

#### 41. New Zealand

SHIPPING AND SEAMEN ACT NO. 49 OF 23 OCTOBER 1952.<sup>1</sup>

An Act to consolidate and amend certain enactments of the General Assembly relating to shipping and seamen.

3. (1) Except where this Act or any Order in Council or rules or regulations made thereunder otherwise provide, this Act shall not apply to—

(a) Her Majesty's ships; or

(b) Ships of the naval forces of any Commonwealth country other than New Zealand, or ships which belong to the Government of any such Commonwealth country or are held by any person on behalf of or for the benefit of any person on behalf of or for the benefit of any such Government; or

(c) Her Majesty's aircraft; or

(d) Aircraft which belong to the Government of any Commonwealth country other than New Zealand or are employed in the service of any such Government.

(2) The provisions of this Act and of any Order in Council, rules, and regulations made thereunder shall have the same operation in relation to the Republic of Ireland and to the citizens thereof, and to ships and aircraft registered therein or belonging thereto, and to the owners of those ships and aircraft, and any other persons for the time being responsible for their navigation and management, and to the masters and persons in command and to the crew and other persons in the service of those ships and aircraft, and to all other persons who are or have been on board those ships or aircraft or connected therewith, in the same manner as if the Republic of Ireland were a Commonwealth country, and as if the citizens thereof were British subjects.

#### *National flags*

5. (1) The New Zealand Ensign shall be the blue ensign of the Royal Naval Reserve, having on the fly thereof the Southern Cross as represented by four five-pointed red stars with white borders.

(2) The New Zealand Ensign is hereby declared to be—

(a) The recognized flag of New Zealand for general use on shore within New Zealand; and

(b) The proper national colours to be worn by all New Zealand Government ships and by such other New Zealand ships as may for the time being be authorized to wear the New Zealand Ensign by or pursuant to regulations made under this section.

(3) Without limiting the general power to make regulations conferred by section five hundred and four of this Act, regulations may be made under that section prescribing the circumstances in which and conditions subject to which New Zealand ships, other than New Zealand Government ships, are or may be authorized to wear the New Zealand Ensign; and, without prejudice to the generality of the foregoing provisions of this subsection, those regulations may establish a mode of application for such

<sup>1</sup> Text of Act provided by the Department of External Affairs of New Zealand.

authorization and may fix the fees (if any) which shall be payable in respect of each such application.

6. (1) The marine flag of New Zealand shall be the red ensign usually worn by merchant ships registered in the United Kingdom, with the addition on the fly thereof of the Southern Cross as represented by four five-pointed white stars.

(2) Except as is provided by the last preceding section, and except in the case of any ship for the time being allowed to wear any other national colours in pursuance of a Warrant of Her Majesty, the marine flag of New Zealand shall be the proper national colours to be worn by all New Zealand ships.

## PART XII. REGISTRATION OF SHIPPING

### *Registrars of ships*

383. (1) The Governor-General may from time to time appoint ports in New Zealand to be ports of registry for the registration of ships; and at each such port there may be appointed under the provisions of the Public Service Act 1912 some fit person to be the Registrar of Ships (hereinafter referred to as the Registrar).

384. (1) The Registrar shall keep a book, to be called the register book, . .

### *Qualification for owning New Zealand ships*

385. (1) Subject to the provisions of the next succeeding subsection and of any rules made thereunder, a ship shall not be registered in New Zealand under this Act unless she is owned wholly by persons of the following descriptions (in this Act referred to as persons qualified to own a registered New Zealand ship), namely:—

- (a) British subjects:
- (b) Corporate bodies established under and subject to the law of a Commonwealth country and having their principal place of business in a Commonwealth country.

(2) Without limiting the general power to make rules conferred by section five hundred and four of this Act, rules may be made under that section with respect to the manner in which New Zealand Government ships, or any class of those ships, may be registered under this Act; and, subject to any modifications which may be made by those rules either generally or in respect of any specified class of ships, this Act shall apply to New Zealand Government ships which are registered in accordance with the rules as if they were ships registered in the manner provided in section three hundred and eighty-seven of this Act.

