as circumstances permit.

Penalty for use of improper certificate.

16. If the master or owner of a ship uses or attempts to use for her navigation a certificate of registry not legally granted in respect of the ship, he shall, in respect of each offence, be guilty of a misdemeanor, and the ship shall be subject to forfeiture under this Act.

Power to grant new certificate.

17. The Registrar of Shipping may, with the approval of the Governor in Council, and on the delivery up to him of the certificate of registry of a ship, grant a new certificate in lieu thereof.

Provision for loss of certificate.

18.—(1) In the event of the certificate of registry of a ship being mislaid, lost, or destroyed, the Registrar of Shipping shall grant a new certificate of registry in lieu of her original certificate.

(2) If—

- (a) the port where the ship is at the time of the event (or, as the case may be, where it first arrives thereafter) is a port in a country outside Bermuda, and
- (b) the master of the ship, or some other person having knowledge of the facts of the case, makes a declaration before the appropriate person stating—
 - (i) the facts of the case, and
 - (ii) the names and descriptions of the registered owners of the ship to the best of the declarant's knowledge and belief,

the appropriate person may thereupon grant a provisional certificate containing a statement of the circumstances under which it is granted.

(3) The provisional certificate shall within ten days after the first subsequent arrival of the ship at Hamilton be delivered up to the Registrar of Shipping, and the Registrar of Shipping shall thereupon grant the new certificate of registry; and if the master without reasonable cause fails to deliver up the provisional certificate within the ten days aforesaid, he shall be liable to a fine not exceeding seven hundred and fifty dollars.

(4) In this section "the appropriate person", in relation to a port in a country outside Bermuda means—

- (a) any British consular officer within whose consular district the port lies, or
- (b) where Her Majesty's Government in the United Kingdom is represented in that country by a High Commissioner, any member of the High Commissioner's official staff nominated by him for the purposes of this Part of this Act, or
- (c) where that country is a colony, the Governor of the colony or any person appointed by him for those purposes,

and in this subsection "High Commissioner" includes an acting High Commissioner and "Governor" includes an acting Governor.

Endorsement of change of ownership on certificate.

20.—(1) Whenever a change occurs in the registered ownership of a ship, the change of ownership shall be endorsed on her certificate of registry by the Registrar of Shipping.

(2) The master shall, for the purpose of such endorsement by the Registrar of Shipping, deliver the certificate of registry to the Registrar forthwith after the change.

(4) If the master fails to deliver to the Registrar of Shipping the certificate of registry as required by this section he shall, for each offence, be liable to a fine not exceeding seven hundred and fifty dollars.

Delivery up of certificate of ship lost or ceasing to be Bermudan owned.

21.—(1) In the event of a registered ship being either actually or constructively lost, taken by the enemy, burnt, or broken up, or—

- (a) ceasing to be entitled to be registered (whether because a majority interest in the ship is no longer owned by persons qualified to be owners of ships or for any other reason), or
- (b) becoming registered, otherwise than under this Part of this Act, in Bermuda, every registered owner of the ship or any share in the ship shall, immediately on obtaining knowledge of the event, if no notice thereof has already been given to the Registrar of Shipping, give notice thereof to the Registrar of Shipping, and he shall make an entry thereof in the register and the registry of the ship shall terminate forthwith.

(2) Except where the ship's certificate of registry is lost or destroyed, the master of the ship shall, as soon as practicable after the event, deliver up the certificate—

- (a) to the Registrar of Shipping, or

- (b) if the port where the ship is at the time of the event (or, as the case may be, where it first arrives thereafter) a port in a country outside Bermuda, to the appropriate person (as defined by section 18(4) of this Act);

and any person receiving a certificate in pursuance of paragraph (b) above shall forthwith forward it to the Registrar of Shipping.

(4) The registry of a registered ship shall also terminate if—

- (a) the owner of the ship gives notice to the Registrar of Shipping that he desires to terminate the ship's registry, and
- (b) the Registrar records the giving of that notice in the register.

(5) Where the registry of a ship terminates by reason of—

- (a) any notice given in pursuance of subsection (4) of this section, or
- (b) any direction given by the Governor in Council under section 7(5) of the Merchant Shipping Act 1988 (power to direct removal from register in certain cases),

subsections (2) and (3) of this section shall have effect in relation to the delivering up and forwarding of the ship's certificate of registry as if the giving of that notice or direction were the event referred to in subsection (2).

