

[AS REPORTED FROM THE LABOUR COMMITTEE]

House of Representatives, 17 August 1972.

The word inserted is shown in roman underlined with a double rule.

Hon. Mr Gordon

SHIPPING AND SEAMEN AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Shipping and Seamen Act 1952

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title**—This Act may be cited as the Shipping and Seamen Amendment Act 1972, and shall be read together with and deemed part of the Shipping and Seamen Act 1952* (hereinafter referred to as the principal Act).

10 2. **Interpretation**—(1) Section 2 of the principal Act is hereby amended by inserting in subsection (1), in their appropriate alphabetical order, the following definitions:

*Reprinted, 1965, Vol. 3, p. 1631
Amendments: 1966, No. 84; 1967, No. 119; 1968, No. 55; 1969, Nos. 4, 25; 1970, Nos. 4, 141; 1971, No. 79

No. 24—2

Price 10c

“Daylight excursion’ means any voyage or excursion which is commenced not earlier than 1 hour before sunrise and is completed not later than 1 hour after sunset on the same day as that on which the voyage or excursion commenced: 5

“Extreme limits’ means restricted limits which pursuant to section 250 of this Act are for the time being defined as extreme limits:

“Mile’ means a nautical mile of 6,080 ft (or 1,852 metres): 10

“Shipwright Inspector’ means a Shipwright Inspector appointed under section 13B of this Act:”.

(2) Section 2 of the principal Act is hereby further amended by repealing the definition of the expression “fishing boat” in subsection (1) (which definition was substituted by section 2 of the Shipping and Seamen Amendment Act 1967), and substituting the following definition: 15

“Fishing boat’ means a vessel used for catching fish, whales, seals, walrus, or other living resources of the sea for profit; and includes a vessel that is recognised by the Secretary as being engaged in fisheries research:” 20

(3) Section 2 of the principal Act is hereby further amended by repealing the definition of the expression “foreign-going ship” in subsection (1), and substituting the following definition: 25

“Foreign-going ship’ means a ship, other than a pleasure yacht or a New Zealand fishing boat, which in the course of any voyage proceeds beyond 150 miles from the coasts of New Zealand; and ‘engaged in the foreign trade’ has a corresponding meaning:” 30

(4) Section 2 of the principal Act is hereby further amended—

(a) By adding to paragraph (b) of the definition of the expression “home-trade ship” in subsection (1) the word “or”, and by inserting in that definition, after paragraph (b), the following paragraph: 35

“(c) Within restricted limits,—”:

(b) By omitting from the same definition the words “and in neither case goes”, and substituting the words “and, in any case to which paragraph (a) or paragraph (b) of this definition applies, does not go”. 40

(5) Section 2 of the principal Act is hereby further amended by repealing the definition of the expressions "register length" and "length" in subsection (1) (which definitions were inserted by section 2 (1) of the Shipping and Seamen Amendment Act 1959), and substituting the following definitions:

10 " 'Register length' or 'length', in relation to any ship, means the length of the ship measured from the
15 fore side of the head of the stem to the aft side of the head of the stern post, or in a ship not having a stern post, to the fore side of the rudder stock. In ships not having a stern post or rudder stock, the after terminal point shall be taken to the aftermost part of the transom or stern of the ship: ".

(6) Section 2 of the principal Act is hereby further amended by repealing the definition of the expression "restricted-limit ship" in subsection (1), and substituting the following definition:

20 " 'Restricted-limit ship' means a ship (not being a New Zealand fishing boat) in respect of which a restricted-limit certificate is for the time being in force: ".

(7) The following enactments are hereby consequentially
25 repealed:

(a) Paragraphs (b) and (g) of subsection (2) of section 2 of the Shipping and Seamen Amendment Act 1964:

30 (b) Section 2 of the Shipping and Seamen Amendment Act 1967.

3. Shipwright Inspectors—The principal Act is hereby further amended by inserting, after section 13A (as inserted by section 3 of the Shipping and Seamen Amendment Act 1963), the following section:

35 "13B. (1) There may from time to time be appointed under the provisions of the State Services Act 1962 suitable persons to be Shipwright Inspectors for the purposes of this Act.