(3) Where the Minister has reason to believe that there is some doubt as to the title of any ship registered in New Zealand under this Act to be so registered, he may direct the Registrar at the port of registry of the ship to require that evidence be given to his satisfaction that the ship is entitled to be so registered.

(4) If, within such time as may be determined by the Minister, not being less than thirty days, evidence to the satisfaction of the Registrar of

the title of the ship to be registered is not given, the ship shall be liable to forfeiture.

*Obligation to register ships*

386. (1) Whenever a ship is owned wholly by persons qualified to own a registered New Zealand ship, that ship shall be registered either in New Zealand in manner provided in this Part of this Act or in some other Commonwealth country in accordance with the law of that country, unless—

(a) The ship is recognized by the law of a Commonwealth country other than New Zealand as a ship of that country, and is by the law of that country exempted from registration; or

(b) The ship is, pursuant to the next succeeding subsection, exempted from registration under this Act.

(2) Ships not exceeding fifteen register tons employed solely on the coasts or inland waters of New Zealand are exempted from registration under this Act.

(3) If any ship does not comply with the requirements of subsection one of this section, that ship shall not be recognized as a New Zealand ship.

(4) If the master of any ship which is owned wholly by persons qualified to own a registered New Zealand ship fails, on demand, to produce a certificate of registration of the ship or such other evidence as satisfies the Minister that that ship complies with the requirements of subsection one of this section, that ship may be detained until that evidence is produced.

(5) A ship which is, at the commencement of this Part of this Act, registered at a port in New Zealand in accordance with the provisions of the United Kingdom Merchant Shipping Act shall be deemed to be registered in New Zealand under this Act in manner provided in this Part of this Act.

*Procedure for registration*

387. (1) An application for a ship to be registered in New Zealand under this Act shall be made to the Registrar at a port of registry in New Zealand in a form approved by the Minister.

(2) The application shall be made in the case of individuals by the person requiring to be registered as owner, or by some one or more of the persons so requiring if more than one, or by his or their agent, and in the case of a corporation by its agent; and the authority of the agent shall be testified by writing, if appointed by individuals, under the hands of the appointors, and, if appointed by a corporation, under the common seal of the corporation.

(3) The Registrar may demand proof of ownership to his satisfaction before proceeding with the registry of a ship.

388. (1) Whenever application for a ship to be registered is made under the last preceding section, the owner or other applicant shall, on or before making the application, cause the ship to be surveyed by a Surveyor of Ships and the tonnage of the ship to be ascertained in accordance with the tonnage regulations of this Act.

(2) The Surveyor shall, upon making the survey, deliver to the owner or applicant a certificate signed by him (hereinafter referred to as a Surveyor's tonnage certificate); and that certificate shall be delivered to the Registrar before the ship is registered.

(3) A Surveyor's tonnage certificate shall be in a form approved by the Minister, and shall specify the ship's tonnage and build, and such other particulars descriptive of the identity of the ship as the Minister may from time to time require.

390. (1) A person shall not be entitled to be registered as owner of a ship, or of a share therein, until he, or, in the case of a corporation, the person authorized by this Act to make declarations on behalf of the corporation, has made and signed a declaration of ownership referring to the ship as described in the Surveyor's tonnage certificate, and containing the following particulars:—

(a) A statement of his qualification to own a registered New Zealand ship, or, in the case of a corporation, of such circumstances of the constitution and business thereof as prove it to be qualified to own a registered New Zealand ship;

(b) A statement of the time when and the place where the ship was built, or if the ship was built in a foreign country and the time and place of building are unknown, a statement that she was built in a foreign country and that the declarant does not know the time and place of her building; and in addition, in the case of a foreign ship, a statement of her foreign name, or, in the case of a ship condemned, a statement of the time, place and Court at and by which she was condemned;

(c) Except in the case of a ship exempted by the Minister under subsection six of section three hundred and ninety-seven of this Act, but subject to the terms and conditions of any such exemption, a statement of the name of her master;

(d) A statement of the number of shares in the ship of which he or the corporation, as the case may be, is entitled to be registered as owner;

(e) A declaration that, to the best of his knowledge and belief, no unqualified person or body of persons is entitled as owner to any legal or beneficial interest in the ship or any share therein.

