

ST HELENA

REVISED EDITION OF THE LAWS, 2017

MARITIME & AVIATION LAW

PORTS ORDINANCE, 2016¹

*Ordinance 15 of 2016
In force 22 July 2016*

No amendments to Ordinance

*No subsidiary legislation under Ordinance, but see:
Gazette Notice No. 101 of 18 May 2022 declaring Jamestown Port*

PORTS ORDINANCE, 2016

ARRANGEMENT OF SECTIONS

**PART 1
PRELIMINARY**

1. Short title and commencement
2. Interpretation

**PART 2
POWER TO APPOINT HARBOUR MASTER AND DECLARE PORTS**

3. Appointment of Harbour Master
4. Power to declare ports

**PART 3
POWERS OF HARBOUR MASTER IN RELATION TO VESSELS**

5. Orders of Harbour Master
6. Boarding of vessels
7. Identity of Master
8. Directions to vessels in harbour waters
9. Enforcement of directions

**PART 4
OBSTRUCTIONS IN HARBOUR WATERS**

10. Removal of wrecks

¹ Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 18 May 2022.

11. Removal of obstructions other than vessels
12. Removal of projections
13. Cargo and other items lost
14. Abandoned equipment of vessels

PART 5
LIABILITY FOR DAMAGE AND INTERFERENCE

15. Damage by a vessel
16. Interference with port equipment

PART 6
OFFENCES RELATING TO VESSELS

17. Taking a vessel without consent
18. Stowaways
19. Unauthorised presence on board ship

PART 7
PROVISIONS RELATING TO NAVIGATION BY PERSONS AFFECTED BY ALCOHOL

20. Definitions
21. Alcohol offences
22. Breath tests and other specimens
23. Failure to provide specimen
24. Prescribed limit
25. Evidence
26. Further provisions as to specimens
27. Hospital patients
28. Power of arrest
29. Disqualification provisions

PART 8
ACCESS TO PORT AREA

30. Trespass in the port area
31. Power to question and search

PART 9
SAFETY AND SECURITY

32. Regulation of crowds
33. Power of arrest without warrant

PART 10
OTHER OFFENCES

34. Impersonation of Harbour Master
35. Obstructing officer in execution of duty

PART 11
MISCELLANEOUS

- 36. Service of documents
- 37. Regulations
- 38. Crown exemption
- 39. Repeal and transitional provisions

AN ORDINANCE to provide for the regulation, management and control of ports in St Helena, and of vessels in them; to make provision for enforcement of provisions of the international ship and port facility security code in St Helena; and for connected and incidental purposes.

**PART 1
PRELIMINARY**

Citation and commencement

1. This Ordinance may be cited as the Ports Ordinance, 2016, and comes into force on the date of publication.

Interpretation

2. In this Ordinance, unless the context otherwise requires—
- “**boat**” includes a lighter, barge, hulk, or any open or partly decked craft;
 - “**boat for hire**” means a boat let for hire for carrying persons, and includes a passenger boat;
 - “**certificate of competency**” means a certificate issued to a person under regulations made pursuant to section 37 authorising the person to use a boat or class or description of boats in harbour waters, and “**certificate**” is to be construed accordingly;
 - “**charge**” includes any fee, charge, rate, toll or due of every description which may for the time being, be authorised by this Ordinance or any regulations made under it;
 - “**competent authority**” means the national authority for St Helena under the International Ship and Port Facility Security Code implemented under the International Convention for the Safety of Life at Sea, 1974;
 - “**customs officer**” means any person appointed by the Governor as such by section 4 of the Customs and Excise Ordinance, 1999, or any statutory modification to or re-enactment of that section;
 - “**disqualified**” means disqualified by reason of an order made under section 29 from holding or obtaining a certificate of competency, and “**disqualification**” is to be construed accordingly;
 - “**goods**” includes motor vehicles, and all tangible personal property of any kind;
 - “**Government**” means the Government of St Helena;
 - “**Harbour Master**” means the person for the time being appointed by the Governor pursuant to section 3 and includes the deputy and assistants of a person so appointed;
 - “**harbour waters**” means the water within any port up to a limit of 3 miles from the coast, and “**waters**” is to be construed accordingly;
 - “**land**” includes any land for the time being covered by water, and any interest in land;
 - “**landing place**” means a wharf or other waterside landing place, pier, jetty and similar installation, and includes the approach from land to any such installation;
 - “**lighter**” includes a barge or other like craft for carrying goods;