“(2) The functions of a Shipwright Inspector shall be—

“(a) To assist Surveyors of Ships by carrying out the inspection of ships for the purposes of survey in accordance with the provisions of this Act; and

“(b) To report to the Secretary or a Surveyor of Ships on any matter in respect of the inspection of ships as may from time to time be required. 5

“(3) In the exercise of his functions under subsection (2) of this section, a Shipwright Inspector may, at all reasonable times, go on board any New Zealand ship, wherever she may be, and any other ship while she is at a port in New Zealand or is elsewhere within the limits or territorial waters of New Zealand, and may, without unnecessarily detaining or delaying her from proceeding on any voyage or excursion, inspect the ship and her superstructure or any part thereof. 10 15

“(4) If any person hinders any Shipwright Inspector from going on board a ship, that person commits an offence against this Act.

“(5) Where a Shipwright Inspector has inspected any part of a ship, the report of that inspection may be accepted by a Surveyor of Ships for the purpose of making a declaration of survey, in the same manner as if a Surveyor of Ships under this Act had made the report.” 20

4. Medical examination of masters, seamen, and apprentices—The principal Act is hereby further amended by inserting, after section 140, the following section: 25

“140A. (1) Without limiting the general power to make regulations conferred by section 504 of this Act, regulations may be made under that section, on the advice of the Minister after consultation by him with organisations which appear to him to be representative of seamen employed on ships to which this section applies and with organisations which appear to him to be representative of owners of such ships, with respect to the medical examination of, and the issue of certificates of fitness to, masters, seamen, and apprentices and persons proposing to engage in employment as masters or seamen or to become apprentices. 30 35

“(2) Without limiting the generality of subsection (1) of this section, regulations made pursuant to that subsection may— 40

“(a) Prohibit the engagement of a person as a master or seaman or the taking of an apprentice to sea,

unless he is the holder of a certificate issued under those regulations not earlier than a time specified in the regulations, or in respect of whom an unfavourable medical report has been made:

- 5 “(b) Require the Superintendent, on receipt of such an unfavourable medical report, to refuse to permit the person in respect of whom the report is made to be engaged in a capacity specified in the regulations:
- 10 “(c) Provide for the Superintendent’s refusal to permit any person to be engaged to be reviewed by a competent authority appointed or nominated by the Minister:
- 15 “(d) Prescribe the fees to be paid by the persons at whose request the medical examination is to be made.
- “ (3) Regulations made pursuant to this section shall apply to the following ships, and to persons engaged or to be engaged as masters, seamen, and apprentices on such ships
- 20 and to the owners or charterers of such ships and their agents, namely:
- “ (a) Any New Zealand ship (including a New Zealand Government ship specified in the regulations):
- “ (b) Any ship engaged in the home trade.
- 25 “ (4) Every person commits an offence who does any act in contravention of or fails to comply with any provision of any regulations made pursuant to this section.”

5. New sections (as to Shipping Industry Tribunal) inserted—The principal Act is hereby further amended by

30 inserting, after section 151r (as inserted by section 9 of the Shipping and Seamen Amendment Act 1971), the following sections:

“151j. **Registrar of Tribunal**—The Secretary for Marine shall designate an officer of the Department to be the

35 Registrar of the Shipping Industry Tribunal.

“151k. **Services for Tribunal**—The Department shall furnish such secretarial, recording, clerical, and other services as may be necessary to enable the Shipping Industry Tribunal to exercise its functions and powers.”

6. **Ships built in New Zealand**—Section 196 of the principal Act (as substituted by section 12 (1) of the Shipping and Seamen Amendment Act (No. 2) 1970) is hereby amended by repealing paragraph (c) of subsection (4).