(6) Where the registry of a ship terminates—

- (a) under subsection (1) or (4) of this section, or
- (b) as mentioned in subsection (5)(b) of this section,

the termination of its registry shall not affect any entry made in the register so far as relating to any undischarged registered mortgage, or any existing certificate of mortgage, of that ship or of any share in it.

(7) Subsection (6) of this section shall not apply to an entry in the register in a case where the Registrar of Shipping is satisfied that every person appearing on the register to be interested as a mortgagee under the mortgage in question has consented to the entry ceasing to have effect.

22.—(1) If a ship becomes entitled to be registered while at a port in a country outside Bermuda, then (subject to the following provisions of this section) the appropriate person (as defined by section 18(4) of this Act) may, on the application of the master of the ship, grant to him a provisional certificate stating the matters specified in subsection (2) of this section, and shall forward a copy of the certificate at the first convenient opportunity to the Registrar of Shipping.

Provisional certificate for ship becoming entitled to be registered while abroad.

(2) Those matters are—

- (a) the name of the ship;
- (b) the time and place of the purchase of the ship and the names of the purchasers; and
- (c) the best particulars respecting the tonnage, build and description of the ship which the person granting the certificate is able to obtain.

(3) No provisional certificate shall be granted by any person under this section unless he is satisfied that an application under section 8 of this Act for registry of the ship has been made or is intended.

(4) A provisional certificate shall have the effect of a certificate of registry until—

- (a) the expiration of three months from its date, or
- (b) the ship's arrival at Hamilton,

whichever happens first, and shall then cease to be of any effect.

(5) Where a provisional certificate has been granted for a ship under this section, no further provisional certificate shall be so granted for the ship within one year from the date of that certificate except with the consent of the Governor in Council.

23. Where it appears to the Governor in Council that by reason of special circumstances it would be desirable that permission should be granted to any Bermudan ship to pass, without being previously registered, from any port in Her Majesty's dominions to any other port within Her Majesty's dominions, the Governor may grant a pass accordingly, and that pass shall, for the time and within the limits therein mentioned, have the same effect as a certificate of registry.

Temporary passes in lieu of certificates of registry.

Transfers and Transmissions

24.—(1) Any transfer of—

- (a) a registered ship, or
- (b) a share in any such ship,

shall be effected by a bill of sale, unless the transfer will result in a majority interest in the ship no longer being owned by persons qualified to be owners of Bermudan ships.

Transfer of ships or shares.

(2) The bill of sale shall contain such description of the ship as is contained in the surveyor's certificate, or some other description sufficient to identify the ship to the satisfaction of the Registrar of Shipping, and shall be executed by the transferor in the presence of, and be attested by, a witness or witnesses.

Declaration of transfer.

25. Where a registered ship or a share therein is transferred in accordance with section 24(1) of this Act, the transferee shall not be entitled to be registered as owner thereof until he, or, in the case of a corporation, the person authorised by this Act to make declarations on behalf of the corporation, has made and signed a declaration (in this Act called a declaration of transfer) referring to the ship, and containing—

- (a) a statement of the qualification of the transferee to own a Bermudan ship, or if the transferee is a corporation, of such circumstances of the constitution and business thereof as prove it to be qualified to own a Bermudan ship; and
- (b) a declaration that, to the best of his knowledge and belief, a majority interest in the ship is owned by persons qualified to be owners of Bermudan ships, and the ship is otherwise entitled to be registered.

In the application of this section to a ship which is not wholly owned by persons qualified to be owners of Bermudan ships, paragraph (a) above shall have effect only in relation to persons who are so qualified.

Registry of transfer.

26.—(1) Every bill of sale for the transfer of a registered ship or of a share therein, when duly executed, shall be produced to the Registrar of Shipping, with the declaration of transfer, and the Registrar shall thereupon enter in the register the name of the transferee as owner of the ship or share, and shall endorse on the bill of sale the fact of that entry having been made, with the day and hour thereof.

(2) Bills of sale or of a share therein shall be entered in the register in the order of their production to the Registrar of Shipping.

Transmission of property in ship on death, bankruptcy, marriage etc.

27.—(1) Where the property in a registered ship or share therein is transmitted to any person by any lawful means other than a transfer under section 24 of this Act and a majority interest in the ship remains in the ownership of persons qualified to be owners of Bermudan ships—

- (a) That person shall authenticate the transmission by making and signing a declaration (in this Act called a declaration of transmission) identifying the ship and containing the several statements herein-before required to be contained in a declaration of transfer, or as near thereto as circumstances admit, and also a statement of the manner in which and the person to whom the property has been transmitted.
- (c) If the transmission is consequent on bankruptcy, the declaration of transmission shall be accompanied by such evidence as is for the time being receivable in courts of justice as proof of the title of persons claiming under a bankruptcy.
- (d) If the transmission is consequent on death, the declaration of transmission shall be accompanied by the instrument of representation, or an official extract therefrom.