- “**master**”, in relation to a vessel, means any person having or taking the command, charge or management of a vessel for the time being;
- “**mooring**” includes anchorage;
- “**navigating**”, in relation to a vessel, means any time when the vessel is in motion, and “**navigation**” is to be construed accordingly;
- “**owner**”, in relation to a vessel, includes the charterer;
- “**passenger boat**” means a boat used for carrying passengers, whether or not for reward;
- “**port**” means any area which is declared to be a port under section 4;
- “**port area**” means any area within a port or harbour waters that the Governor in Council may declare to be a port area by notice in the *Gazette*;
- “**port security officer**” means and includes the Harbour Master, deputy harbour master, every assistant harbour master, every port security guard appointed by the Harbour Master, and every customs officer and police officer;
- “**prescribed**” means provided for by regulations made under section 37;
- “**road**” means any highway or other place to which the public has access, and includes any bridge over which a road passes;
- “**rowing boat**” means a boat capable only of being propelled by oars;
- “**summarily**”, in relation to the recovery of expenses or charges, means proceedings issued by way of complaint in the Magistrates’ Court;
- “**vessel**” means every description of ship or boat, however propelled or moved, and includes anything constructed or used to carry persons or goods by water, and a seaplane on or in the water, a hovercraft and a hydrofoil vessel.

PART 2

POWER TO APPOINT HARBOUR MASTER AND DECLARE PORTS

Appointment of Harbour Master

3. (1) The Governor must appoint a Harbour Master who, subject to this Ordinance and any regulations made under it, is to have the control and management of ports in St Helena.

(2) The Governor may appoint a deputy Harbour Master and assistant Harbour Masters whenever the Governor considers it appropriate to do so.

(3) The Governor in Council may from time to time issue policy directions for guidance to the Harbour Master, who must comply with them in the exercise of all powers and duties contained in this Ordinance, or any regulations made under it.

Power to declare ports

4. The Governor in Council may, by order² published in the *Gazette*, declare any area of the coast and waters of St Helena to be a port, subject to final approval by the competent authority.

² *Jamestown Port declared by order published in Gazette Notice No. 101 of 18 May 2022*

PART 3 POWERS OF HARBOUR MASTER IN RELATION TO VESSELS

Orders of Harbour Master

5. (1) The Harbour Master may order the owner or master of any vessel within a port to—

- (a) move the mooring of the vessel to another place the Harbour Master specifies;
- (b) make a declaration, in writing, containing information sufficient to answer any query made by the Harbour Master in relation to the vessel, its cargo or crew.

(2) It is an offence for the owner or master of a vessel -

- (a) without reasonable cause to fail to obey an order under subsection (1) to move a vessel;
- (b) to fail to make a declaration when requested under that subsection; or
- (c) to make a declaration that the owner or master knows to be false.

Penalty: A fine of £500 or imprisonment for 3 months, or both.

Boarding of vessels

6. (1) The Harbour Master may board any vessel which is moored in harbour waters for the purpose of granting pratique, and in consideration of the grant of pratique may demand of the master payment of the prescribed fee.

(2) If payment of the prescribed fee is not made upon demand, the Harbour Master may—

- (a) refuse to grant pratique until the fee is paid; or
- (b) grant pratique and proceed to recover the fee summarily from the master, the owner or agent of the vessel.

(3) It is an offence for a person to -

- (a) receive any goods from any vessel moored in harbour waters; or
- (b) board or leave or make fast to any such vessel,

before the Harbour Master has boarded, and before the vessel has received pratique.

Penalty: A fine of £500.

Identity of Master

7. (1) The Harbour Master may require the owner of a vessel to supply, in writing, all information in the owner's possession as to the identity and present whereabouts of the person who at any particular time was the master of such vessel.

(2) It is an offence for an owner of a vessel of whom a requirement is made under subsection (1) -

- (a) without reasonable cause to fail to comply with the requirement; or
- (b) to supply any information in response to the requirement which the owner knows to be false.

Penalty: A fine of £500 or imprisonment for 3 months, or both.

(3) In any proceedings relating to the vessel or its master, any written information supplied pursuant to subsection (1) is admissible evidence for the purpose of determining the identity of the master of the vessel at a particular time.

Directions to vessels in harbour waters

8. (1) The Harbour Master may give directions applicable to a particular vessel, to all vessels, or to a specified class of vessels in harbour waters for the purpose of -

- (a) ensuring the safety of moored vessels at, or to property at, or forming part of, any landing place; or
- (b) securing the efficient conduct of the business of boarding, unloading, arriving at or departing from any landing place.

(1A) Without limiting subsection (1), directions given under it may relate to the—

- (a) movement, berthing or mooring of any vessel;
- (b) dispatch of the business of any vessel at any landing place;
- (c) disposition or use of the appurtenances or equipment of any vessel;
- (d) use of the motive power of any vessel;
- (e) embarking or landing of passengers;
- (f) loading or discharging of cargo, fuel, water or ships' stores;
- (g) use of ballast.