7. **Ships not to proceed to sea without certificate of survey**—Section 198 of the principal Act is hereby amended by omitting from paragraph (c) of subsection (2) the words “Other ships engaged in the Pacific trade and”. 5

8. **Recognition of certificates of survey granted and surveyors’ reports made in other countries**—Section 202 of the principal Act is hereby amended by repealing subsection (1B) (as enacted by section 11 (1) of the Shipping and Seamen Amendment Act 1957), and substituting the following subsections: 10

“(1B) Where a New Zealand cargo ship is surveyed on the continuous survey principle for the issue of a certificate of survey under section 213 of this Act, a report of a survey made at a port in a country outside New Zealand (not being a Commonwealth country), of any part of the hull or machinery of that ship may at the request of the owner of the ship be accepted by a Surveyor of Ships under this Act for the purpose of making a declaration of survey as if a Surveyor of Ships under this Act had made the report: 20
 “Provided that such a report shall not be accepted, unless— 25

“(a) The prior approval of the Minister is obtained, which shall be given only if he is satisfied that it would unduly delay the sailing of the ship or be impracticable or unreasonable in the circumstances to require the survey to be carried out in New Zealand; and 30

“(b) The survey is carried out in accordance with requirements specified by the Minister by a surveyor having qualifications similar to those of a Surveyor of Ships under this Act and exclusively employed either by the Government of the country in which the survey is carried out or by a classification society for the survey and registry of ships approved by the Minister for the purpose of this section; and 35 40

“(c) The report of the survey shall be supplied in the form of a certificate issued under the authority of the Government or classification society concerned, which accepts full responsibility for the satisfactory condition of the parts surveyed.

5 “(1c) Notwithstanding anything in subsection (1b) of this section, a survey for the issue of a safety construction certificate shall, subject to the provisions of sections 228 and 228A of this Act, normally be carried out in New
10 Zealand, and in addition at least 1 intermediate survey shall be carried out in New Zealand during each continuous survey cycle.”

9. Control of ships voyaging more than 50 miles from the coast—The principal Act is hereby further amended by
15 inserting, after section 246B (as inserted by section 50 (1) of the Shipping and Seamen Amendment Act 1959), the following section:

“246c. (1) This section applies to all ships other than—

20 “(a) A New Zealand ship for which there is in force a certificate of survey issued under section 213 of this Act appropriate for the voyage on which the ship is to be engaged:

25 “(b) Any other Commonwealth ship or a foreign ship, being in either case a ship for which there is in force a certificate of survey issued under section 213 of this Act or a certificate of survey required by the country to which the ship belongs appropriate for that ship for the voyage on which the ship is to be engaged:

30 “(c) A pleasure yacht in respect of which a certificate under section 246B of this Act is for the time being in force in respect of the voyage on which the yacht is to be engaged, or which has complied with the provisions of paragraph (b) of subsection (2)
35 of that section in respect of the voyage on which the yacht is engaged.

“(2) The master of every ship to which this section applies shall not go to sea from any place in New Zealand on any voyage during the course of which the ship will be
40 more than 50 miles from the nearest part of the coast of New Zealand, unless—

“(a) Before departure the owner or the master of the ship has informed the Superintendent at the port at

or nearest to the proposed place of departure of the nature and destination of the intended voyage; and

“(b) The ship complies with the standards as to manning and seaworthiness which the Superintendent directs shall apply to that ship on that voyage;— and the ship may be detained until those provisions are complied with. 5

“(3) The master and each member of the crew each commits an offence against this Act if the master fails or refuses to comply with any of the provisions of subsection (2) of this section: 10

“Provided that it shall be a good defence in any proceedings for an offence against this subsection if the defendant proves that the ship would not have proceeded more than 50 miles from the nearest part of the coast of New Zealand except by reason of stress of weather, mishap, or other circumstance which the master could not have prevented or forestalled. 15

“(4) In addition to any directions given by the Superintendent pursuant to paragraph (b) of subsection (2) of this section, he may give further directions as to matters to be complied with by the master during the course of the voyage, and the master commits an offence against this Act if he fails to comply with any such directions or does any act in contravention thereof. 20 25

“(5) Section 14 of the Summary Proceedings Act 1957 and section 481 of this Act shall not apply with respect to an offence against subsection (3) or subsection (4) of this section. 30

“(6) Where the master of a ship commits an offence against subsection (3) or subsection (4) of this section and any expenses are incurred by the Crown in making inquiries for or carrying out a search for the ship or in rescuing the master or any member of the crew, the amount of those expenses, not exceeding the value of the ship and the equipments and stores thereof and the property of the master aboard the ship when she returns to New Zealand, may be recovered by the Crown in any Court of competent jurisdiction as a debt owing by the master. 35 40

“(7) Where any member of the crew of a ship commits an offence against subsection (3) of this section and any expenses are incurred by the Crown in making inquiries for or carrying out a search for the ship or in rescuing the master or any member of the crew, the amount of those expenses, not exceeding the value of the property of the defendant aboard the ship when she returns to New Zealand, may be recovered by the Crown in any Court of competent jurisdiction as a debt owing by the defendant.

