



Merchant Shipping Act 1894

1894 CHAPTER 60

PART IV

FISHING BOATS.

I

PROVISIONS APPLYING TO ALL FISHING BOATS AND TO THE WHOLE FISHING SERVICE.

The following sections shall apply to all fishing boats and the whole fishing service :—

Fishing Boats Register.

373 Registry of British fishing boat.

- (1) This section shall apply to the British Islands, and to all British fishing boats, including those used otherwise than for-profit, and the expression " fishing boat" in this section shall be construed accordingly.
- (2) Subject to any exemptions made by the regulations under this section, every fishing boat shall be lettered and numbered and have official papers, and shall for that purpose be entered in the fishing boat register.
- (3) If a fishing boat required to be so entered is not so entered, she shall not be entitled to any of the privileges or advantages of a British fishing boat, but all obligations, liabilities, and penalties with reference to that boat, and the punishment of offences committed on board her, or by any persons belonging to her, and the jurisdiction of officers and courts, shall be the same as if the boat were actually so entered.
- (4) If a fishing boat required to be entered in the fishing boat register is not so entered, and is used as a fishing boat, the owner and skipper of such boat shall each be liable, for each offence, to a fine not exceeding twenty pounds, and the boat may be detained.

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- (5) Her Majesty, by Order in Council, may make regulations for carrying into effect and enforcing the entry of fishing boats in the fishing boat register, and any convention with a foreign country relative to the registry, lettering, and numbering of fishing boats, which is for the time being in force by virtue of any statute, and may by such regulations—
- (a) adopt any existing system of registry or lettering and numbering of boats, and provide for bringing any such system into conformity with the requirements of this Act and of any such convention, and the regulations; and
 - (b) define the boats or classes of boats to which the regulations or any of them are to apply, and provide for the exemption of any boats or classes of boats from the provisions of this section, and from the regulations or any of them ; and
 - (c) apply to the entry of fishing boats in the fishing boat register, and to all matters incidental thereto, such (if any) of the enactments contained in this or any other Act relating to the registry of British ships, and with such modifications and alterations as may be found desirable; and
 - (d) impose fines not exceeding twenty pounds for the breach of any such regulations which cannot be punished by the application of any of those enactments.
- (6) Section twenty-six of the Sea Fisheries Act, 1868, and sections eleven to fourteen of the Sea Fisheries Act, 1883, shall apply in like manner as if those sections referred to this section and an Order in Council made thereunder, in substitution for sections twenty-two to twenty-four of the Sea Fisheries Act, 1868, and any Order in Council made under those sections.
- (7) Section one hundred and seventy-six of the Customs Consolidation Act, 1876, shall not apply to any fishing boat entered in the fishing boat register in pursuance of this Act.

374 Effect of registry of fishing boat.

In all legal proceedings against the owner or skipper of, or any person belonging to, any boat entered in the fishing boat register, either for an offence against the fishery regulations or regulations as to lights in the Sea Fisheries Act, 1868, or for an offence against the Sea Fisheries Act, 1883, or for the recovery of damages for injury done by such boat, the register shall be conclusive evidence that the persons entered therein at any date as owners of the boat were at that date owners thereof, and that the boat is a British sea-fishing boat: Provided that—

- (a) this enactment shall not prevent any proceedings being instituted against any person not so entered who is beneficially interested in the boat; and
- (b) this enactment shall not affect the rights of the owners among themselves, or the rights of any owner entered in the register against any person not so entered who is beneficially interested in the boat; and
- (c) save as aforesaid, entry in the fishing boat register shall not confer, take away, or affect any title to or interest in any fishing boat.

375 Rules as to boats and life-buoys of fishing boats.

- (1) A fishing boat entered in the fishing boat register, whether used for profit or not, shall not proceed to sea from any port in the United Kingdom—

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- (a) if she is decked, unless she is provided according to her tonnage with boats duly supplied with all requisites for use, and not being fewer in number nor less in their cubic contents than is in that behalf specified in the Fifteenth Schedule to this Act for the class to which the fishing boat belongs; and
- (b) if she carries more than ten passengers, unless she is, in addition to the above boats, provided with two life-buoys and provided either with a lifeboat furnished with all requisites for use, or has one of her boats rendered buoyant after the manner of a lifeboat;

and such boats and life-buoys shall be kept so as to be at all times fit and ready for use.