(2) The Harbour Master may give a direction requiring the immediate removal of a vessel from or to any other location within harbour waters if—

- (a) the vessel is on fire;
- (b) the vessel is in such a condition that, in the opinion of the Harbour Master, it is liable to become immobilised or waterlogged, or to sink;
- (c) the vessel is making any unlawful or improper use of harbour waters or any landing place;
- (d) the vessel is wilfully interfering with the use of harbour waters or any landing place by other vessels or the despatch of business in the harbour waters or at the landing place;
- (e) the removal of the vessel is, in the opinion of the Harbour Master, necessary to enable maintenance or repair work to be carried out to any landing place.

(3) Any direction given pursuant to this section may be given verbally or in writing, as the Harbour Master considers appropriate.

(4) The Harbour Master may issue directions to prohibit or limit any recreational activities during specified times or within specified areas of harbour waters, or to regulate the use of any recreational water craft in harbour waters in a manner that is consistent with regulations made under this Ordinance.

(5) A person who, without lawful authority or reasonable cause, fails to obey any direction given by the Harbour Master pursuant to this section commits an offence.

Penalty: A fine of £5,000 or imprisonment for 12 months, or both.

Enforcement of directions

9. (1) Without affecting any other remedy available to the Harbour Master, if any direction given pursuant to section 8 is not complied with in what, in the opinion of the Harbour Master, is a reasonable time, the Harbour Master may -

- (a) if practicable, put persons on board the vessel to carry out the direction given; or
- (b) otherwise cause the vessel to be handled in accordance with the terms of the direction.

(2) Subject to subsection (2A), if there is no person on board a vessel to attend to any direction given pursuant to section 8, the Harbour Master may proceed as if the direction had been given but not complied with.

(2A) The powers in subsection (2) must not be exercised—

- (a) in relation to a vessel other than a lighter - unless after reasonable enquiry has been made the master or owner of the vessel cannot be found; or
- (b) in relation to a lighter - unless it is obstructing the access to or exit from any landing place or otherwise interfering with navigation.

(3) The expenses incurred by the Harbour Master in the exercise of the powers conferred by this section may be recovered as if they were a charge by the Government in respect of that vessel.

PART 4 OBSTRUCTIONS IN HARBOUR WATERS

Removal of wrecks

10. (1) If, in the opinion of the Harbour Master, any vessel or part of a vessel is sunk, stranded or abandoned in harbour waters in such a manner as to be a danger or obstruction to safe navigation, the Harbour Master may—

- (a) take possession of and raise, remove or destroy the vessel or that part of it;
- (b) light or buoy the vessel or that part until it can conveniently be raised, removed or destroyed.

(1A) If the Harbour Master raises or removes a vessel or part of a vessel, he or she may, on demand made, and on payment of all expenses incurred, deliver to the owner or the owner's agent the vessel or part so raised or removed, and also any other goods recovered in consequence of the raising or removal.

(1B) In the absence of a demand and payment as contemplated by subsection (1A), the Harbour Master may sell, in a manner he or she thinks fit, the vessel or part or goods, and out of the proceeds of such sale, deduct all expenses incurred by him or her and deposit in the Bank of St Helena the surplus (if any) of such proceeds, in trust for the person or persons entitled to them.

(2) If the proceeds of sale of any vessel or part or goods raised or removed pursuant to subsection (1) are insufficient to fully reimburse the Harbour Master for all expenses he or she has incurred in the raising or removal, the Harbour Master may recover the balance of the expenses summarily from the owner.

Removal of obstructions other than vessels

11. (1) Without affecting the powers in section 10, the Harbour Master may remove—

- (a) any goods, other than a vessel, causing or likely to become an obstruction or impediment to the safety of any vessel navigating or moored in harbour waters, or to persons using them;
- (b) any goods causing, or likely to become an obstruction or impediment to the proper use of any landing place.

(2) If any goods removed by the Harbour Master under subsection (1) are so marked as to be readily identifiable as the property of a particular person or persons, the Harbour Master must, within one month of the removal, give written notice in accordance with subsection (5) to that person or those persons.

(2A) If -

- (a) possession of any goods in response to a notice under subsection (2) is not retaken within the period specified in, and in accordance with the terms of, the notice; or
- (b) any goods are not marked as mentioned in subsection (2), and are not within 3 months of the date of their removal proved to the reasonable satisfaction of the Harbour Master to belong to any identifiable person or persons,

the ownership of such goods thereupon vests in the Government.

(3) The Harbour Master may, at a time and in a manner he or she considers appropriate, dispose of any goods referred to in subsection (2A)(b) which are of a perishable nature, or the custody of which involves unreasonable expense or inconvenience, even if the ownership of such goods has not yet vested in the Government pursuant to this section.