(2) The Registrar of Shipping, on receipt of the declaration of transmission so accompanied, shall enter in the register the name of the person entitled under the transmission as owner of the ship or share the property in which has been transmitted, and where there is more than one such person, shall enter the names of all those persons, but those persons, however numerous, shall, for the purpose of the provision of this Act with respect to the number of persons entitled to be registered as owners, be considered as one person.

Order for sale on transmission to unqualified person.

28.—(1) Where the property in a registered ship or share therein is transmitted to any person by any lawful means other than a transfer under section 24 of this Act, but as a result a majority interest in the ship no longer remains in the ownership of persons qualified to be owners of Bermuda ships, then the Supreme Court may, on an application by or on behalf of that person, order a sale of the property so transmitted and direct that the proceeds of sale, after deducting the expenses of the sale, shall be paid to that person or otherwise as the court direct.

(2) The court may require any evidence in support of the application they think requisite, and may make the order on any terms and conditions they think just, or may refuse to make the order, and generally may act in the case as the justice of the case requires.

(3) Every such application for sale must be made within four weeks after the occurrence of the event on which the transmission has taken place, or within such further time (not exceeding in the whole one year from the date of the occurrence) as the court allow.

(4) If such an application is not made within the time aforesaid, or if the court refuse an order for sale, the ship or share transmitted shall thereupon be subject to forfeiture under this Act.

29. Where any court, whether under the preceding sections of this Act or otherwise, order the sale of any ship or share therein, the order of the court shall contain a declaration vesting in some person named by the court the right to transfer that ship or share, and that person shall thereupon be entitled to transfer the ship or share in the same manner and to the same extent as if he were the registered owner thereof; and the Registrar of Shipping shall obey the requisition of the person so named in respect of any transfer to the same extent as if such person were the registered owner.
- Transfer of ship or sale by order of court.
30. The Supreme Court may, if the Court think fit (without prejudice to the exercise of any other power of the court), on the application of any interested person make an order prohibiting for a time specified any dealing with a ship or any share therein, and the Court may make the order on any terms or conditions they think just, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires; and the Registrar of Shipping without being made a party to the proceeding, shall on being served with the order or an official copy thereof obey the same.
- Power of court to prohibit transfer.
- 31.—(1) A registered ship, or a share in any such ship, may be made a security for the repayment of a loan or the discharge of any other obligation; and on production of the instrument creating any such security (referred to in this Act as a mortgage) the Registrar of Shipping shall record it in the register.
- Mortgage of ship or share.
- (2) Mortgages shall be recorded by the Registrar of Shipping in the order in time in which they are produced to him for that purpose, and the Registrar shall by memorandum under his hand notify on each mortgage that it has been recorded by him, stating the day and hour of that record.
32. Where a registered mortgage is discharged, the Registrar of Shipping shall, on the production of the mortgage deed, with a receipt for the mortgage money endorsed thereon, duly signed and attested, make an entry in the register to the effect that the mortgage has been discharged, and on that entry being made the estate (if any) which passed to the mortgagee shall vest in the person in whom (having regard to intervening acts and circumstances, if any,) it would have vested if the mortgage had not been made.
- Entry of discharge of mortgage.
33. If there are more mortgages than one registered in respect of the same ship or share, the mortgagees shall, notwithstanding any express, implied, or constructive notice, be entitled in priority one over the other, according to the date at which each mortgage is recorded in the register and not according to the date of each mortgage itself.
- Priority of mortgages.
34. Except as far as may be necessary for making a mortgaged ship or share available as a security for the mortgage debt, the mortgagee shall not by reason of the mortgage be deemed the owner of the ship or share, nor shall the mortgagor be deemed to have ceased to be owner thereof.
- Mortgagee not treated as owner.
35. Every registered mortgagee shall have power absolutely to dispose of the ship or share in respect of which he is registered, and to give effectual receipts for the purchase money; but where there are more persons than one registered as mortgagees of the same ship or share, a subsequent mortgagee shall not, except under the order of a court of competent jurisdiction, sell the ship or share without the concurrence of every prior mortgagee.
- Mortgagee to have power of sale.
36. A registered mortgage of a ship or share shall not be affected by any act of bankruptcy committed by the mortgagor after the date of the record of the mortgage, notwithstanding that the mortgagor at the commencement of his bankruptcy had the ship or share in his possession, order, or disposition, or was reputed owner thereof, and the mortgage shall be preferred to any right, claim, or interest therein of the other creditors of the bankrupt or any trustee or assignee on their behalf.
- Mortgage not affected by bankruptcy.
37. A registered mortgage of a ship or share may be transferred to any person and on production of the instrument effecting the transfer the Registrar of Shipping shall record it by entering in the register the name of the transferee as mortgagee of the ship or share, and shall by memorandum under his hand notify on the instrument of transfer that it has been recorded by him, stating the day and hour of the record.
- Transfer of mortgages.
- 38.—(1) Where the interest of a mortgagee in a ship or share is transmitted on death, or bankruptcy, or by any lawful means, other than by a transfer under this Act, the transmission shall be authenticated by a declaration of the person to whom the interest is transmitted, containing a statement of the manner in which and the person to whom the property has been transmitted, and shall be accompanied by the like evidence as is by this Act required in case of a corresponding transmission of the ownership of a ship or share.
- Transmission of interest in mortgage by death, bankruptcy, etc.
- (2) The Registrar of Shipping on the receipt of the declaration and the production of the evidence aforesaid, shall enter the name of the person entitled under the transmission in the register as mortgagee of the ship or share.

