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Merchant Shipping (Investigation of Marine Casualties) Act, 2000



Number 14 of 2000

MERCHANT SHIPPING (INVESTIGATION OF MARINE CASUALTIES) ACT, 2000

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Number 14 of 2000

MERCHANT SHIPPING (INVESTIGATION OF MARINE CASUALTIES) ACT, 2000

AN ACT TO PROVIDE FOR THE INVESTIGATION OF MARINE CASUALTIES, THE PUBLICATION OF REPORTS ON THE INVESTIGATION OF MARINE CASUALTIES, THE CONDUCTING OF INQUIRIES INTO MARINE CASUALTIES, THE REPEAL OF CERTAIN PROVISIONS OF THE MERCHANT SHIPPING ACT, 1894, RELATING TO MARINE CASUALTIES, THE AMENDMENT OF THE MERCHANT SHIPPING ACT, 1992, IN RELATION TO THE REGULATION AND USE OF PLEASURE CRAFT AND OTHER VESSELS, THE AMENDMENT OF THE SEA POLLUTION ACT, 1991, THE ADVANCE OF MONEYS BY THE MINISTER FOR THE MARINE AND NATURAL RESOURCES FOR MARINE OR NATURAL RESOURCE BASED TOURISM OR HERITAGE PROJECTS, AND TO PROVIDE FOR RELATED MATTERS. [27th June, 2000]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

Preliminary

Short title,
commencement,
construction,

1.— (1) This Act may be cited as the Merchant Shipping (Investigation of Marine Casualties) Act, 2000.

collective citation
and effect.

(2) This Act shall come into operation on such day or days as, by order or orders made by the Minister under this section, may be fixed therefor, either generally or with reference to a particular purpose or provision, and different days may be so fixed for different purposes and different provisions.

(3) This Act shall be construed as one with the Merchant Shipping Acts, 1894 to 1998, and may be cited together with those Acts as the Merchant Shipping Acts, 1894 to 2000.

(4) This Act shall not apply to vessels of the Naval Service of the Defence Forces.

Interpretation.

2.—(1) In this Act, unless the context otherwise requires—

“Board” means the Marine Casualty Investigation Board established by [section 7 \(1\)](#);

“Chairperson” means the Chairperson of the Board, and includes the Deputy Chairperson while acting as or performing the functions of the Chairperson;

“Chief Surveyor” means the person from time to time holding (including temporarily), or performing the duties of, the position with the designation Chief Surveyor in the Marine Survey Office of the Department of the Marine and Natural Resources;

“functions” includes powers and duties;

“investigation” means an investigation of a marine casualty in accordance with *Part 3*;

“investigator” means a person appointed under [section 26 \(2\)](#) to be an investigator;

“Irish waters” includes the territorial sea, the waters on the landward side of the territorial sea, and the estuaries, rivers, lakes and other inland waters (whether or not artificially created or modified), of the State;

“marine casualty” means an event or process which causes or poses the threat of—

(a) death or serious injury to a person;

(b) the loss of a person overboard;

(c) significant loss or stranding of, or damage to, or collision with, a vessel or property; or

(d) significant damage to the environment,

in connection with the operation of—

(i) a vessel in Irish waters;

(ii) an Irish registered vessel, in waters anywhere; or

(iii) a vessel normally located or moored in Irish waters and under the control of a resident of the State, in international waters contiguous to Irish waters,

and includes an accident or damage referred to in [section 26 \(1\) \(b\)](#);

“Minister” means the Minister for the Marine and Natural Resources;

“owner”, in relation to a vessel, means—

(a) where it is owned by the State or another state and operated by a person who in the State or that other state, as the case may be, is registered as its operator, the person so registered, and

(b) in any other case—

(i) the person registered as its owner; or

(ii) the person who directly or indirectly owns the vessel,

and includes any part-owner, charterer, manager or operator of the vessel;

“record” includes any memorandum, book, plan, chart, map, drawing, diagram, pictorial or graphic work or other document, any photograph, film or recording (whether of sound or images or both), any form in which data (within the meaning of the [Data Protection Act, 1988](#)) are held, any form (including machine-readable form) or thing in which information is held or stored manually, mechanically or electronically, and anything that is a part or copy, in any form, of any of, or any combination of, the foregoing;

“report” means a published report of an investigation into a marine casualty, in whatever form the report may take;

“tribunal” means a person or persons appointed under [section 38 \(2\) \(a\)](#) to hold an inquiry;

“vessel”, in relation to a marine casualty, means a vessel or craft (or part of a vessel or craft) which at the time of the casualty—

(a) is registered in the State, or

(b) is located in the State (including in Irish waters), or

(c) being a vessel normally located or moored in Irish waters, is under the control of a resident of the State in international waters contiguous to Irish waters,

and capable of being used, or intended to be used, for navigation or transportation on water, but does not include a seaplane.

(2) In this Act, including the *Schedule*—

(a) a reference to any other enactment shall, except to the extent that the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act,

(b) a reference to a section or Part is a reference to a section or Part of this Act, unless it is indicated that reference to some other enactment is intended,

(c) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and

(d) a reference to the *Schedule* is a reference to the *Schedule* to this Act.

Regulations.

3.—(1) The Minister may make regulations for such matters as are permitted or required by or under this Act to be prescribed by regulations and may make such other regulations as are necessary or expedient for the purpose of giving effect to this Act.

(2) Regulations made under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary.

Laying of orders and regulations before Houses of Oireachtas.

4.—Every order (other than an order under [section 1 \(2\)](#)) and every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

- Expenses of Minister. **5.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.
- Repeals. **6.**—Sections 425, 426, 464, 465, 466, 467, 468 and 728(a) of the Merchant Shipping Act, 1894, are hereby repealed.

PART 2

Marine Casualty Investigation Board

Marine Casualty Investigation Board. **7.**—(1) There is hereby established, on such day as shall be appointed for that purpose by order of the Minister, a body to be known as Board Imscrúdú Taismí Muirí or, in the English language, the Marine Casualty Investigation Board, to investigate marine casualties and publish reports of such investigations and to perform such other functions as are assigned to it by or under this Act.