(2) A declaration of ownership by an individual owner and a declaration of ownership on behalf of a corporation as owner shall each be made in a form approved for the purpose by the Minister.

392. (1) As soon as the requirements of this Act preliminary to registry have been complied with the Registrar shall enter in the register book the following particulars respecting the ship—

(a) The name of the ship and the name of the port to which she belongs;

(b) The details comprised in the Surveyor's tonnage certificate;

(c) The particulars respecting her origin stated in the declaration of ownership; and

(d) The name, address, and occupation of her registered owner or owners, and if there are more owners than one, what share in the ship is held by each owner.

(2) On the registry of a ship the Registrar shall retain in his possession the following documents—

(a) The Surveyor's tonnage certificate;

(b) The builder's certificate (if any);

(c) All declarations of ownership:

- (d) Any bill of sale of the ship previously made;
- (e) The copy of the condemnation (if any).

*Certificate of registry*

396. (1) The Registrar at the port of registry of a ship registered in New Zealand may, with the approval of the Minister and on the delivery to him of the certificate of registry of the ship, grant a new certificate in lieu thereof.

(2) In the event of the certificate of registry of a ship registered in New Zealand being lost, mislaid or destroyed, the Registrar at her port of registry shall grant a new certificate of registry in lieu of her original certificate.

(3) If, in the case of a ship registered in New Zealand, the event referred to in the last preceding subsection occurs while the ship is at a port out of New Zealand, or if after the occurrence of that event the ship first arrives at a port out of New Zealand, the master of the ship, or some other person having knowledge of the facts of the case, shall furnish the proper officer at that port with a declaration stating the facts of the case and the names and descriptions of the registered owners of the ship, and the proper officer may thereupon grant a provisional certificate of registry, in a form approved by the Minister, containing a statement of the circumstances in which it is granted.

(4) Whenever a proper officer grants a provisional certificate in respect of any ship under the last preceding subsection, he shall transmit a copy of that certificate to the Registrar at the ship's port of registry.

(5) The master of a ship in respect of which a provisional certificate has been granted under subsection three of this section shall, within ten days after the first subsequent arrival of the ship at a port in New Zealand, deliver the provisional certificate to the Registrar at that port or, if there is no Registrar at that port, to the Registrar at the ship's port of registry, and if the master fails to comply with this subsection he commits an offence against this Act.

(6) If under the last preceding subsection a provisional certificate is delivered to a Registrar who is not himself the Registrar at the ship's port of registry, he shall forthwith forward the certificate to the Registrar at the ship's port of registry.

(7) Upon receipt of a provisional certificate granted under this section, the Registrar at the ship's port of registry shall grant a new certificate of registry.

401. (1) If at a port in a foreign country a ship becomes the property of persons qualified to own a registered New Zealand ship, and if some one or more of those persons declare to the proper officer at that port an intent to apply to have the ship registered in New Zealand, or if the master of the ship makes such a declaration and declares therein that he is authorized by some one or more of the owners of the ship to make the declaration, the proper officer may grant to the master of the ship, on application by him, a provisional certificate in a form approved by the Minister, or as near thereto as circumstances permit, stating—

- (a) The name of the ship;
- (b) The time and place of her purchase, and the names and addresses of the purchasers;

(c) The name of the master; and

(d) The best particulars respecting the tonnage, build, and description of the ship which he is able to obtain,—  
and shall forthwith forward a copy of the certificate to the Secretary.

(2) A provisional certificate granted in accordance with the last preceding subsection shall be deemed to be a certificate of registry until the expiry of six months from the date on which it was granted, or until the arrival of the ship at a port in New Zealand, whichever is the earlier date, and shall thereafter have no effect.

(3) The master of every ship in respect of which a provisional certificate is granted under this section shall, within ten days of the ship's first arrival thereafter at a port in New Zealand, deliver the certificate to the Registrar at that port, or, if there is no Registrar at that port, to the Registrar at the ship's intended port of registry; and if any master fails to comply with this subsection he commits an offence against this Act.