(3A) If goods as described in subsection (3) are sold, the proceeds of sale must be applied in payment of the expenses incurred under this section in relation to the goods, and any balance—

- (a) must be paid to any person who within 3 months from the date of removal proves to the reasonable satisfaction of the Harbour Master that the person was the owner of the goods at that time; or
- (b) if within that period no person proves ownership at that time, belongs to the Government.

(4) If any goods removed under this section—

- (a) are sold by the Harbour Master and the proceeds of sale are insufficient to reimburse the total expenses incurred in the exercise of the powers of removal and sale; or
- (b) cannot be sold,

the Harbour Master may recover summarily the deficiency or the whole of the expenses, as the circumstances require, from the person who was the owner at the time the goods were abandoned or lost.

(5) Any notice given under subsection (2) must -

- (a) specify the goods removed; and

- (b) state that, upon proof of ownership to the reasonable satisfaction of the Harbour Master, possession may be retaken at the place named in the notice within the time specified in it (being not less than 14 days after the date of the notice) subject to payment of any expenses incurred in the removal.

(6) In the exercise of the powers under this section the Harbour Master must not remove anything placed or constructed by the Government or by any person or body of persons exercising statutory functions.

Removal of projections

12. (1) For the purposes of this section, “projection” means anything which projects over any part of harbour waters, and includes rocks, stairs, trees, bushes or other plants, but does not include any such thing authorised by Ordinance or by a works licence granted by the Government to be placed or constructed.

(2) If any projection is, in the opinion of the Harbour Master, a danger to the navigation of harbour waters the Harbour Master may remove it, and may recover the expenses of such removal from the owner or occupier of the land on which the projection was situated.

(3) Before exercising the powers under subsection (2), the Harbour Master must, if it is reasonably practicable to do so, give notice of the intention to do so to the owner or occupier of the land on which the projection is situated.

(4) If any projection is, in the opinion of the Harbour Master, an obstruction or inconvenience to the navigation of harbour waters but not a danger to them, the Harbour Master may, by notice in writing, require the owner or occupier of the land on which the projection is situated to remove the projection within a time, not being less than 7 days, specified in the notice.

(5) A person aggrieved by a notice served under subsection (4) may appeal to the Magistrates’ Court.

(6) If -

(a) a person to whom notice is given under subsection (4) fails to comply with its terms within the time specified in the notice; or

(b) the person having appealed, the appeal is not allowed within the time specified in the notice or any other time the Court specifies,

the Harbour Master may exercise the powers contained in subsection (2).

(7) Any notice given under subsection (4) must refer to the right of appeal provided for by subsection (5).

(8) In any proceedings to recover expenses pursuant to subsection (2), the Magistrates’ Court may enquire whether the Harbour Master might reasonably have proceeded alternatively under subsection (4), and if the court so determines, must decline to award such expenses.

Cargo and other items lost

13. (1) The master of a vessel from which any anchor, cable, cargo, apparel or other goods have slipped or become lost in harbour waters must-

- (a) immediately buoy the spot; and
- (b) cause to be delivered to the Harbour Master a full report, in writing, of the loss and of the position of the buoy.

(2) All expenses incurred by the Harbour Master in locating, raising and removing any goods lost in harbour waters may be recovered summarily from the master of the vessel to which they belonged.

(3) If the master has left St Helena before repaying any and all expenses for which the master of a vessel is liable under subsection (2), the owner, agent and consignee of the vessel at the time of the loss are jointly and severally liable for payment of such expenses.

(4) It is an offence for the master of a vessel who is liable to comply with subsection (1) to—

- (a) fail without reasonable cause to buoy the spot where any anchor, cable, cargo, apparel or other goods have slipped or become lost in harbour waters;
- (b) fail to supply a report of the action taken to comply with that subsection; or
- (c) supply a report containing any information which the master knows to be false.

Penalty: A fine of £500 or imprisonment for 3 months.

Abandoned equipment of vessels

14. (1) Any person who finds or otherwise comes into possession of any abandoned rowing boat or anchor, chain or other equipment which, from its appearance, can be reasonably concluded to have formerly belonged to any vessel, must notify the Harbour Master of the location of the boat or equipment.

(2) A person liable to comply with subsection (1) who fails without reasonable cause to do so within 7 days of the finding or coming into possession commits an offence.

Penalty: A fine of £500.

PART 5 LIABILITY FOR DAMAGE AND INTERFERENCE

Damage by a vessel

15. (1) There is absolute liability to pay to the Harbour Master the full cost of making good any damage caused by any means whatsoever by any vessel, or by any person employed on or in connection with any vessel, to any landing place or to any goods belonging to the Government on a landing place or in harbour waters.

(2) The Harbour Master may recover summarily the cost of making good any such damage from either the master or the owner of the vessel that causes the damage.

(3) Without affecting any other remedy available, the Harbour Master may detain and exercise the right of lien upon any vessel causing such damage until the cost of making good the damage has been paid or security for the cost, acceptable to the Harbour Master, has been given.