(2) The *Schedule* shall have effect in relation to the Board.

(3) The Board shall have such powers as are necessary for or incidental to the performance of its functions under this Act.

Independence of Board. **8.**—The Board shall be independent of the Minister in the performance of its functions and, in general, shall be independent of any other person or body whose interests could conflict with the functions of the Board.

Composition of Board. **9.**—(1) The Board shall consist of—

(a) three persons appointed by the Minister;

(b) the Chief Surveyor; and

(c) the Secretary-General of the Department of the Marine and Natural Resources, or his or her nominee.

(2) The Minister shall appoint one of the persons appointed under *subsection (1)(a)* to be the Chairperson of the Board and another to be its Deputy Chairperson to perform the duties of the Chairperson during any vacancy in the office of the Chairperson or where the Chairperson is absent from, or for any reason is unable to perform the duties of, his or her office.

Tenure of office of Chairperson and members of Board appointed by Minister. **10.**—(1) Subject to this section—

- (a) the Chairperson shall hold office as Chairperson and member of the Board for a period of 5 years, and may be re-appointed for a second or subsequent term of office in either or both capacities,
 - (b) the other members of the Board appointed under [section 9 \(1\)\(a\)](#) shall hold office for such period, not exceeding 5 years, as shall be specified by the Minister when appointing them, and may be re-appointed for a second or subsequent term of office not exceeding 5 years, and
 - (c) a member of the Board holding office as a nominee of the Secretary-General of the Department of the Marine and Natural Resources shall hold office until such time as the Secretary-General nominates a replacement.
- (2) The Chairperson or other member of the Board appointed under [section 9 \(1\)\(a\)](#) may resign the office of Chairperson or member, as the case may be, by letter addressed to the Minister, and the resignation shall take effect on the date of the receipt of the letter by the Minister.
- (3) The Chairperson or other member of the Board shall vacate the office of Chairperson and member on attaining the age of 70 years.
- (4) Where the Chairperson or other member of the Board—
- (a) accepts nomination as a member of Seanad Éireann,
 - (b) is nominated as a candidate for election to either House of the Oireachtas or to the European Parliament, or
 - (c) is regarded pursuant to Part XIII of the Second Schedule to the [European Parliament Elections Act, 1997](#), as having been elected to the European Parliament,
- he or she shall thereupon cease to be the Chairperson or a member of the Board.
- (5) The Minister may remove the Chairperson or other member of the Board from office—
- (a) if the Chairperson or member becomes incapable through ill-health of effectively performing his or her functions,
 - (b) for stated misbehaviour, or
 - (c) notwithstanding [section 8](#), if the Chairperson's or member's removal appears to the Minister to be necessary for the effective performance by the Board of its functions,

and the Minister shall cause to be laid before each House of the Oireachtas a statement in writing of the reasons for any such removal.

(6) Where the Chairperson or other member of the Board—

(a) is adjudged bankrupt or makes, under the protection or procedure of a court, a composition or arrangement with creditors, or

(b) is convicted on indictment by a court of competent jurisdiction,

he or she shall thereupon be disqualified from holding, and shall cease to hold, office as Chairperson or member of the Board.

Remuneration, etc., of Chairperson and members of Board appointed by Minister.

11.—There shall be paid by the Board to the Chairperson and each other member of the Board appointed under [section 9 \(1\) \(a\)](#), such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Finance, determines.

Chairperson to ensure efficient performance of functions of Board.

12.—(1) It shall be the function of the Chairperson to ensure the efficient performance of the functions of the Board.

(2) Where the Chairperson is of the opinion that the conduct of a member of the Board has been such as to bring the Board into disrepute or has been prejudicial to the effective performance by the Board of its functions, the Chairperson may, in his or her discretion—

(a) require the member to attend before him or her for interview, and, on the member so attending, interview the member privately and inform the member of that opinion, or

(b) otherwise investigate the matter and, if he or she considers it appropriate to do so, report to the Minister the result of the investigation.

Meetings and procedure of Board.

13.—(1) The Board shall hold such meetings as are necessary for the performance of its functions.

(2) Subject to any provision of this Act which regulates, or otherwise affects, the procedure of the Board, the Board shall regulate its own procedure.

(3) The Board may perform any of its functions through a person who has been duly authorised by the Board to perform those functions.

Quorum, vacancies,
etc.

14.—(1) The quorum for a meeting of the Board shall be the Chairperson or Deputy Chairperson and 2 other members.

(2) Subject to *subsection (1)*, the Board may act notwithstanding a vacancy in the office of Chairperson, Deputy Chairperson or among the other members.

(3) Where a vacancy occurs in the office of Chairperson, Deputy Chairperson or other member appointed under [section 9 \(1\) \(a\)](#), the Minister shall, as soon as practicable, take steps to fill the vacancy.

(4) Where the office of Chief Surveyor is vacant, the Secretary-General of the Department of the Marine and Natural Resources shall nominate a further member to the Board until such time as the office of Chief Surveyor is filled.

Secretary of Board.

15.—An officer of the Minister who is an established civil servant for the purpose of the [Civil Service Regulation Act, 1956](#) , and who is seconded to the Board for that purpose, either on a whole-time or part-time basis, shall act as secretary of the Board.

Consultants,
advisers and
investigators.

16.—(1) The Board may, from time to time, engage such consultants, advisers and investigators (including investigators nominated by the Chief Surveyor from the Marine Survey Office of the Department of the Marine and Natural Resources) as it considers necessary for the performance of its functions and any fees due to a consultant or adviser or investigator (other than an investigator from the Marine Survey Office) so engaged shall be paid by the Board out of moneys made available by the Oireachtas.

(2) A person may notify the Board in writing of his or her willingness to be engaged by the Board as a consultant, adviser or investigator and give to the Board particulars of his or her qualifications and experience, and the Board shall maintain a list of such persons.