Name of Ship

Rules as to
name of ship.

47.—(1) A ship shall not be described by any name other than that by which she is for the time being registered.

(2) A change shall not be made in the name of a ship without the previous written permission of the Governor in Council.

(3) Application for that permission shall be in writing, and if the Governor in Council is of opinion that the application is reasonable he may entertain it, and thereupon require notice thereof to be published in such form and manner as he thinks fit.

(4) On permission being granted to change the name, the ship's name shall forthwith be altered in the register, in the ship's certificate of registry, and on her bows and stern.

(5) If it is shown to the satisfaction of the Governor in Council that the name of any ship has been changed without his permission he shall direct that her name be altered into that which she bore before the change, and the name shall be altered in the register, in the ship's certificate of registry, and on her bows and stern accordingly.

(6) Where a ship having once been registered has ceased to be so registered no person unless ignorant of the previous registry (proof whereof shall lie on him) shall apply to register, and the Registrar of Shipping shall not knowingly register, the ship, except by the name by which she was previously registered, unless with the previous written permission of the Governor in Council.

(7) Where a foreign ship not having at any previous time been registered as a Bermudan ship, becomes a Bermudan ship, no person shall apply to register, and the Registrar of Shipping shall not knowingly register, the ship, except by the name which she bore as a foreign ship immediately before becoming a Bermudan ship, unless with the previous written permission of the Governor in Council.

(8) If any person acts, or suffers any person under his control to act, in contravention of this section, or omits to do, or suffers any person under his control to omit to do, anything required by this section, he shall for each offence be liable to a fine not exceeding seven hundred and fifty dollars, and (except in the case of an application being made under the section with respect to a foreign ship which not having at any previous time been registered as a Bermudan ship has become a Bermudan ship) the ship may be detained until this section is complied with.

Registry of Alterations, Registry Anew, and Transfer of Registry

Registry of
alterations.

48.—(1) When a registered ship is so altered as not to correspond with the particulars relating to her tonnage or description contained in the register, then the Registrar of Shipping shall, on application being made to him, and on receipt of a certificate from the proper surveyor stating the particulars of the alteration, either cause the alteration to be registered, or direct that the ship be registered anew.

(2) If default is made in registering anew a ship, or in registering an alteration of a ship so altered as aforesaid, the owner of the ship shall be liable on summary conviction to a fine not exceeding seven hundred and fifty dollars and, in addition, to a fine not exceeding seventy five dollars for every day during which the offence continues after conviction.

Regulations for
registry of
alteration.

49.—(1) For the purpose of the registry of an alteration in a ship, the ship's certificate of registry shall be produced to the Registrar of Shipping, and the Registrar shall, in his discretion, either retain the certificate of registry and grant a new certificate of registry containing a description of the ship as altered, or endorse and sign on the existing certificate a memorandum of the alteration.

(2) The particulars of the alteration so made, and the fact of the new certificate having been granted, or endorsement having been made, shall be entered by the Registrar of Shipping in the register.

Registry anew
on change of
ownership.

51. Where the ownership of any ship is changed, the Registrar of Shipping may, on the application of the owners of the ship register the ship anew, although registration anew is not required under this Act.