402. (1) Where a ship is owned wholly by persons qualified to own a registered New Zealand ship, and that ship is not registered in New Zealand or in any other Commonwealth country and is not recognized by the law of that country as a ship of that country, and the Secretary is by reason of special circumstances satisfied that permission should be granted for that ship to pass, without being previously registered, from any port in New Zealand to any other port in a Commonwealth country, he may direct a Registrar to grant a pass in respect of that ship specifying the voyage which the ship is thereby authorized to make and specifying also the time for which and any limits within which the pass remains valid; and a Registrar, when so directed, shall grant the pass accordingly.

(2) A pass granted under this section shall be in a form approved by the Minister; and every such pass, and every pass granted under the corresponding provisions of the law of any Commonwealth country other than New Zealand, shall, for the time and within the limits therein mentioned, have the same effect as a certificate of registry.

#### *Transfers and transmissions*

415. (1) When the property in a ship registered in New Zealand or any share therein is transmitted to any person qualified to own a registered New Zealand ship on the death or bankruptcy of any registered owner, or by any lawful means other than by a transfer under this Act—

(a) That person shall authenticate the transmission by making in a form approved by the Minister and by signing a declaration (in this Part of this Act referred to as a declaration of transmission) identifying the ship and containing the several statements hereinbefore required to be contained in a declaration of transfer, or as near thereto as circumstances permit, and also a statement of the manner in which, and the person to whom, the property has been transmitted;

(b) If the transmission is consequent on death, the declaration of transmission shall be accompanied by a grant of probate or letters of administration in the estate of the deceased owner or, in the case of the death of a joint owner, by proof of survivorship to the satisfaction of the Registrar;

(c) If the transmission is consequent on bankruptcy, the declaration of transmission shall be accompanied by such evidence as is for the time being

receivable in any Court in New Zealand as proof of the title of persons claiming under a bankruptcy.

(2) The Registrar, on receipt of the declaration of transmission so accompanied, shall enter in the register book the name of the person so entitled under the transmission as owner of the ship or share the property in which has been transmitted, and, where there is more than one such person, shall enter the names of all those persons, but those persons however numerous shall, for the purpose of the provisions of section three hundred and eighty-four of this Act, be considered as one person.

416. (1) Where the property in a ship registered in New Zealand or a share therein is transmitted on death or bankruptcy or otherwise to persons not qualified to own a registered New Zealand ship, the Supreme Court may, on application by or on behalf of the unqualified persons, order a sale of the property so transmitted, and direct that the proceeds of the sale, after deducting the expenses thereof, be paid to the persons entitled under the transmission or otherwise as the Court directs.

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

(3) Every such application for sale shall be made within thirty days after the occurrence of the event on which the transmission has taken place, or within such further time (not exceeding in the whole one year from the date of the occurrence) as the Court allows.

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

#### *National character of ships*

437. (1) A Collector of Customs shall not grant a clearance for any ship until the master of the ship has declared to him the name of the country to which he claims the ship belongs, and the Collector shall thereupon inscribe that name on the clearance.

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

438. (1) If a person—

(a) Uses the national colours and assumes the national character of New Zealand on board a foreign ship for the purpose of making that ship appear to be a New Zealand ship; or

(b) Uses the national colours and assumes the national character of any Commonwealth country other than New Zealand on board a foreign ship for the purpose of making that ship appear to be a ship of that country; or

(c) Otherwise uses without the authorization of a competent authority in a Commonwealth country and without the sanction of the law of any such country (and proof of such authorization or sanction shall lie on the person alleging the same) on board any foreign ship any distinctive flag, ensign, pendant, or marking for the purpose of falsely asserting that that ship is entitled to any benefits, privileges, advantages, or protection usually enjoyed by Commonwealth ships,—

the ship shall be liable to forfeiture under this Act, unless the assumption has been made or the distinctive flag, ensign, pendant, or marking has

been used for the purpose of escaping capture by the enemy, or by a ship of war in the exercise of some belligerent right.

(2) In any proceedings for enforcing any such forfeiture, the burden of proving a title to use any colours, flag, ensign, pendant, or marking referred to in subsection one of this section, or to assume any character referred to in that subsection, shall lie on the person alleging the same.