(3) The Board shall, in engaging a consultant, adviser or investigator under this section, have regard to the list maintained under *subsection (2)*, but nothing in this subsection shall be construed as precluding the Board from engaging as a consultant, adviser or investigator a person whose name is not on the list.

(4) The Board shall include in its annual report a statement of the names of the persons, if any, engaged pursuant to this section during the year to which the report relates.

Disclosure of
interests.

17.—(1) Where the Chairperson or other member of the Board, the secretary of the Board, or a consultant, adviser or investigator engaged by the Board, has a pecuniary or other beneficial interest in, or material to, any vessel or the cargo of a vessel involved in a marine casualty, or to any other matter to be considered by the Board, he or she shall disclose to the Board the nature of the interest in advance of any consideration by the Board as to whether the marine casualty should be investigated, or any other matter relating to the marine casualty, and—

- (a) neither influence nor seek to influence a decision in relation to the investigation or matter,
 - (b) take no part in any consideration of the investigation or matter, and
 - (c) withdraw from the meeting of the Board for so long as the investigation is being considered or matter discussed by the Board and, in the case of the Chairperson or other member of the Board, shall not be counted towards a quorum at the meeting during that time.
- (2) For the purposes of this section but without prejudice to the generality of *subsection (1)*, a person shall be regarded as having a beneficial interest if—
- (a) the person or a member of the person's household, or a nominee of the person or of a member of his or her household, is a member of a company or other body which has a beneficial interest in, or material to, a matter referred to in that subsection,
 - (b) the person or a member of the person's household is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, such a matter,
 - (c) the person or a member of the person's household is a party to an arrangement or agreement (whether or not enforceable) concerning a vessel or the cargo of a vessel to which such a matter relates, or
 - (d) a member of the person's household has a beneficial interest in, or material to, such a matter.
- (3) For the purposes of this section, a person shall not be regarded as having a beneficial interest in, or material to, a matter by reason only of an interest of the person or of a company or other body or person mentioned in *subsection (2)* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering or discussing a question in respect of a matter arising or coming before the Board or in performing a function in relation to such a matter.
- (4) Where a question arises as to whether or not a course of conduct, if pursued by a person, would be a failure by the person to comply with the requirements of *subsection (1)*, the question shall be determined by the Board and particulars of the determination shall be recorded in the minutes of the meeting concerned.
- (5) Where a disclosure is made to the Board pursuant to *subsection (1)*, particulars of the disclosure shall be recorded by the Board.
- (6) A person who fails to comply with *subsection (1)* or, when purporting to comply with that subsection, gives particulars which are false or which, to his or her knowledge, are misleading in a material respect, shall be guilty of an offence.

- information. or investigator engaged by the Board, unless the person is authorised by the Board to do so or as otherwise authorised by law, shall be guilty of an offence.
- (2) In *subsection (1)*, but subject to the [Freedom of Information Act, 1997](#), “confidential information” includes information, or information of a particular class or description of information, expressed by the Board to be confidential.
- Grants to Board. **19.**—The Minister may, after consultation with the Board in relation to its likely work programme and expenditure for a financial year, make grants of such amounts as may be sanctioned by the Minister for Finance out of moneys provided by the Oireachtas towards the expenditure incurred by the Board in the performance of its functions.
- Accounts and audits. **20.**—(1) The Board shall keep, in such form as may be approved by the Minister with the consent of the Minister for Finance, proper and usual accounts of all moneys received or expended by it.
- (2) Accounts kept in pursuance of *subsection (1)* shall be submitted annually to the Comptroller and Auditor General for audit at such times as the Minister, with the consent of the Minister for Finance, directs and those accounts, when so audited, shall (together with the report of the Comptroller and Auditor General on the accounts) be presented to the Minister who shall cause copies of the audited accounts, and the report, to be laid before each House of the Oireachtas.
- Annual report, etc. **21.**—(1) As soon as practicable, but not later than 6 months, after the end of each financial year, the Board shall, in writing, report to the Minister on its proceedings in that year and the Minister shall cause copies of the report (the “annual report”) to be laid before each House of the Oireachtas.
- (2) The annual report shall identify the marine casualties occurring during the year to which it relates and contain a summary of the position in respect of investigations of marine casualties ongoing or completed during the year.
- (3) The Board shall give to the Minister such information relating to the performance of its functions as the Minister may from time to time request.
- Board to keep itself informed of certain matters. **22.**—(1) The Board shall keep itself informed of the policies, objectives, resolutions and guidelines of any public authority the functions of which have, or may have, a bearing on the matters with which the Board is concerned.
- (2) After consultation with the Board, the Minister may, where he or she considers it expedient, make regulations under [section 3](#) to give effect to the policies, objectives, resolutions or guidelines of a public authority concerning the investigation of marine casualties or the publication of reports into the investigation of marine casualties.
- (3) In this section, “public authority” means the Minister, the European Commission, the International Maritime Organisation and any other authority in the State or abroad which, in the opinion of the Board, has functions that have, or may have, a bearing on matters with which the Board is concerned.

PART 3

Marine Casualties

Reporting of Marine Casualties

Initial notification of marine casualties.

23.—(1) An owner, charterer, master, skipper, person in charge, ship's agent, ship's manager or ship's husband of a vessel involved in a marine casualty shall, by using the quickest feasible means, notify the Chief Surveyor or any other marine surveyor in the Marine Survey Office of the Department of the Marine and Natural Resources of the casualty immediately he or she is aware that the marine casualty has occurred or commenced, or as soon as practicable thereafter.

(2) There shall be included in the notification such relevant information as is known to the person notifying the marine casualty, including the name and description of the vessel, its position, the number of persons on board and as accurate a summary as possible of the marine casualty.

(3) A person required by *subsection (1)* to notify a marine casualty who without reasonable excuse fails to do so shall be guilty of an offence.

Comprehensive report of marine casualties.