Procedure for
registry anew.

52.—(1) Where a ship is to be registered anew, the Registrar of Shipping shall proceed as in the case of first registry, and on the delivery up to him of the existing certificate of registry, and on the other requisites to registry, or in the case of a change of ownership such of them as he thinks material, being duly complied with, shall make such registry anew, and grant a certificate thereof.

(2) When a ship is registered anew, her former register shall be considered as closed, except so far as relates to any unsatisfied mortgage of existing certificates of sale or mortgage entered

thereon, but the names of all persons appearing on the former register to be interested in the ship, as owners or mortgagees shall be entered on the new register, and the registry anew shall not in any way affect the rights of any of those persons.

53A.—(1) Subject to subsection (2) of this section, the registration of a ship under this Part of this Act may be transferred from Hamilton to a port in the United Kingdom or in a relevant overseas territory on the application to the Registrar of Shipping made by declaration in writing of all persons appearing on the register to be interested in the ship as owners or mortgagees, but that transfer shall not in any way affect the rights of those persons or any of them, and those rights shall in all respects continue in the same manner as if no such transfer had been effected.

Transfer of
registry.

(1A) On any such application the Registrar of Shipping shall transmit notice thereof to the registrar of the intended port of registry with a copy of all particulars relating to the ship, and the names of all persons appearing on the register to be interested in the ship as owners or mortgagees.

(1B) The ship's certificate of registry shall be delivered up to either the Registrar of Shipping or the registrar of the ship's intended port of registry, and, if delivered up to the former, shall be transmitted to the registrar of the intended port of registry.

(2) Where an application is made under this section for the transfer of a ship's registration to a port in the United Kingdom or in a relevant overseas territory, the Registrar of Shipping shall not proceed to deal with the application unless he is satisfied that registration of the ship under this Part of this Act at the intended port of registry is not precluded by—

- (a) any Order in Council in force under section 11 of the Merchant Shipping Act 1988, or
- (b) any provision of the law in force in the United Kingdom or in the territory in question as the case may be;

and any certificate purporting to be signed by the registrar of the intended port of registry and stating that any such registration of the ship is not precluded by any such provision shall be conclusive evidence for the purposes of this subsection of the matters stated in it.

(3) Where the registrar of the intended port of registry grants a fresh certificate of registry in pursuance of any such application as is mentioned in subsection (2) of this section, the ship in question shall thenceforth be considered as registered at the new port of registry, and the name of Hamilton shall be removed from the ship's stern.

(4) The Registrar of Shipping shall, on being notified by the registrar of the new port of registry of the grant of the new certificate of registry, terminate the registration of the ship in the register.

(5) In this section "relevant overseas territory" means—

- (a) the Isle of Man;
- (b) any of the Channel Islands; or
- (c) any colony of the United Kingdom other than Bermuda.

53B.—(1) Where a ship is registered under this Part of this Act in the United Kingdom or in a relevant overseas territory (as defined by section 53A(5) of this Act), the registration of that ship may (subject to subsection (5) of this section) be transferred to Hamilton if—

- (a) an application to the registrar of the existing port of registry has been made for the purpose by a declaration in writing by all the persons appearing on his register to be interested in the ship as owners or mortgagees, and
- (b) the documents mentioned in subsection (2) of this section have been transmitted to the Registrar of Shipping.

(2) Those documents are—

- (a) a notice of the application transmitted by the registrar of the existing port of registry;
- (b) a copy transmitted by him of all the registered particulars of the ship and the names of all the persons appearing on his register to be interested in the ship as owners or mortgagees; and
- (c) the ship's certificate of registry.

(3) On receipt of those documents the Registrar of Shipping shall (subject to subsection (5) of this section)—

- (a) enter in the register all the particulars and names so transmitted, and
- (b) grant a fresh certificate of registry;

and thenceforth the ship in question shall be considered as registered at Hamilton, and the name of that port shall be substituted for the name of the former port of registry on the ship's stern.

(4) The Registrar of Shipping shall notify the registrar of the former port of registry of the grant of the new certificate of registry.

(5) Where the entitlement of a ship to be registered is by virtue of any provision of section 4 of the Merchant Shipping Act 1988 subject to any condition specified in that provision being satisfied, the registry of the ship shall not be transferred to Hamilton under this section unless it appears to the Registrar of Shipping that that condition is satisfied.

(6) A transfer of registration under this section shall not affect the rights of any of the persons mentioned in subsection (1)(a) of this section.

Trusts and Equitable Rights

Notice of trusts not received.