(2) In any of the following cases—

- (a) if any such fishing boat proceeds to sea without being provided with such boats or life-buoys ; or
- (b) if any such boat or life-buoy is lost or rendered unfit for service in the course of the voyage through the wilful fault or negligence of the owner or skipper ; or
- (c) if in case of any such boat or life-buoy being accidentally lost or injured in the course of the voyage the skipper fails without reasonable cause to replace or repair the same on the first opportunity; or
- (d) if any such boat or life-buoy is not kept so as to be at all times fit and ready for use;

then, if the owner appears to be in fault, he shall for each offence be liable to a fine not exceeding one hundred pounds, and if the skipper appears to be in fault, he shall for each offence be liable to a fine not exceeding fifty pounds.

(3) A fishing boat required under this section to be provided with boats and life-buoys may be detained until she is duly so provided.

Discipline.

376 Offences by seamen and apprentices.

(1) If a seaman lawfully engaged to serve in any fishing boat, or an apprentice in the sea-fishing service, commits any of the following offences, that seaman or apprentice shall be liable to be punished summarily as follows :—

- (a) For the offence of desertion,—he shall be liable to forfeit all or any part of the effects he leaves on board, and all or any part of the wages which he has then earned, and to satisfy any excess of wages paid by the skipper or owner of the fishing boat from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him :
- (b) For the offence of absence without leave, that is to say for neglecting or refusing without reasonable cause to join or to proceed to sea in his fishing boat, or for being absent without leave at any time within twenty-four hours of his boat's sailing from any port, either at the commencement or during the progress of the engagement, or for being absent at any time without leave and without sufficient reason from his boat,—if the offence does not amount to desertion, or is not treated as such by the skipper, he shall be liable to forfeit a sum not exceeding two days wages, and in addition for every twenty-four hours of absence, either a sum not exceeding four days wages, or any expenses properly incurred in respect of a substitute:

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- (c) For the offence of wrongfully quitting the boat, that is to say for quitting the boat without leave after her arrival in port, and before she is placed in security,—he shall be liable to forfeit a sum not exceeding two weeks wages:
 - (d) For the offence of wilful disobedience, that is to say for wilfully disobeying any lawful command during the engagement,—he shall be liable to imprisonment for any period not exceeding four weeks, and also to forfeit a sum not exceeding two days wages :
 - (e) For the offence of continued breach of duty, that is to say for continued wilful disobedience to lawful commands during the engagement, or continued wilful omission to do his duty during the engagement,—he shall be liable to imprisonment for any period not exceeding twelve weeks, and also to forfeit for every twenty-four hours continuance of the offence either a sum not exceeding six days wages or any expenses properly incurred in respect of a substitute :
 - (f) For the offence of assault, that is to say for assaulting any skipper or second hand,—he shall be liable to imprisonment for a period not exceeding twelve weeks :
 - (g) For the offence of unlawful combination, that is to say for combining with any one or more of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the boat, or the progress of the trip,—he shall be liable to imprisonment for a period not exceeding twelve weeks:
 - (h) For the offence of wilful damage, that is to say for wilfully damaging the boat or embezzling or wilfully damaging any of her stores or cargo,—he shall be liable to forfeit a sum equal in amount to the loss thereby sustained, and also to imprisonment for a period not exceeding twelve weeks :
 - (i) For the offence of smuggling, that is to say for any act of smuggling of which he is convicted and which caused loss or damage to the skipper or owner,—he shall be liable to forfeit a sum sufficient to reimburse that loss or damage.
- (2) A skipper shall be liable to punishment for the said offences of desertion, absence without leave, wrongfully quitting the boat, wilful damage, and smuggling, as if he were a seaman.
- (3) The court before whom any skipper, seaman, or apprentice is convicted of an offence under this section may order any money forfeited for that offence to be deducted from his wages, and (if they think fit) may order the forfeiture to be applied for the benefit of the person by whom the wages are payable, or of the person injured by the commission of the offence.
- (4) The provisions of this section relating to the offences of wilful disobedience, continued breach of duty, assault, and unlawful combination shall extend to apprentices in the sea fishing service, and to sea-fishing boys as herein-after defined, whether on shore or on board.
- (5) A seaman or apprentice shall not be relieved by his refusal or neglect to go to sea or by his desertion from being liable to punishment under this section for an offence of wilful disobedience, continued breach of duty, or unlawful combination, and in addition to any such punishment shall also be liable to be punished for the offence of desertion or absence without leave.
- (6) Any imprisonment under this section may be with or without hard labour.