Interference with port equipment

16. It is an offence for a person -

- (a) without lawful authority, to remove, tamper with, or otherwise interfere with any item of equipment, property, structure or part of a structure within the port area; or
- (b) to attempt to commit any such act.

Penalty: A fine of £2,000 or imprisonment for 6 months, or both.

PART 6 OFFENCES RELATING TO VESSELS

Taking a vessel without consent

17. (1) It is an offence for a person, without the consent of the owner or other lawful authority, to -

- (a) take, cause to be taken, or use any vessel in harbour waters; or
- (b) allow himself or herself to be carried on any such vessel.

Penalty: A fine of £10,000 or imprisonment for 3 years, or both.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that the person believed on reasonable grounds that he or she had lawful authority, or that the owner would, if asked, have consented to the taking or use of the vessel.

Stowaways

18. A master of a vessel who permits, suffers or facilitates in any way the landing in St Helena of any person who is or has been a stowaway on the vessel, without the permission in writing of the Governor, commits an offence.

Penalty: A fine of £10,000 or imprisonment for 12 months, or both, in respect of each person who was a stowaway on the vessel.

Unauthorised presence on board ship

19. (1) It is an offence for a person, not being a person who is either engaged in Her Majesty's service or who has lawful authority to do so or other reasonable excuse, to—

- (a) go on board a relevant ship without the consent of the master or of any other person authorised to give it; or
- (b) remain on board a relevant ship after being requested to leave by the master or a port security officer.

Penalty: A fine of £5,000 or imprisonment for 12 months, or both.

(2) In this section, “**relevant ship**” means any ship, lighter, boat, raft, or similar vessel which is within the port area.

PART 7
PROVISIONS RELATING TO NAVIGATION BY PERSONS AFFECTED BY
ALCOHOL

Definitions

- 20.** For purposes of this Part—
“approved device” means either an approved screening device or an approved measuring device;
“approved measuring device” or **“approved screening device”** means a device approved as such under section 60(1) of the Road Traffic Ordinance, 2016;
“prescribed limit” has the meaning provided in section 24.

Alcohol offences

21. (1) A person who navigates or attempts to navigate any vessel in harbour waters, having consumed so much alcohol that the proportion of it in the person’s breath, blood or urine exceeds the prescribed limit, commits an offence.
 Penalty: A fine of £2,500 or imprisonment for 18 months, or both.

(2) A person who is in charge of any vessel in harbour waters, having consumed so much alcohol that the proportion of it in the person’s breath, blood or urine exceeds the prescribed limit, commits an offence.
 Penalty: A fine of £2,000 or imprisonment for 12 months, or both.

(3) Without affecting subsection (1), a person who navigates or attempts to navigate a vessel in harbour waters when unfit to do so through drink or drugs commits an offence.
 Penalty: A fine of £5,000 or imprisonment or 3 years, or both.

(4) Without affecting subsection (2), a person who is in charge of a vessel in harbour waters when unfit to navigate through drink or drugs commits an offence.
 Penalty: A fine of £2,000 or imprisonment for 12 months, or both.

(5) In this section **“unfit to navigate through drink or drugs”** means under the influence of drink or drugs to such an extent as to be incapable of having proper control of a vessel.

Breath tests and other specimens

22. (1) A police officer who has reasonable cause to suspect that any person—
 (a) has committed or is committing an offence under this Ordinance; or
 (b) was navigating or in charge of a vessel at a time when the vessel was involved in an accident,
 may require that person to supply a specimen of breath for analysis using an approved screening device.

(2) If an approved screening device is not readily available to a police officer who is entitled to make a requirement of any person as mentioned in subsection (1), the officer may

require the person to accompany the officer to a police station or other place where an approved screening device or an approved measuring device is available for use.

(3) If the result of an analysis of breath under subsection (1) leads a police officer to suspect that the person who supplied the specimen might be guilty of an offence against this Part, the officer may arrest the person; and whether or not the officer arrests the person, may require the person to supply a further 2 specimens of breath for analysis, using an approved measuring device.

(4) A police officer who is entitled to require a person to provide a specimen of breath for analysis using an approved screening device may, if an approved measuring device is available for use at the location where that requirement would otherwise be made, instead of making that requirement, require the person to supply 2 specimens of breath for analysis using an approved measuring device.

(5) If it appears to any police officer who is entitled to require any person to supply a specimen of breath for the purposes of this section that, by reason of—

- (a) the inability of the person to comply with such a requirement;
- (b) the unavailability of an approved device or a reliable approved device; or
- (c) any other cause,

it is not practicable to require such a specimen to be provided, the officer may require the person to accompany the officer to a police station or hospital, and there to provide either a specimen of blood or a specimen of urine (the decision as to which type of specimen to require being made by the officer) for analysis.