439. If the master or owner of a Commonwealth ship, or of a ship which is owned wholly by persons qualified to own a registered New Zealand ship, does anything or permits anything to be done, or carries or permits to be carried any papers or documents, with intent to conceal from any person who is, under the law of any Commonwealth country, entitled to inquire into the same the fact that that ship is a Commonwealth ship, or is a ship owned wholly by persons qualified to own a registered New Zealand ship, or with intent to assume a foreign character, or with intent to deceive any person so entitled as aforesaid, the ship shall be liable to forfeiture under this Act; and the master, if he commits or is privy to the commission of the offence, shall in respect of each offence be guilty of a crime.

440. (1) If any person who is not qualified to own a registered New Zealand ship acquires as owner any interest, either legal or beneficial,—

(a) Otherwise than by such transmission as is in this Part of this Act provided for, in a ship registered in New Zealand, or in a ship which is not a Commonwealth ship and which is owned wholly by persons qualified to own a registered New Zealand ship; or

(b) Otherwise than in accordance with the law of any Commonwealth country other than New Zealand, in a ship registered in or recognized as belonging to that country,—

and any such ship is a ship which uses the national colours and assumes the national character of New Zealand or of any other Commonwealth country, that interest shall be liable to forfeiture under this Act.

(2) Nothing in this section shall be deemed to prohibit New Zealand ships which are exempt from registration under this Act from using on the coasts of New Zealand the marine flag of New Zealand or any other national colours which any such ship is for the time being entitled to wear in accordance with sections five and six of this Act.

441. Where it is declared by this Act that a ship which is owned wholly by persons qualified to own a registered New Zealand ship shall not be recognized as a New Zealand ship, that ship shall not be entitled to any benefits, privileges, advantages, or protection usually enjoyed by New Zealand ships or by other Commonwealth ships, nor to use the national colours nor assume the national character of New Zealand or of any other Commonwealth country; but as far as regards the payment of dues, the liability to fines and forfeiture, and the punishment of offences committed on board that ship, or by any persons belonging to her, the ship shall be dealt with in the same manner in all respects as if she were registered in New Zealand and recognized as a New Zealand ship.



## PART XVII. GENERAL

*Miscellaneous*

513. (1) As from the commencement of this Part of this Act, no provision of the United Kingdom Merchant Shipping Act shall have effect as part of the law of New Zealand:

Provided that, subject to the provisions of this Act, all Orders in Council, rules, and regulations under the United Kingdom Merchant Shipping Act which immediately before the commencement of this Part of this Act had effect as part of the law of New Zealand shall continue so to have effect as if they had been made under the corresponding provisions of this Act, but the Governor-General may, by Order in Council, declare that any such first mentioned Order in Council or any such rules or regulations shall cease to have effect as part of the law of New Zealand, and every such declaration by the Governor-General shall have effect accordingly.

**42. Nicaragua**LAWS RELATING TO CUSTOMS AND HARBOURS <sup>1</sup>

## CHAPTER X. NICARAGUAN SHIPS

*Article 193.* A ship which is not a Nicaraguan ship and has not acquired Nicaraguan nationality shall not use the Nicaraguan flag. . .

*Article 194.* A Nicaraguan ship shall not sail without a proper certificate and articles.

*Acquisition of Nicaraguan nationality by ships*

*Article 195.* A ship shall not be deemed to be a Nicaraguan ship unless—

1. It was built in the Republic for the service of the State or of a private person;
2. Having been built abroad, it was purchased by the Government for service in the Nicaraguan navy;
3. It was seized from the enemy or confiscated in accordance with the law; or
4. It has acquired Nicaraguan nationality in accordance with the law.

*Article 199.* An alien desiring to acquire nationality for a ship owned by him shall submit to the collector of customs an application written on the appropriate stamped paper, and shall undertake in such application to comply with all the provisions of these laws; and he shall have no right of action whatsoever not open in similar circumstances to the owner or managing owner of a Nicaraguan ship. The collector of customs shall transmit

<sup>1</sup> The source of the following text is a compilation of the maritime law of Nicaragua entitled: *Leyes de Aduanas y Puertos. Comercio marítimo et buques de la República de Nicaragua*. Recopiladas por Clifford D. Ham, Recaudador General de Aduanas, Edición Managua, 1928. The Spanish text was provided by the Government of Nicaragua. Translation by the Secretariat of the United Nations.