24.—(1) If requested by the Board or the investigator, every owner, charterer, master, skipper, person in charge, ship's agent, ship's manager and ship's husband of a vessel involved in a marine casualty and any other person the Board or the investigator considers may have knowledge of the casualty, shall make a comprehensive written and signed report to the Board, which shall include all relevant details of the casualty known to the person making the report, and shall supply such additional relevant information known to the person as the Board or the investigator requests.

(2) Without prejudice to its generality, the expression “relevant details” in *subsection (1)* includes—

(a) the name and description of the vessel and its International Maritime Organisation (IMO) number, where applicable,

(b) if the vessel is registered, the name of the flag state,

(c) the names of the owner, charterer, master, skipper, person in charge, ship's agent and ship's husband, and the names of all persons killed, lost or seriously injured as a result of or arising out of the marine casualty,

(d) the date and local time of the marine casualty,

(e) the last point of departure and next point of intended landing of the vessel,

(f) the position of the vessel when the marine casualty commenced or occurred,

- (g) the number of passengers and crew on board the vessel when the marine casualty commenced or occurred and, where practicable, the names and addresses of the passengers and crew,
- (h) the extent of damage caused to the vessel and to any other vessel,
- (i) the extent of damage caused to the environment,
- (j) a description of the cargo of the vessel, and
- (k) the quantity of any substance on board the vessel which, if released into the sea or other environment, would be or be likely to cause pollution as defined in the [Sea Pollution Act, 1991](#) , or otherwise.

(3) A person required by *subsection (1)* to make a comprehensive report of a marine casualty who fails to do so shall be guilty of an offence.

Investigations

Purpose of investigations.

25.—(1) The purpose of an investigation under this Part is to establish the cause or causes of a marine casualty with a view to making recommendations for the avoidance of similar marine casualties.

(2) It shall not be the purpose of an investigation to attribute blame or fault.

Investigations.

26.—(1) Where the Board considers that an investigation is warranted and feasible, it may investigate—

(a) a marine casualty, or

(b) after consultation with the Minister, the nature and cause of any accident or damage which any vessel has sustained or caused, or is alleged to have sustained or caused, which, if the vessel had been an Irish registered vessel, would be a marine casualty.

(2) The Board may appoint any person engaged in accordance with [section 16 \(1\)](#) who, in the opinion of the Board, is suitably qualified to undertake or assist in the undertaking of the investigation of marine casualties, to investigate and report back to the Board, or assist in the investigation, of one or more than one marine casualty on behalf of the Board.

(3) The Board shall issue to a person appointed under *subsection (2)* a warrant of his or her appointment and the person shall, on demand by any person affected by the investigation, show the warrant to that person.

(4) A person who obstructs, impedes or improperly influences, or attempts to obstruct, or impede or improperly to influence, an investigation shall be guilty of an offence.

Power to conduct investigation.

27.—(1) Subject to *subsection (2)*, an investigator may, by the use of reasonable force if necessary, enter any place or premises or means of transport (including a vessel) for the purpose of carrying out an investigation (including to question a person whom he or she believes, on reasonable grounds, may have information concerning the marine casualty in respect of which the investigator is appointed under [section 26](#)).

(2) Except with the consent of the occupier, an investigator shall not enter a private dwelling unless he or she has obtained a warrant from the District Court under [section 28](#) authorising such entry.

(3) An investigator may search any place or premises or means of transport he or she may enter for the purposes of an investigation under this Part and take possession of and remove any object which he or she believes on reasonable grounds to be relevant to the conduct of the investigation that is found in the course of the search.

Search warrant.

28.—(1) If a judge of the District Court is satisfied on the sworn information of an investigator that there are reasonable grounds for suspecting that there is information or an object required by an investigator for the purposes of an investigation under this Part held in any place or premises or means of transport (including a vessel), the judge may issue a warrant authorising an investigator, accompanied where appropriate by other investigators or by a member of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production of the warrant if so required, to enter that place or those premises or means of transport, if need be by the application of reasonable force, and exercise therein or thereon all or any of the powers conferred on an investigator under this Act.

(2) An investigator, where he or she considers it necessary, may require a member of the Garda Síochána to assist the investigator when exercising a power of entry or otherwise conferred on an investigator by or under this Act which may involve the use of force, and a member of the Garda Síochána so required shall, unless he or she has a reasonable excuse for not doing so, comply with the requirement.

Power of investigators.

29.—(1) Where possession of an object is taken by an investigator under [section 27 \(3\)](#), the investigator—

(a) may, subject to *paragraph (b)*, cause such tests, including tests to destruction, to be conducted on the object as necessary for the purposes of the investigation,

(b) shall to the extent that is practical and safe to do so and does not unreasonably impede the progress of the investigation—

(i) take all reasonable measures to invite the owner of the object, and any person who appears on reasonable grounds to be entitled to possession of the object, to be present at any tests referred to in *paragraph (a)*, and

(ii) allow persons referred to in *subparagraph (i)* to be present at those tests,

and

(c) subject to the need to conduct such tests, shall cause the object to be preserved pending its return to that owner or person, or to the person from whom possession was taken, as soon as possible after it has served the purpose for which possession of the object was taken.

(2) An investigator may take any measurements or photographs, or make any tape, electrical or other recordings, he or she considers necessary for the purposes of an investigation, examination or inquiry made by him or her under this Act.

(3) An investigator shall have unhampered access to any vessel wreckage and the place where it is located, and unrestricted control over it, to ensure that a detailed examination can be made without delay by persons who under this Act are entitled to participate in any investigation in connection with the wreckage or marine casualty from which it resulted.

(4) An investigator may give to any person in or in the vicinity of a vessel or the wreckage of a vessel involved in a marine casualty, or any site or object the investigator considers, on reasonable grounds, might be relevant to the investigating of the marine casualty, such directions to prevent or regulate the access of the person to the vessel, wreckage, site or object, and for such period, as the investigator considers necessary to enable a proper investigation of the marine casualty or such inquiry to be carried out under this Act.