56. No notice of any trust, express, implied, or constructive, shall be entered in the register or be receivable by the Registrar of Shipping, and subject to any rights and powers appearing by the register to be vested in any other person, the registered owner of a ship or of a share therein shall have power absolutely to dispose in manner in this Act provided of the ship or share, and to give effectual receipts for any money paid or advanced by way of consideration.

Equities not excluded by Act.

57. The expression "beneficial interest," where used in this Part of this Act, includes interests arising under contract and other equitable interests; and the intention of this Act is, that without prejudice to the provisions of this Act for preventing notice of trusts from being entered in the register or received by the Registrar of Shipping, and without prejudice to the powers of disposition and of giving receipts conferred by this Act on registered owners and mortgagees, and without prejudice to the provisions of this Act relating to the exclusion of unqualified persons from the ownership of Bermudan ships, interests arising under contract or other equitable interests may be enforced by or against owners and mortgagees of ships in respect of their interest therein in the same manner as in respect of any other personal property.

Liability of Beneficial Owner

Liability of owners.

58. Where any person is beneficially interested, otherwise than by way of mortgage, in any ship or share in a ship registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this or any other Act on the owners of ships or shares therein, so nevertheless that proceedings may be taken for the enforcement of any such penalties against both or either of the aforesaid parties, with or without joining the other of them.

Declarations, Inspection of Register, and Fees

Power of Registrar of Shipping to dispense with declarations and other evidence.

60. When, under this Part of this Act, any person is required to make a declaration on behalf of himself or of any corporation, or any evidence is required to be produced to the Registrar of Shipping and it is shown to the satisfaction of the Registrar of Shipping that from any reasonable cause that person is unable to make the declaration, or that the evidence cannot be produced, the Registrar may, with the approval of the Governor in Council, and on the production of such other evidence, and subject to such terms as he may think fit, dispense with the declaration or evidence.

Mode of making declarations.

61. Declarations required by this Part of this Act may be made on behalf of a corporation by the secretary or any other officer of the corporation authorised by them for the purpose.

Application of fees.

62. All fees authorised to be taken under this Part of this Act, shall, except where otherwise in this Act provided, be disposed of in such way as the Governor in Council directs.

Returns, Evidence, and Forms

Returns to be made by Registrar of Shipping.

63. The Registrar of Shipping shall at such times as may be fixed by the Registrar-General of Shipping and Seamen of the United Kingdom, transmit to him a full return, in such form as the said Registrar-General may direct, of all registries, transfers, transmissions, mortgages, and other dealings with ships which have been registered by or communicated to him in his character of Registrar, and of the names of the persons concerned in the same, and of such other particulars as may be directed by the said Registrar-General.

Evidence of register, certificate of registry, and other documents.

64.—(1) A person, on payment of a fee to be fixed by the Governor in Council may on application to the Registrar of Shipping at a reasonable time during the hours of his official attendance, inspect the register.

(2) The following documents shall be admissible in evidence in manner provided by this Act; namely,—

(b) A certificate of registry under this Act purporting to be signed by the Registrar of Shipping or other proper officer;

- (c) An endorsement on a certificate of registry purporting to be signed by the Registrar of Shipping or other proper officer;
- (d) Every declaration made in pursuance of this Part of this Act.

(3) A person shall be entitled, on payment of the prescribed fee, to obtain a copy, certified as a true copy by the Registrar of Shipping, of any information contained in an entry in the register, and any document purporting to be such a certified copy shall be evidence of the matters stated in the document.

(4) A person shall be entitled, on payment of the prescribed fee, to obtain such a certified copy of the information entered in the register on the registry of a ship, together with a statement certified by the Registrar of Shipping showing who is for the time being the owner of the ship.

(5) The provisions of subsection (3) of section 695 of this Act shall apply to any document supplied in pursuance of subsection (3) or (4) of this section as they apply to any document to which that section applies.

(6) In subsection (3) or (4) of this section "the prescribed fee" means such fee as the Governor in Council may prescribe for the purposes of that subsection by regulations.

65.—(1) The several instruments and documents specified in the second part of the First Schedule to this Act shall be in the form prescribed by the Governor in Council or as near thereto as circumstances permit; the Governor in Council may make such alterations in the form so prescribed as he may deem requisite.

Forms of documents and instructions as to registry.

(2) The Registrar of Shipping shall not be required without the special direction of the Governor in Council to receive and enter in the register any bill of sale, mortgage, or other instrument of the disposal or transfer of any ship or share, or any interest therein, which is made in any form other than that for the time being required under this Part of this Act, or which contains any particulars other than those contained in such form; but the Governor in Council shall, before altering the forms, give such public notice thereof as may be necessary in order to prevent inconvenience.