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377 Civil right unaffected by criminal provisions.

- (1) Nothing in the last preceding section shall takeaway or limit any remedy by action or before a court of summary jurisdiction which an owner or skipper would otherwise have for any breach of contract in respect of the matters constituting an offence under that section, but no owner or skipper shall be compensated more than once in respect of the same damage.
- (2) Any question concerning the forfeiture of or deductions from the wages of a seaman or apprentice in the sea-fishing service may be determined in any proceeding lawfully instituted with respect to those wages, notwithstanding that the offence in respect of which the question arises, though by this Act made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

378 Application of forfeitures.

All effects and wages which are, under this Part of this Act, forfeited for desertion shall be applied first in reimbursing the expenses occasioned by such desertion to the skipper or owner of the boat, and, subject to that reimbursement, shall be paid into the Exchequer, and carried to the Consolidated Fund ; and any court having cognizance of any proceedings in relation thereto may order the same to be applied accordingly, and where the effects forfeited do not consist of money, may order the same to be sold, and the proceeds of the sale to be applied in manner aforesaid.

379 Deserters and others may be sent back to their boats.

Whenever any seaman or apprentice is brought before any court charged with the offence (under this Part of this Act) of desertion or of absence without leave, or with otherwise absenting himself from his boat without leave, the court may at the request of the owner or skipper or his agent, in addition to, or in lieu of, imposing any punishment to which he may be liable, cause him to be conveyed on board for the purpose of fulfilling his engagement, or deliver him to the skipper to be so conveyed by him, and may order any costs or expenses properly incurred to be paid by the offender, and if necessary to be deducted from any wages which he has then earned, or which he may thereafter earn under his engagement.

380 Apprehension of seamen guilty of certain offences.

- (1) Any of the following officers; namely,—
 - (a) a superintendent; or
 - (b) the principal Board of Trade officer at a port or district, or his deputy;may, on the information (made, if the officer so require, on oath) of the owner, skipper, second hand, or agent of a fishing boat, issue a warrant under his hand in the form approved by the Board of Trade for the apprehension of any seaman or apprentice charged with the offence (under this Part of this Act) of desertion, absence without leave, wilful disobedience, continued breach of duty, or unlawful combination.
- (2) Such warrant shall be executed by any constable of the county, borough, or place, where the offender may be, and shall continue in force for ninety-six hours from the time endorsed on the warrant by the officer issuing the same.
- (3) The seaman or apprentice when apprehended shall be brought by the constable without delay before some officer by whom a warrant may be issued under this section, and

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that officer shall then and there inquire into the case, and if the explanation of the seaman or apprentice is, in his opinion, sufficient, shall discharge him, but, if not, shall order him to join his boat and resume his duty.

- (4) If the seaman or apprentice refuses to obey that order, the officer shall order him to be detained and to be brought with convenient speed before a court of summary jurisdiction, and that court shall hear and determine in due course of law the charge made against him by the information on which he has been apprehended.
- (5) An information laid before an officer under this section need not be reduced to writing.
- (6) An officer acting under this section may take the evidence (if he thinks fit, on oath) of any person other than the seaman or apprentice charged who is able and willing to give information as to the matters in question, and for that purpose shall have the powers of a Board of Trade inspector under this Act.
- (7) A warrant issued under this section shall be valid if it is in the form approved by the Board of Trade and filled in reasonably in accordance with the directions contained in the form, and is duly signed, and shall not be invalidated by the officer who issued it dying or ceasing to hold office.