(5) A direction under *subsection (4)* may be given orally or in writing, or generally to all persons by a written notice affixed on or in such a way in the vicinity of the vessel, wreckage, site or object so as to be clearly visible to the public or persons to whom it is directed, or by any other means the investigator considers necessary to inform the public generally.

Provision of records
and other
information.

30.—(1) Where in the opinion of an investigator an inspection of such record may be necessary for the purpose of an investigation, the investigator may require a person to deliver to a place nominated by the investigator, and within such reasonable period as the investigator specifies, any record, to enable the investigator to inspect and copy it, and the person shall comply with the requirement.

(2) An investigator may require the attendance before him or her of any person in the jurisdiction for the purpose of providing to the investigator any information which may be known to the person and which, in the investigator's opinion may be necessary for the purpose of an investigation, and the person shall comply with the requirement.

(3) A person required to attend before an investigator in accordance with *subsection (2)* shall be entitled to the reimbursement by the Board of reasonable expenses incurred in connection with his or her attendance.

(4) The investigator may, for the purposes of the investigation—

- (a) examine any person required to attend before him or her in accordance with *subsection (2)* and may require answers or returns to any inquiry he or she thinks fit to make; and
- (b) administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by the person in his or her examination.

(5) An investigator may make such copies or take such extracts from the information gathered under *subsection (4)* as the investigator considers necessary for the purposes of the investigation.

(6) If a person objects to answering a question asked of him or her as a witness at an investigation or inquiry on the grounds that the answer might tend to incriminate the person or make the person liable to a penalty, and the person is informed of his or her obligation to answer the question, the person shall not refuse to answer the question but the answer given on that occasion shall not be admissible as evidence in criminal or other proceedings against the person other than proceedings against him or her in respect of the falsity of the answer or the failure to answer the question.

(7) A person who fails to comply with this section (including a requirement of an investigator under this section) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,000.

Medical or physical examination.

31.—(1) Where an investigator believes on reasonable grounds that the physical or medical examination of a person who is directly or indirectly involved in the operation of any vessel is or may be relevant to the investigation, the investigator may, by notice in writing signed by the investigator, require—

- (a) the person, within such time (not exceeding 12 hours in the case of an examination or test for the presence or level, if any, of intoxicants in the person's blood), and at such place, as is specified in the notice, to submit to a physical or medical examination or to give samples for analysis or testing, or
- (b) a medical practitioner or other person examining or who has examined a person involved in the operation of a vessel or who has analysed or tested samples referred to in *paragraph (a)*, whether at the request of the investigator or otherwise, to provide to the investigator a report on the results of any such examination, analysis or test.

(2) A medical practitioner may refuse to carry out an examination under *subsection (1)* on medical grounds.

(3) A person who, without reasonable excuse, fails to comply with this section (including a requirement of an investigator under this section) is guilty of an offence and is liable on summary conviction to a fine not exceeding £1,000.

(4) In this section, “intoxicants” includes alcohol and drugs and any combination of drugs or of drugs and alcohol.

Detention of and interference with vessels, etc.

32.—(1) An investigator may detain a vessel involved in a marine casualty for such period as he or she thinks necessary for the proper investigation of the marine casualty and may give to any person on or apparently in charge of the vessel such directions as the investigator thinks necessary to effect that detention.

(2) An investigator may, by notice in writing to a member of the crew of a vessel involved in a marine casualty, require that person to stay in the vicinity, and for a period not exceeding 24 hours, specified in the notice, where in the investigator's opinion the presence of the person is necessary for the proper investigation of the marine casualty.

(3) A requirement under *subsection (2)* may be subject to such conditions as the investigator thinks fit and specifies in the notice.

(4) A person who, without lawful excuse, refuses or fails to comply with—

(a) a direction under *subsection (1)*, or

(b) a requirement under *subsection (2)* or a condition to which it is subject,

shall be guilty of an offence.

(5) The Board may apply to the District Court for a Court Order—

(a) prohibiting the interference by any person, except a person authorised by the Board, with a vessel, including a wrecked or sunken vessel, or

(b) detaining the crew of a vessel,

involved in a marine casualty, for such period as is necessary to enable the proper investigation of the marine casualty, and the Court may order accordingly.

Board may re-open investigation.

33.—(1) The Board may re-open a completed investigation if satisfied there is new evidence available which could be likely to materially alter the findings of the investigation and the purpose of the investigation would be served by re-opening it.

(2) This Act shall apply to a re-opened investigation in the same way as it applies to an investigation.

Reports of Findings of Investigation

Publication of report.

34.—(1) The Board shall publish a report of an investigation into a marine casualty in such form as it thinks appropriate and shall immediately transmit a copy to the Minister.

(2) The Board shall endeavour to publish the report within 9 months after the notification of the marine casualty under [section 23](#).

(3) Where it appears to the Board that it would not be possible or appropriate in the circumstances to publish the report within the 9 month period, it shall, within that period, give to the Minister its reasons as to why the report cannot be published within the period and indicate the estimated period within which it expects the report will be published.

(4) The Board may, at any time during an estimated period indicated by it under *subsection (3)*, publish one or more interim reports of the investigation.

(5) *Sections 35 and 36* shall apply to an interim report in the same way as they apply to a report under *subsection (1)*.

Contents of report.

35.—(1) The report of an investigation into a marine casualty shall record all relevant findings of the investigator during the investigation.

(2) Having regard to [section 25](#), if the investigator succeeds in establishing the cause or causes, or probable cause or causes, of the marine casualty, the report shall indicate it or them.

(3) Having regard to [section 25](#), the report shall outline any recommendations the Board considers to be warranted and feasible for the avoidance of similar marine casualties.

(4) Although it shall not be the purpose of the report to attribute blame or fault, [section 25](#) shall not prevent the reporting of relevant findings of an investigator in accordance with *subsection (1)*, the indicating of the cause or causes or probable cause or causes of the casualty in accordance with *subsection (2)* or the making of recommendations in accordance with *subsection (3)*, of this section.