(6) A specimen of blood must not be taken for the purposes of this section except by or under the direct supervision of a public officer employed at the General Hospital in Jamestown who is qualified to take blood samples.

(7) If it appears to a police officer of the rank of Inspector or above (in this subsection called “the senior officer”) that a person whom a police officer has power to require to provide a specimen of breath under subsection (1)(b), arising out of an accident in which injury was caused to any person other than the suspect, is in any building, vehicle, vessel or other closed place, and that access to that place cannot be gained by any other means without allowing an opportunity for the ends of justice to be defeated, the senior officer may order the use of such force as is reasonably necessary in order to gain access to that closed place.

Failure to provide specimen

- 23. (1)** It is an offence for a person, without reasonable cause, to fail to –
- (a) supply any specimen of breath, blood or urine which the person has been required to provide under section 22; or
 - (b) accompany a police officer to a police station, hospital, or other place when required to do so under that section.

Penalty: A fine of £2,500 or imprisonment for 18 months, or both.

- (2) In this section “**fail**” includes “refuse”.

(3) A person fails to provide a specimen if the person fails to supply it in a manner and quantity suitable for the purpose for which it is required.

Prescribed limit

24. The prescribed limit referred to in section 21 is whichever is appropriate of the following limits, namely—

- (a) 35 microgrammes of alcohol per 100 millilitres of breath;
- (b) 80 milligrammes of alcohol per 100 millilitres of blood;
- (c) 107 milligrammes of alcohol per 100 millilitres of urine.

Evidence

25. (1) In every case of an offence alleged to have been committed against section 21, evidence of the result of any analysis of any specimen of breath, blood or urine taken under section 22 is admissible in evidence, and the court must, subject to subsection (1A), presume that the proportion of alcohol in the defendant's breath, blood or urine at the time of the alleged offence was not less than the proportion revealed by such analysis.

(1A) The presumption in subsection (1) must not be made if the court is satisfied (by evidence on oath) that the defendant consumed such an amount of alcohol, after he or she ceased to navigate or be in charge of the vessel, as would be likely to account for the amount by which the result of the analysis exceeded the prescribed limit.

(2) Evidence of the proportion of alcohol in a specimen of breath may be given by the police officer who operated the approved device by which the specimen was analysed or by the production of a certificate of the kind described in subsection (3)(a), but a person must not be convicted unless it is proved—

- (a) that 2 separate specimens of breath were analysed by an approved measuring device; and
- (b) that the lower of the 2 results disclosed a proportion of alcohol in the specimen which exceeded the prescribed limit.

(3) Evidence of the proportion of alcohol or drug in a specimen of breath, blood or urine may, subject to subsections (5) and (6), be given by the production of a document or documents purporting to be whichever of the following is appropriate, that is to say—

- (a) a statement automatically produced by the approved measuring device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by a police officer (which may but need not be contained in the same document as the statement) that the statement relates to a specimen provided by the accused at the date and time shown in the statement; or
- (b) a certificate signed by an approved analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.

(4) Subject to subsections (5) and (6), evidence that a specimen of blood was taken from the accused by a public officer referred to in section 22(6) may be given by the production of a document purporting to certify that fact and to be signed by such public officer.

(5) Subject to subsection (6) a document purporting to be such a statement or such a certificate (or both such a statement and such a certificate) as is mentioned in subsection (3)(a) is admissible in evidence on behalf of the prosecution for purposes of this section.

(6) A document purporting to be a certificate (or so much of a document as purports to be a certificate) is not so admissible if the accused, not later than 3 days before the hearing or within any further time the court in special circumstances allows, has served notice on the prosecutor requiring the attendance at the hearing of the person by whom the document purports to be signed.

(7) In this section “**approved analyst**” has the meaning given that term by section 59(2) of the Road Traffic Ordinance, 2016.

Further provisions as to specimens

26. (1) Every specimen of blood or urine provided by a person under this Part must be divided into 2 approximately equal parts, and—

- (a) subject to paragraph (b), only one part is to be analysed, and the other part (“**the retained part**”) must be preserved until the conclusion of all proceedings for any offence in connection with which the specimen was provided;
- (b) the court which tries any alleged offence upon the trial of which the prosecutor relies upon evidence of the result of the analysis of a specimen of blood or urine provided under this Part, may (if it appears to be in the interest of justice so to do) order that the retained part is to be analysed, and adjourn the hearing to enable such analysis to be carried out;
- (c) a court which makes an order under paragraph (b) may order that the analysis be carried out by or under the supervision of any medical officer the court thinks fit, and a medical officer to whom such an order is addressed must comply with the order and send a report of the result of the analysis, as soon as practicable, to the Clerk of the Peace.