381 Dealing with seaman who refuses to proceed to sea, &c.

If a seaman or apprentice engaged or liable to serve on board any fishing boat neglects, or refuses to join, or deserts from, or refuses to proceed to sea in, or absents himself without leave from that fishing boat, the skipper owner or agent of the boat may, with or without the assistance of the local constables (who shall give their assistance in these cases when required by the skipper, owner, or agent) take the seaman or apprentice before some officer by whom a warrant can be issued for his apprehension under this Part of this Act, who shall deal with him as if apprehended under such a warrant.

382 Notice by seaman that he intends to absent himself.

- (1) If a seaman (not being a sea-fishing boy as defined by this Act) or a skipper intends to absent himself from his fishing boat or his duty, he may, when not at sea, give notice of his intention, if a skipper to the owner of the boat or the owner's agent, and if a seaman either to the owner or to the skipper, not less than forty-eight hours before the time at which he ought to be on board.
- (2) When such notice is duly given the skipper or seaman shall not be compelled to go or be brought on board for the purpose of proceeding with the voyage or engagement.

383 Calculation of wages.

- (1) The wages of a skipper seaman or apprentice of a fishing boat shall accrue from day to day.
- (2) When wages are contracted for by the voyage or trip or the season or b)' the share, and not by a stated period of time, the amount accruing from day to day shall be an amount equal to the wages for the whole voyage or trip or season, or the whole share, (as the case may be) divided by the number of days occupied in the voyage or trip or season, but a skipper seaman or apprentice shall not be entitled to more than what his share of the profits or catch made during the period he has actually served may or would have amounted to.

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- (3) Where the whole time spent in the voyage or trip does not exceed the period for which the wages are to be forfeited, the forfeiture shall extend to the whole wages or share.

384 Facilities for proving desertion so far as concerns forfeiture of wages.

- (1) Whenever a question arises before a court whether the wages of any skipper seaman or apprentice of a fishing boat are forfeited for desertion, it shall be sufficient for the person insisting on the forfeiture to show that the skipper seaman or apprentice was duly engaged and belonged to the boat, and left the boat before the completion of the voyage or engagement.
- (2) The desertion shall thereupon, so far as relates to any forfeiture of wages, be deemed to be proved, unless the skipper seaman or apprentice can produce a proper certificate of discharge, or can otherwise show to the satisfaction of the court that he was not guilty of desertion.

*Provisions as to Deaths, Injuries, Ill-treatment,
Punishments, and Casualties in Fishing Boats.*

385 Record and report of death, injury, ill-treatment, punishment, casualties, &c.

- (1) The skipper of a fishing boat shall keep a record of the following occurrences; namely,
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- (i) Of every death, injury, ill-treatment, or punishment of any member of his boat's crew while at sea or of any person on board his boat, and
- (ii) Of every casualty to his fishing boat or any boat belonging to her.
- (2) The skipper shall produce the record so kept to any superintendent when required by him, and shall also send the same to the superintendent at the port to which the boat belongs at such periods as the Board of Trade require by any directions endorsed on the forms approved by them.
- (3) If any such occurrence has happened in the case of a fishing boat, the skipper of the boat shall make to the superintendent at the port where his boat's voyage ends, within twenty-four hours of the boat's arrival at that port, a report of the occurrence.
- (4) The record and report under this section shall be in such form and contain such particulars as the Board of Trade require.
- (5) If a skipper fails without reasonable cause to comply with any requirement of this section, he shall for each offence be liable to a fine not exceeding twenty pounds.

386 Inquiry as to death, injury, ill-treatment, punishment, &c.

- (1) Where any such occurrence as in the last preceding section mentioned happens or is supposed to have happened, the superintendent at or nearest to the port at which the fishing boat arrives after the occurrence, or to which the boat belongs, may inquire into the cause and particulars of the occurrence, and, if a report as to the occurrence is made to him in pursuance of the said section, may make on the report an endorsement either that in his opinion the particulars in the report are true, or otherwise to such effect as in his opinion his information warrants.