(5) To avoid doubt, copyright in a published report or interim report remains with the Board, but the copyrighted material may be freely used for educational purposes.

Preparation of draft report and observations of affected persons.

36.—(1) Before publishing a report, the Board shall send a draft of the report or sections of the draft report to any person who, in its opinion, is likely to be adversely affected by the publishing of the report or sections or, if that person be deceased, then such person as appears to the Board best to represent that person's interest.

(2) A person to whom the Board sends a draft in accordance with *subsection (1)* may, within a period of 28 days commencing on the date on which the draft is sent to the person, or such further period, not exceeding 28 days, as the Board in its absolute discretion thinks fit, submit to the Board in writing his or her observations on the draft.

(3) A person to whom a draft has been sent in accordance with *subsection (1)* may apply to the Board for an extension, in accordance with *subsection (2)*, of the period in which to submit his or her observations on the draft.

(4) Observations submitted to the Board in accordance with *subsection (2)* shall be included in an appendix to the published report, unless the person submitting the observations requests in writing that the observations be not published.

(5) Where observations are submitted to the Board in accordance with *subsection (2)*, the Board may, at its discretion—

(a) alter the draft before publication or decide not to do so, or

(b) include in the published report such comments on the observations as it thinks fit.

(6) A person to whom a draft has been sent in accordance with *subsection (1)* shall not publish or publicise, or cause to have published or publicised, the draft or its contents, except with the prior consent in writing of the Board.

(7) A person who contravenes *subsection (6)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months, or both.

Protection for Actions in Good Faith

Immunities from claims.

37.—(1) The Minister, the Board, an investigator investigating a marine casualty and any other person involved in an investigation or preparing a report shall be immune from all claims for damages arising from the conduct of the investigation and the publication of the report of such investigation, where they act in good faith.

(2) In *subsection (1)*, “report” includes a draft report referred to in [section 36 \(1\)](#), an interim report under [section 34 \(4\)](#) and a draft interim report, and it also includes written observations on a draft report or draft interim report, and comments on any such observations, as referred to in [section 36](#).

Inquiries into Marine Casualties

Tribunal of inquiry.

38.—(1) The Minister may, where he or she considers it necessary and after consultation with the Board, direct that an inquiry be held into a marine casualty.

(2) The following provisions shall have effect in relation to an inquiry under this section:

(a) the Minister shall appoint a competent person or persons to hold the inquiry, and may appoint any person possessing legal or special knowledge to act as an assessor to assist in the inquiry;

(b) the tribunal shall hold the inquiry in such manner and under such conditions as it thinks appropriate;

- (c) the tribunal shall have for the purposes of the inquiry all the powers of a judge of the District Court when hearing a prosecution for an offence under this Act, and all the powers of an investigator under this Act, and in addition, power—
- (i) by summons signed by the tribunal, to require the attendance of such persons as it thinks fit to call before it and examine for the purposes of the inquiry, and to require answers or returns to the inquiries it thinks fit to make; and
 - (ii) to administer an oath and require any person examined to make and sign a declaration of the truth of the statements made by the person in his or her examination.
- (3) Persons attending as witnesses before the tribunal shall be allowed such expenses as would be allowed to witnesses attending before a court of record and, in case of dispute as to the amount to be allowed, the dispute shall be referred by the tribunal to a taxing master of the High Court, who, on request signed by the tribunal, shall ascertain and certify the proper amount of the expenses.
- (4) The tribunal shall make a report to the Minister stating the causes and circumstances of the subject of the inquiry and adding any observations which it thinks right to make.
- (5) The Minister may cause the report of a tribunal under this section to be made public at such time and in such manner as the Minister thinks fit.
- (6) The Minister may pay to the person or persons conducting an inquiry under this section such fees and expenses as the Minister may, with the consent of the Minister for Finance, determine.
- (7) The Minister may defray the other costs, if any, of an inquiry and report under this section.
- (8) The tribunal may, in its absolute discretion, decide whether or not to award costs in connection with an inquiry under this section and where it decides that costs shall be awarded those costs may be awarded in such amounts and in respect of such matters as the tribunal, in its absolute discretion, thinks fit.
- (9) The Minister shall give notice of intention to conduct an inquiry under this section by a notice published in *Iris Oifigiúil* and at least one daily newspaper circulating in the State, setting out the terms of reference of the inquiry.
- (10) The Minister may, if it proves necessary for the more effective conduct of inquiries, make regulations under [section 3](#) governing the holding of inquiries.
- (11) Without prejudice to the generality of *subsection (10)*, the regulations may relate to the location at which an inquiry may be held, the manner in which facts may be proved at an inquiry, the persons allowed to appear and the notices to be given to persons affected.

Investigation or hearing by Board not to commence or continue where inquiry directed.

39.—(1) The Minister may direct that an inquiry be held under [section 38 \(1\)](#) notwithstanding that the marine casualty into which the inquiry is to be held is the subject of an investigation or hearing under this Act by or on behalf of the Board or whether such an investigation or hearing has been completed or a report has been published under [section 33](#) .

(2) Where the Minister directs that an inquiry be held under [section 38](#) into a marine casualty, no investigation or hearing by or on behalf of the Board into the same matter may be commenced or continue.

Minister may reopen inquiry.

40.—(1) The Minister, after consultation with the Board, may direct that a completed inquiry be re-opened if satisfied there is new evidence available which could be likely to materially alter the outcome of the inquiry and the purpose of the inquiry would be served by re-opening it.

(2) This Act shall apply to a re-opened inquiry in the same way as it applies to an inquiry.

PART 4

General

Prosecution of summary offences.

41.—A summary offence under this Act may be prosecuted by the Board.

Penalties.

42.—A person convicted of an offence against a provision of this Act for which no other penalty is provided shall be liable—

(a) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 3 months, or to both,

(b) on conviction on indictment, to a fine not exceeding £100,000 or to imprisonment for a term not exceeding 2 years, or to both.

Completion of investigations into certain marine casualties.