(4) The Governor in Council may also, for carrying into effect this Part of this Act, give such instructions to his officers as to the manner of making entries in the register, as to the execution and attestation of powers of attorney, as to any evidence required for identifying any person, as to the referring to himself of any question involving doubt or difficulty, and generally as to any act or thing to be done in pursuance of this Part of this Act, as he thinks fit.

Forgery and False Declarations

66. If any person forges, or fraudulently alters or assists in forging or fraudulently altering, or procures to be forged or fraudulently altered, any of the following documents, namely, any register, builder's certificate, surveyor's certificate, certificate of registry, declaration, bill of sale, instrument of mortgage, or certificate of mortgage or sale under this Part of this Act, or any entry or endorsement required by this Part of this Act to be made in or on any of those documents, that person shall in respect of each offence be guilty of felony.

Forgery of documents.

67.—(1) If any person in the case of any declaration made in the presence of or produced to the Registrar of Shipping under this Part of this Act, or in any document or other evidence produced to that Registrar—

False declarations.

- (i) wilfully makes, or assists in making, or procures to be made any false statement concerning the title to or ownership of, or the interest existing in any ship, or any share in a ship; or
- (ii) utters, produces or makes use of any declaration or document containing any such false statement knowing the same to be false,

he shall in respect of each offence be guilty of a misdemeanor.

(2) If any person wilfully makes a false declaration touching the qualification of himself or of any other person or of any corporation to own a Bermudan ship or any share therein, or the entitlement of a ship to be registered, he shall for each offence be guilty of a misdemeanor, and that ship or share shall be subject to forfeiture under this Act, to the extent of the interest therein of the declarant, and also, unless it is proved that the declaration was made without authority, of any person or corporation on behalf of whom the declaration is made.

National Character and Flag

68.—(1) An officer of customs shall not grant clearance or transire for any ship until the master of such ship has declared to that officer the name of the nation to which he claims that she belongs, and that officer shall thereupon inscribe that name on the clearance or transire.

National character of ship to be declared before clearance.

(2) If a ship attempts to proceed to sea without such clearance or transire, she may be detained until the declaration is made.

Penalty for unduly assuming Bermudan character.

69.—(1) If a person uses the British flag and assumes the Bermudan national character on board a ship in which a majority interest is not owned by persons qualified to be owners of Bermudan ships for the purpose of making the ship appear to be a Bermudan ship, the ship shall be subject to forfeiture under this Act, unless the assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.

(2) In any proceeding for enforcing any such forfeiture the burden of proving a title to use the British flag and assume the Bermudan national character shall lie upon the person using and assuming the same.

Penalty for concealing Bermudan character of a ship.

70. If the master or owner of a Bermudan ship does anything, or permits anything to be done, for the purpose of—

- (a) concealing the nationality of the ship from any person entitled under the law of Bermuda to inquire into the nationality of the ship, or
- (b) deceiving such a person, or
- (c) causing the ship to appear not to be a Bermudan ship,

the ship shall be subject to forfeiture under this Act; and the master and the owner of the ship shall each be guilty of an offence and liable on summary conviction to a fine not exceeding three thousand, five hundred dollars.

Liabilities of unregistered ships.

72.—(1) Where a ship—

- (a) is 24 metres or more in length, and
- (b) is wholly owned by one or more persons qualified to be owners of Bermudan ships, but
- (c) is neither registered under this Part of this Act nor registered under the law of any country outside Bermuda,

then (notwithstanding that the ship is not entitled to any benefits, privileges, advantages or protection usually enjoyed by a Bermudan ship) the ship shall, for the purposes mentioned in subsection (2) of this section, be dealt with in the same manner in all respects as if the ship were a Bermudan ship.

(2) Those purposes are—

- (a) the payment of dues, fees or other charges;
- (b) liability to fines and forfeiture; and
- (c) the punishment of offences committed on board the ship, or by any persons belonging to the ship.

(3) In this section “length”, in relation to a ship, has the same meaning as in the tonnage regulations of this Act.

National colours for ships, and penalty on carrying improper colours.

73.—(1) The red ensign usually worn by merchant ships, without any defacement or modification whatsoever, is hereby declared to be the proper national colours for all Bermudan ships except in the case of Her Majesty's ships, or in the case of any other ship for the time being allowed to wear any other national colours in pursuance of a warrant from Her Majesty or from the Admiralty.