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- (2) For the purpose of the inquiry, a superintendent shall have all the powers of a Board of Trade inspector under this Act.
- (3) If in the course of the inquiry it appears to the superintendent that any such occurrence as aforesaid has been caused or was accompanied by violence or the use of any improper means, he shall report the matter to the Board of Trade, and shall also, if the emergency of the case in his opinion so requires, take immediate steps for bringing the offender to justice, and may for that purpose, if in his discretion he thinks it necessary, cause him to be arrested, and thereafter dealt with in due course of law.

Settlement of Disputes.

387 Decision of disputes by superintendent.

- (1) A superintendent shall inquire into, hear, and determine any dispute, either between the owner of a fishing boat and the skipper or a seaman of the boat, or between the skipper of a fishing boat and any seaman of the boat concerning—
 - (i) the skipper's or seaman's wages or his share in the profits of the voyage or trip or a fishing catch, or any deduction therefrom ; or
 - (ii) the skipper's or seaman's engagement, service, or discharge ; or
 - (iii) the cost, quantity, or quality, of the provisions supplied to the crew;
 if any party to the dispute calls on him to decide it, and his decision thereon shall be final and binding on all persons.
- (2) The decision shall, on the request of any party to the dispute, be put into writing, and any such written decision, if purporting to be signed by the superintendent, shall be admissible in evidence in manner provided by this Act.
- (3) The decision may be enforced by any justice of the peace, within whose jurisdiction the person or goods of any one against whom the decision is given may be found, in the same manner as if the decision were an order made by a court of summary jurisdiction, and a skipper or seaman may also recover any sum adjudged due to him by any such decision as if it were wages.
- (4) A superintendent for the purpose of hearing and determining any such dispute shall have all the powers of a Board of Trade inspector under this Act.

Provisions for ascertaining Profits of Fishing Boats.

388 Accounts to be rendered by owners.

- (1) Where a skipper or any other member of the crew of a fishing boat is paid by a share in the catch; the owner of the boat shall render to him a full and true account, in a form approved by the Board of Trade, showing in detail the amounts for which the fish have been sold, and all deductions from those amounts which are chargeable in any respect to the men who are paid by share, and are made either in respect of stores supplied to the fishing boat, or provisions furnished to the crew or otherwise.
- (2) If the owner of a fishing boat fails without reasonable cause to comply with the foregoing provisions of this section, he shall for each offence be liable to a fine not exceeding five pounds.

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- (3) If a dispute arises as to the share of the catch, the skipper or seaman shall be entitled to inspect at all reasonable times the owner's accounts and books relating to the catch, and if the owner of a fishing boat upon demand fails without reasonable cause to submit his accounts or books at a reasonable time to such inspection, he shall for each offence be liable to a fine not exceeding twenty pounds.

Agreements for Fishing Vessels in Scotland.

389 Agreements for fishing vessels in Scotland.

- (1) The owner or skipper of any British vessel engaged in fishing off the coast of the United Kingdom may enter into an agreement with any person employed on that vessel that that person shall be remunerated wholly by a share in the profit of the fishing adventure.
- (2) Every such agreement shall be in writing, and shall be signed by the contracting parties in the presence of a superintendent.
- (3) The superintendent shall, before the agreement is signed, read and (if necessary) explain the same to the contracting parties, and shall attest the signature of the agreement and certify that it has been read to, and agreed to, by the contracting parties.
- (4) Any such agreement, if made in manner provided by this section, shall be valid and binding on all the contracting parties, and shall have effect notwithstanding anything in Part II of this Act.
- (5) This section shall only apply to Scotland.

Fees and Control of Superintendents.

390 Fees payable on engagements and discharges.

- (1) The Board of Trade may fix the fees to be payable upon engagements or discharges of members of the crews of fishing boats when effected before a superintendent; and a superintendent may refuse to proceed with any such engagement or discharge unless the fee payable thereon has first been paid.
- (2) All fees so paid shall be carried to the credit of the Mercantile Marine Fund.

391 Control of Board of Trade.

All superintendents shall, in carrying into effect the provisions of this Part of this Act, other than those relating to the fishing boat register, be subject to the control of and obey any directions given by the Board of Trade.