43.—Where an investigation of a marine casualty has been commenced after 26 February, 1992, by an officer appointed under section 465, 466 or 728 of the Merchant Shipping Act, 1894, and on the commencement of this Act a report has not been published by the Minister, the Board shall complete the investigation and publish the report of the investigation, in accordance with *Part 3* of this Act.

Amendment of Merchant Shipping Act, 1992.

44.—(1) Section 2(1) of the [Merchant Shipping Act, 1992](#) , is amended—

(a) by the substitution of the following for the definition of “fishing vessel”:

“‘fishing vessel’ means a vessel designed, equipped or used commercially for catching or taking fish or other living resources of the sea (including the sea bed) or freshwater;”,

(b) in the definition of “passenger boat”, by the deletion of “, a fishing vessel”,

(c) in the definition of “passenger ship”, by the deletion of “, a fishing vessel”,

(d) by the insertion of the following after the definition of “passenger ship”:

“‘personal watercraft’ means a craft of less than 4 metres in length which uses an internal combustion engine having a water jet pump as its primary source of propulsion and which is designed to be operated by a person or persons sitting, standing or kneeling on, rather than within the confines of, a hull;”,

and

(e) in the definition of “vessel” by the insertion after “navigation” of “and personal watercraft”.

(2) [Section 18](#) of the [Merchant Shipping Act, 1992](#), is amended by the substitution of the following for subsection (1):

“(1) The Minister may, by regulations, make such provision as the Minister thinks necessary or expedient for the purpose of ensuring—

(a) the safety of—

(i) passenger boats,

(ii) the passengers and crews of passenger boats, and

(iii) other persons, and of property, from injury or damage caused by, resulting from or arising out of the use of passenger boats;

or

(b) that the use of a passenger boat does not create a disturbance or constitute a nuisance.”.

(3) [Section 18\(2\)](#) of the [Merchant Shipping Act, 1992](#), is amended—

(a) in paragraph (d), by the substitution for “specified risks, and” of “specified risks”,

(b) in paragraph (e), by the substitution for “such standards as aforesaid.” of “such standards as aforesaid,”,

(c) by the insertion of the following after paragraph (e):

“(f) provide for the registration of passenger boats or specified classes of passenger boats and the licensing or certification of masters or persons in control of or operating passenger boats or passenger boats of a specified class,

(g) (i) regulate the use of passenger boats or specified classes of passenger boats by reference to the age or other qualifications of masters or persons in control of or operating passenger boats or passenger boats of a specified class,

(ii) regulate or prohibit the use of passenger boats or specified classes of passenger boats in particular circumstances, and the consumption of alcohol or drugs by masters or persons in control of or operating passenger boats or passenger boats of a specified class,

and

(h) require and regulate the use of lifejackets on specified classes of passenger boats.”.

(4) Section 18(4) of the [Merchant Shipping Act, 1992](#) , is amended by the insertion after “passenger boats” of “or persons on or using passenger boats”.

(5) Section 18(5) of the [Merchant Shipping Act, 1992](#) , is amended in paragraphs (a) and (b)(i) by the substitution for “£1,000” of “£1,500”.

(6) [Section 19](#) of the [Merchant Shipping Act, 1992](#) , is amended by the substitution of the following for subsection (1):

“(1) The Minister may, by regulations, make such provision as the Minister thinks necessary or expedient for the purpose of ensuring—

(a) the safety of—

(i) fishing vessels,

(ii) the crews of fishing vessels, and

(iii) other persons, and of property, from injury or damage caused by, resulting from or arising out of the use of fishing vessels;

or

(b) that the use of a fishing vessel does not create a disturbance or constitute a nuisance.”.

(7) Section 19(2) of the [Merchant Shipping Act, 1992](#) , is amended—

(a) in paragraph (d) by the substitution for “other findings of such surveys, and” of “other findings of such surveys,”,

(b) in paragraph (e), by the substitution for “such standards as aforesaid.” of “such standards as aforesaid, and”,

(c) by the insertion of the following after paragraph (e):

“(f) require and regulate the use of lifejackets on specified classes of fishing vessels.”.

(8) Section 19(5) of the [Merchant Shipping Act, 1992](#) , is amended in paragraph (a) by the substitution for “£1,000” of “£1,500”.

(9) [Section 20](#) of the [Merchant Shipping Act, 1992](#) , is amended—

(a) by the substitution of the following for subsection (1):

“(1) The Minister may, by regulations, make such provision as the Minister thinks necessary or expedient for the purpose of ensuring—

(a) the safety of—

(i) pleasure craft,

(ii) the occupants of pleasure craft, and

(iii) other persons, and of property, from injury or damage caused by, resulting from or arising out of the use of pleasure craft;

or

(b) that the use of a pleasure craft does not create a disturbance or constitute a nuisance.”,

(b) in subsection (2)(c), by the substitution for “navigation equipment, and” of “navigation equipment,”,

(c) in subsection (2)(d), by the substitution for “other findings of such surveys.” of “other findings of such surveys,”,

(d) in subsection (2), by the insertion of the following after paragraph (d):

“(e) provide for the registration of specified classes of pleasure craft and the licensing or certification of masters or persons in control of or operating pleasure craft or specified classes of pleasure craft,

(f) (i) regulate the use of pleasure craft or specified classes of pleasure craft by reference to the age or other qualifications of masters or persons in control of or operating pleasure craft or pleasure craft of a specified class,

(ii) regulate or prohibit the use of pleasure craft or specified classes of pleasure craft in particular circumstances, and the consumption of alcohol or drugs by masters or persons in control of or operating pleasure craft or pleasure craft of a specified class,

(g) prohibit the use of pleasure craft or specified classes of pleasure craft unless there are in force policies of insurance under which the owners of the pleasure craft or, if the pleasure craft are on hire, the persons to whom they are on hire are insured to a specified extent against specified risks relating to the use of the pleasure craft, and

(h) require and regulate the use of lifejackets on specified classes of pleasure craft.”,

(e) in subsection (4), by the insertion after “pleasure craft” of “or persons on or using pleasure craft”, and

(f) in subsection (5)—

(i) by the insertion after “master” of “or person in charge”, and

(ii) by the substitution for “£1,000” and “6 months” of “£1,500” and “12 months”, respectively.