(2) A specimen of urine must be provided within one hour of being required, and after the provision of a previous specimen of urine (such previous specimen being discarded).

Hospital patients

27. If a person is at a hospital as a patient, a police officer must not require the person to provide any specimen of breath, blood or urine for the purposes of this Part unless the medical officer in charge of the patient’s treatment has been notified of the officer’s intention to require the specimen and has confirmed that such a requirement would not be prejudicial to the health or treatment of the patient.

Power of arrest

28. A police officer may arrest without warrant a person whom the officer reasonably suspects of committing an offence against any of sections 21(3), 21(4), or 23(1).

Disqualification provisions

29. (1) If a person is convicted of an offence contrary to any of sections 17, 21 or 23, this section applies with respect to the making of an order that the person may or must be disqualified from using or operating in harbour waters any vessel, or a particular class or description of vessel.

(2) The court may order that any person convicted of an offence under section 17 is disqualified from obtaining or holding a certificate of competency in respect of the use of vessels generally, or vessels only of the class or description to which the offence relates, for a period the court considers appropriate .

(3) Subject to subsection (4), if a person is convicted of an offence contrary to section 21 or section 23, the court must order the person to be disqualified from holding or obtaining a certificate of competency in respect of all vessels—

- (a)* on a first conviction - for a period of not less than one year;
- (b)* on a second or subsequent conviction, for a period of not less than 3 years.

(4) If a person is convicted of an offence contrary to section 21, section 23, or subsection (6) of this section, and there is evidence, given upon oath which, in the opinion of the court, is sufficient to establish special reasons, as defined by subsection (5), the court may either refrain from making any order of disqualification, or may order disqualification for a shorter period than that prescribed in subsection (4).

(5) For the purposes of subsection (4), no fact or circumstances may be held to be a special reason unless it or they relate to the commission of the offence, as distinct from relating to or concerning the offender.

(6) A person who acts as coxswain of or otherwise uses, manages or controls a vessel in harbour waters during the subsistence of an order made under this section disqualifying that person from holding or obtaining a certificate of competency in respect of any vessel, or of a class or description of vessel of the same type, commits an offence. Penalty: A fine of £10,000 or imprisonment for 3 years, or both and, subject to subsections (4) and (5), disqualification for a further period of not less than one year, consecutive to the period of disqualification subsisting at the time of the offence.

PART 8 ACCESS TO PORT AREA

Trespass in the port area

- 30. (1)** It is an offence for a person -
- (a)* without the consent of a port security officer or other lawful authority to enter the port area; or
 - (b)* to remain in the port area when requested to leave by a port security officer.

Penalty: A fine of £5,000 or imprisonment for 12 months, or both.

(2) A person is not guilty of an offence under subsection (1) unless it is proved that the person entered the port area or remained in the port area when requested to leave by a port security officer at a time when the Harbour Master had caused a sign to be prominently displayed at the entrance to the wharf to the effect that a person commits an offence if he or

she enters the port area without the consent of a port security officer or remains in the port area when requested to leave by a port security officer.

Power to question and search

- 31.** (1) Every person entering the port area must -
- (a) answer any questions a port security officer put to the person with respect to the purpose of the person's entry, or concerning any baggage or other property carried with the person; and
 - (b) if so required by the port security officer, produce that baggage or other property for examination at a place and in a manner the officer directs.
- (2) It is an offence for a person to -
- (a) make a false statement to a port security officer, in relation to the purpose of the person's entry, or concerning any baggage or other property carried with the person; or
 - (b) refuse to produce any baggage or other property carried with the person when requested to do so in accordance with section 31(1).

Penalty: A fine of £5,000 or imprisonment for 12 months, or both.

PART 9 SAFETY AND SECURITY

Regulation of crowds

32. (1) The Director of Police, after consultation with the Harbour Master, with a view to maintaining order and securing the safety of the public, may give any orders the Director of Police considers expedient for the purpose of regulating the passage of vessels in harbour waters, or for regulating the number of persons permitted access to any landing place, on any occasion when the Director of Police has reason to believe crowds of persons are likely to assemble.

(2) The Harbour Master or any police officer may board any vessel, the master of which refuses or neglects to comply with an order given pursuant to subsection (1), for the purpose of taking any measures the Harbour Master or the police officer considers necessary for carrying into effect the objects of the order.

- (3) It is an offence for a person to -
- (a) refuse or neglect to obey an order given pursuant to subsection (1);
 - (b) impede the right of access to a vessel under any such order, or
 - (c) otherwise obstruct the Harbour Master or any police officer in the exercise of their powers under this section.

Penalty: A fine of £5,000 or imprisonment for 12 months, or both.

Power of arrest without warrant

33. The Harbour Master, his or her deputy, any assistant harbour master or any police officer or customs officer may arrest, without warrant, any person whom any of them has reasonable grounds to suspect is guilty of committing or attempting to commit an offence under this Ordinance which carries a term of imprisonment.