10 “(8) A certificate by the Secretary as to the amount of any such expenses shall in all proceedings be sufficient evidence thereof, unless the defendant proves to the contrary.

“(9) Without limiting any other mode of recovery, any amount payable to the Crown by the master or a member of the crew under subsection (6) or subsection (7) of this section may be assessed by the Court by which he is convicted, and shall be recoverable as a fine.”

10. **Restricted limits**—Section 250 of the principal Act (as amended by section 16 of the Shipping and Seamen Amendment Act 1969) is hereby further amended by adding the following subsection:

“(3) In defining any restricted limits pursuant to subsection (1) of this section, the Minister may—

25 “(a) Define those limits in relation to any specified class or classes of ships:

“(b) Require any such ships to have on board any specified equipment:

“(c) Specify the maximum number of passengers that may be carried on any such ships:

30 “(d) Specify the period or season or hours of the day during which any such ships may ply within those limits:

“(e) Prescribe such other conditions as he considers necessary.”

35 11. **Signals of distress**—Section 293 of the principal Act is hereby amended by adding the following subsection:

“(5) If any person without reasonable cause wilfully uses or displays or causes to be used or displayed (whether on land or at sea or on any harbour, river, lake, or other inland water) any distress signal as prescribed in an Order in Council made pursuant to subsection (1) of this section, or any signal likely to be confused with any such prescribed distress

signal, he commits an offence, and shall be liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$200 or to both, and shall further be liable to pay compensation if the Court so orders for any labour undertaken, risk incurred, or loss sustained in consequence of the signal having been supposed to be a signal of distress lawfully used or displayed. Any compensation so ordered to be paid shall be recoverable in the same manner as a fine, and shall, when recovered, be paid to the persons specified in the order of the Court.”

12. Search and rescue operations—The principal Act is hereby further amended by inserting, after section 299, the following heading and section:

“Search and Rescue Operations

- “299A. The Minister may from time to time—
- “(a) Appoint any person to participate, either generally or in any particular case, in maritime search and rescue operations in respect of any ship, aircraft, or hovercraft and the crew and passengers of any ship, aircraft, or hovercraft:
- “(b) Authorise the payment, out of money appropriated by Parliament, of such amount as he considers appropriate to any person who has assisted in search and rescue operations at the request of any person appointed pursuant to paragraph (a) of this section, and to the owners of any ship, aircraft, or hovercraft that has assisted in any such operations pursuant to any such request:
- “(c) Exercise such other powers as are reasonably necessary for the effective performance of maritime search and rescue operations.”

13. Detention of unsafe foreign ships—Section 319 of the principal Act is hereby amended by inserting, before the words “a foreign ship at a port in New Zealand”, the words “the Minister has reason to believe, on complaint or otherwise, that”.

14. In Receiver’s absence, who to act—Section 346 of the principal Act is hereby amended by inserting in subsection (1), after the words “Royal New Zealand Air Force”, the words “or any member of the Police”.

15. Minister's consent to transfers and mortgages—

(1) Section 410 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

5 “(1A) The Minister shall not withhold his consent under
subsection (1) of this section to any transfer or mortgage
or transfer of mortgage, except where it appears to him
expedient so to do in the interests of national defence,
having regard in particular to any agreement or arrange-
10 ment concluded in respect of defence matters, or any
consultations held in respect of such matters, between Her
Majesty's Government in New Zealand and the Govern-
ment of any other country.”

(2) Section 424 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

15 “(3A) The provisions of subsection (1A) of section 410
of this Act shall apply with respect to the consent of the
Minister under subsection (3) of this section as if the
reference in the said subsection (1A) to the consent of the
Minister under subsection (1) of the said section 410
20 were a reference to the consent of the Minister under
subsection (3) of this section.”