(10) Section 31(1)(a) of the [Merchant Shipping Act, 1992](#), is amended by the insertion after “grant of a licence” of “(including a certificate of registration, licence or certification issued or granted by the Minister under regulations made under this Act)”.

(11) The [Merchant Shipping Act, 1992](#), is amended by the insertion of the following after section 32:

“Power or function may be exercised by a statutory authority or body.

33.—(1) Regulations under section 18, 19 or 20 may provide for a power or function (including the power to prohibit or regulate the use, speed, times of operation and noise output of vessels as specified by the regulations in particular areas or circumstances) to be exercised or performed by a statutory authority or other body (including by the making and enforcement of bye-laws as may be permitted by the regulations) in respect of Irish waters under its control or contiguous to land under its control, and where the exercise or performance of a power or function is so provided for, ‘authorised officer’ when used in this Act or the regulations shall include a person authorised in writing or by bye-law of the statutory authority or other body to exercise in respect of the relevant Irish waters the powers conferred on an authorised officer by or under this Act.

(2) Regulations referred to in subsection (1) may allow a statutory authority or other body to charge a fee of such amount specified in the bye-laws of the authority or body, not exceeding £100, for a certificate of registration, licence or certification issued or granted under such regulations or bye-laws made under or in pursuance of such regulations.

(3) Before making regulations under section 18, 19 or 20 in relation to a statutory authority or other body for which another Minister of the Government has responsibility, the Minister shall consult with that other Minister.

Provisions relating to certain offences under regulations made under section 18, 19 or 20.

34.—(1) Where regulations made under section 18, 19 or 20 provide that this section shall apply, an authorised officer who has reasonable grounds for believing that a person is committing or has committed an offence under section 18, 19 or 20, may serve on the person a notice in the prescribed form stating that—

- (a) the person is alleged to have committed the offence,
- (b) the person may during the period of 21 days beginning on the date of the notice make to the statutory authority or body concerned at the address specified in the notice a payment of £100 accompanied by the notice, and
- (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will

be instituted.

(2) Where notice is given under subsection (1)—

- (a) a person to whom it applies may, during the period specified in the notice, make to the statutory authority or body concerned at the address specified in the notice the payment specified in the notice accompanied by the notice,
- (b) the statutory authority or body specified in the notice may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In a prosecution for an offence under section 18, 19 or 20, the onus of proving that a payment pursuant to a notice under this section has been made shall lie on the defendant.

(4) The Minister may by regulations vary the amount standing specified for the time being in subsection (1)(b).

(5) In this section ‘offence under section 18, 19 or 20’ includes an offence under regulations or bye-laws made under or in pursuance of those sections.

Careless navigation or operation of vessels.

35.—(1) A person shall not in Irish waters navigate or operate a prescribed vessel or vessel of a prescribed class without due care and attention.

(2) A person who, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 or to imprisonment for a term not exceeding 3 months, or to both.

Dangerous navigation or operation of vessels.

36.—(1) A person shall not in Irish waters navigate or operate a prescribed vessel or vessel of a prescribed class in a manner (including at a speed) which, having regard to all the circumstances of the case (including the condition of the vessel or class of vessel, the nature,

condition and use of the waters and the amount of traffic, or number of people, which or who then actually are, or might reasonably be expected then to be, on or in those waters) is dangerous to the public.

(2) A person who, without reasonable excuse, contravenes subsection (1) shall be guilty of an offence and—

(a) where the contravention causes death or serious bodily harm to another person, shall be liable on conviction on indictment to imprisonment for a term not exceeding 5 years or to a fine not exceeding £10,000, or to both, and

(b) in any other case, shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months, or to both.

(3) Where, when a person is tried on indictment or summarily for an offence under this section, the jury, or in the case of a summary trial the District Court, is of opinion that the person was not guilty of an offence under this section but was guilty of an offence under section 34, the jury or court may find the person guilty of an offence under that section and the person may be sentenced accordingly.

Recovery of cost of Minister.

37.—Any costs of the Minister incurred in or in connection with the prosecution of a person for an offence under section 34 or 35 for which a person is convicted may be recovered by the Minister as a debt due and payable to the Minister by the convicted person.”.

Amendment of Sea Pollution Act, 1991.

45.—Section 3(1) of the [Sea Pollution Act, 1991](#), is hereby amended by the substitution of the following for the definition of “maritime casualty”:

““maritime casualty” means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it, resulting in—

(a) material damage or imminent threat of material damage to a ship or cargo, or

(b) pollution;”.

Advances by Minister for marine or natural resources based tourism or heritage projects.

46.—The Minister may, from time to time, with the consent of the Minister for Finance, advance to a person, out of monies provided by the Oireachtas, for the purposes of marine or natural resource based tourism or heritage projects, such sums, by way of grant or loan, as the Minister may determine and upon such terms and conditions as he or she considers necessary.

SCHEDULE

Marine Casualty Investigation Board

Sections 7(2).

(1) The Board shall be a body corporate with perpetual succession and an official seal and power to sue and be sued in its corporate name and, with the consent of the Minister, to acquire, hold and dispose of land or any other property.

(2) The Board shall, as soon as practicable after its establishment, provide itself with a seal.

(3) The seal of the Board shall be authenticated by the signature of the Chairperson or of some other member of the Board authorised by the Board to act in that behalf.

(4) Judicial notice shall be taken of the seal of the Board and every document purporting to be an instrument made by the Board and to be sealed with the seal (purporting to be authenticated in accordance with *paragraph (3)*) of the Board shall be received in evidence and be deemed to be such instrument without proof, unless the contrary is shown.

(5) The Minister may fix the date, time and place of the first meeting of the Board.

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