PART 10 OTHER OFFENCES

Impersonation of Harbour Master

- 34.** It is an offence for a person -
- (a) with intent to deceive, to impersonate the Harbour Master; or
 - (b) to make any statement or do any act calculated falsely to suggest that the person is acting under the authority of or on behalf of the Harbour Master.

Penalty: A fine of £2,000 or imprisonment for 6 months, or both.

Obstructing officer in execution of duty

35. A person who assaults, resists, or obstructs any port security officer in the lawful execution of his or her duty commits an offence.

Penalty: A fine of £10,000 or imprisonment for 5 years, or both.

PART 11 MISCELLANEOUS

Service of documents

36. Any notice or other document required or authorised by or under this Ordinance to be given to or served upon a person—

- (a) being a corporate body, society or association - may be duly given to or served upon the secretary, manager or other officer of that corporate body, society or association;
- (b) being a partnership - may be duly given or served by addressing the notice or document to the partnership, identifying the partnership by the name or style under which its business is carried on;
- (c) being an individual - may be duly given or served by delivering it to him or her or by leaving it at or posting it to his or her last known address.

Regulations

37. The Governor in Council may make regulations for the further and better execution of this Ordinance and, without limiting this power, such regulations may provide for—

- (a) anything which by this Ordinance is required or permitted to be prescribed;
- (b) the repair, maintenance and preservation of any land or landing place, road or goods;
- (ba) the maintenance of good order and safe navigation of vessels;
- (c) the safety of persons entering upon any landing place or road adjacent to a landing place for any purpose, including disembarking from or boarding any vessel;
- (d) the mooring, removal and general navigation of vessels of all descriptions, and the packing, landing, deposit or removal of firearms and ammunition, gunpowder, explosives or other dangerous goods;
- (e) the watering, ballasting, loading and general discharging of the cargo of vessels, whether within harbour waters or on any landing place;

- (f) the management and control generally of all vessels, or any particular class of vessel, in harbour waters, including any requirements pertaining to the arrival in or departure from harbour waters and the raising, removal and destruction of wrecks or other obstructions;
- (g) the licensing of vessels, or any class of vessel permitted to operate in harbour waters, and the fees to be charged for and the conditions attached to such licences;
- (h) the renewal of such licences, and their suspension or revocation;
- (i) tests of competence to be undertaken by applicants for certificates, and conditions which may be attached to certificates issued;
- (j) the condition and examination of vessels, or any class of vessel, the fees to be charged for such examination, and the numbering or marking of such vessels;
- (k) the number of persons permitted to be carried as passengers in any vessel or class of vessel, the lights and safety equipment to be carried on board, and provisions for the safety of passengers carried on such vessels;
- (l) the establishment of a Port Authority, the appointment, resignation, and dismissal of members of it, and the powers, duties and remuneration of members of the Board;
- (m) provisions authorising any person or class of persons to sell, buy or exchange any goods in the port area, including the boarding of any vessel moored in harbour waters for that purpose, and the fees to be charged for such authorisation;
- (n) provisions authorising the Harbour Master or the Director of Police to permit or prohibit any person boarding or disembarking from any vessel moored in harbour waters, in circumstances considered appropriate, and conditions which may be attached to any permission granted;
- (o) provisions for the order of precedence between different classes of vessels, whether moored or navigating in harbour waters;
- (p) provisions for circumstances which will constitute an offence, and the respective penalties for such offences, not exceeding a penalty of a fine £2,000 and/or 6 months imprisonment on conviction for any particular offence;
- (q) the documents necessary and the procedure for the making, determination and notification of the result of appeals by persons aggrieved by any decision or determination of the Harbour Master or Director of Police under this Ordinance;
- (r) the exemption by a specified authority from all or any of the provisions of this Ordinance in respect of any person, vessel, or of any respective class of person or vessel, for a period and in circumstances considered appropriate.

Crown exemption

38. With the exception of the provisions of this Ordinance relating to dangerous projections and the removal of obstructions, nothing in this Ordinance affects prejudicially any estate, interest, right, power, privilege or exemption of the Crown and, in particular, nothing in this Ordinance authorises the Harbour Master to take, use or interfere with any land, goods or rights therein belonging to the Crown in right of the Government or used for the purposes of any Government department.

Repeal and transitional provisions

39. (1) The Harbours Ordinance, Cap. 47 and the Port Security Ordinance, 2006, are repealed.

(2) Notwithstanding the repeal of the Harbours Ordinance, Cap. 47 by subsection (1), any person appointed immediately before the repeal as Harbour Master, deputy harbour master or assistant harbour master under section 3 of that Ordinance is deemed to have been respectively appointed as such under section 3 of this Ordinance.