(2) If any distinctive national colours, except such red ensign or except the Union Jack with a white border or if any colours usually worn by Her Majesty's ships or resembling those of Her Majesty, or if the pendant usually carried by Her Majesty's ships or any pendant resembling that pendant, are or is hoisted on board any Bermudan ship without warrant from Her Majesty or from the Admiralty, the master of the ship, or the owner thereof, if on board the same and every other person hoisting the colours or pendant, shall for each offence be liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding three thousand, five hundred dollars.

(3) Any commissioned officer on full pay in the military or naval service of Her Majesty, or any officer of customs in Her Majesty's dominions, or any British consular officer, may board any Bermudan ship on which any colours or pendants are hoisted contrary to this Act, and seize and take away the colours or pendant, and the colours or pendant shall be forfeited to Her Majesty.

Penalty on ship not showing colours.

74.—(1) A Bermudan ship shall hoist the proper national colours—

- (a) on a signal being made to her by one of Her Majesty's ships (including any vessel under the command of an officer of Her Majesty's navy on full pay), and
- (b) on entering or leaving any foreign port, and
- (c) if of fifty tons gross tonnage or upwards, on entering or leaving a port in Bermuda.

(2) If default is made on board any such ship in complying with this section, the master of the ship shall for each offence be liable to a fine not exceeding seven hundred and fifty dollars.

75. The provisions of this Act with respect to colours worn by merchant ships shall not affect any other power of the Admiralty in relation thereto.

Saving for Admiralty.

Forfeiture of Ship

76.—(1) Where any ship has either wholly or as to any share therein become subject to forfeiture under this Part of this Act,

Proceedings on forfeiture of ship.

(a) any commissioned officer on full pay in the military or naval service of Her Majesty; or

(b) any person appointed by the Governor in Council for the purposes of this section; may seize and detain the ship and bring her for adjudication before the Supreme Court, and the Court may thereupon adjudge the ship with her tackle, apparel, and furniture to be forfeited to Her Majesty, and make such order in the case as to the Court seems just, and may award to the officer or other person bringing in the ship for adjudication such portion of the proceeds of the sale of the ship, or any share therein, as the Court think fit.

(2) Any such officer or other person as is mentioned in subsection (1) of this section shall not be responsible either civilly or criminally to any person whomsoever in respect of any such seizure or detention as aforesaid, notwithstanding that the ship has not been brought in for adjudication, or if so brought in is declared not liable to forfeiture, if it is shown to the satisfaction of the Court that there were reasonable grounds for such seizure or detention; but if no such grounds are shown the Court may award costs and damages to any party aggrieved, and make such other order in the premises as the Court thinks just.

82. Whenever the tonnage of any ship has been ascertained and registered in accordance with the tonnage regulations of this Act, the same shall thenceforth be deemed to be the tonnage of the ship, and shall be repeated in every subsequent registry thereof, unless any alteration is made in the form of capacity of the ship, or unless it is discovered that the tonnage of the ship has been erroneously computed; and in either of those cases the ship shall be re-measured, and her tonnage determined and registered according to the tonnage regulations of this Act.

Tonnage once ascertained to be the tonnage of ship.

83. Such fees as the Governor in Council determines shall be paid in respect of the measurement of a ship's tonnage.

Fees for measurement.

86. All duties in relation to the survey and measurement of ships shall be performed by surveyors of ships under this Act in accordance with regulations made by the Governor in Council.

Surveyors and Regulations for measurement of ships.

FIRST SCHEDULE

Section 65

PART II

Documents of which the forms are to be prescribed by the Governor in Council

Certificate of surveyor.

Declaration of ownership by individual owner.

Declaration of ownership on behalf of a corporation as owner.

Certificate of registry.

Declaration of ownership by individual transferee.

Declaration of ownership on behalf of a corporation as transferee.

Provisional certificate.

Declaration of owner taking by transmission.

Declaration by mortgagee taking by transmission.

Bill of Sale.

Mortgage.

Transfer of mortgage.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends to Bermuda certain provisions of the Merchant Shipping Act 1988, as amended. Its main purpose is to make fresh provision for the registration of entitled vessels in Bermuda, and it also makes provision with respect to the safety of navigation (sections 30–32, 35 and 50), prevention of oil pollution (sections 30, 31, 34, 35 and 50), inquiries (section 44) and crew agreements (section 46). Schedule 2 sets out Part I of the Merchant Shipping Act 1894 as it now applies in Bermuda.