



## **FALKLAND ISLANDS**

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### **Harbours and Ports Ordinance 2017**

**(No. 21 OF 2017)**

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## FALKLAND ISLANDS

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### Harbours and Ports Ordinance 2017

*(assented to: ..... 21 December 2017)*  
*(commencement: in accordance with section 2)*  
*(published: ..... 31 January 2018)*

#### AN ORDINANCE

To make provision for the continued appointment of a Harbour Master, the establishment or designation of an Authority to regulate harbours and ports; to provide for maritime services like pilotage within harbours in the Falkland Islands as well as to licence dredging and other works that can be carried out at harbours and ports.

ENACTED by the Legislature of the Falkland Islands —

### PART 1 – PRELIMINARY

#### 1. Title

This Ordinance is the Harbours and Ports Ordinance 2017.

#### 2. Commencement

This Ordinance comes into force on a date appointed by the Governor by notice in the *Gazette*.

#### 3. Interpretation

In this Ordinance unless the context otherwise requires —

“authority” means the body established or the department designated as such under section 4 of this Ordinance;

“harbour” means any harbour, whether natural or artificial, and any port, haven, estuary, tidal or other river or inland waterway navigated by sea-going ships, and includes a dock or a wharf as declared and defined in accordance with section 14 of this Ordinance and includes a harbour declared as such before the commencement of this Ordinance;

“Harbour Master” means a person appointed under section 5 and includes any deputy Harbour Master;

“hovercraft” means a vehicle which is designed to be supported when in motion wholly or partly by air expelled from the vehicle to form a cushion of which the boundaries include the ground, water or other surface beneath the vehicle;

“master” includes a captain and every person (except a pilot) having command or charge of a ship and, in relation to a fishing vessel, means the person for the time being in command of or in charge of the fishing vessel or in charge of the fishing operations on board the fishing vessel;

“mooring” includes casting anchor and making fast to a shore or a buoy;

“port” means a port declared and defined in accordance with section 7 and includes a port declared as such before the commencement of this Ordinance;

“port state control” means the inspection of foreign vessels by the authority in order to verify that the ship (and its equipment) complies with —

- (a) the requirements of international conventions relating to safety; and
- (b) the requirements under Part 4 of the Maritime Ordinance 2017 with respect to manning;

“unmooring” includes weighing anchor and casting off from ashore or a buoy;

“vessel” includes —

- (a) a ship or boat, or any other description of craft used in navigation;
- (b) a rig, raft or floating platform, or any other moveable thing constructed or adapted for floating on, or partial or total submersion in, water; and
- (c) a seaplane, a hovercraft, or any other amphibious vehicle.

*[Dangerous Vessels Act 1985 (UK), s. 7]*

## **PART 2 – ESTABLISHMENT OF AUTHORITY, HARBOUR MASTER AND OTHER OFFICERS**

#### **4. Establishment or designation of Falkland Islands Maritime Authority**

- (1) The Governor must designate a body as the Falkland Islands Maritime Authority.
- (2) The Governor may designate the department responsible for maritime, harbours and ports matters to be the authority (Department of Natural Resources).
- (3) The Governor may confer functions or responsibilities to the authority under this Ordinance or under any other law.

#### **5. Appointment of Harbour Master**

- (1) The Governor may from time to time appoint a public officer to be the Harbour Master.
- (2) The Governor may —
  - (a) confer such responsibilities or functions on the Harbour Master under this Ordinance or under any other law;
  - (b) give general or specific directions to the Harbour Master in relation to the functions of the Harbour Master under this Ordinance or under any other law.
- (3) The Governor may appoint any number of public officers to be deputy Harbour Masters to assist the Harbour Master in carrying out the functions or responsibilities referred to under subsection (2).
- (4) A person appointed as a Harbour Master before the commencement of this Ordinance continues to be the Harbour Master as specified in the person's instrument of appointment.

### **PART 3 – PORTS**

#### **6. Declaration of ports**

The Governor may by order declare and define the limits of a port.

#### **7. Powers of Harbour Master**

The Harbour Master has power to —

- (a) order the master of any vessel to change the place where any vessel is berthed or moored in a port;
- (b) cause, at the expense of the master, the berth or mooring of any vessel to be changed when an order under paragraph (a) has not been complied with and for that purpose to —

- (i) cast off, loose or unshackle the vessel; and
  - (ii) if necessary, sever any cable, chain or rope of the vessel; and
  - (iii) put on board the vessel sufficient persons to protect the vessel during its change of berth or mooring;
- (c) cause to be boarded and searched any vessel in any port which the Harbour Master reasonably suspects of having on board —
- (i) any arms, explosives, ammunition or other combustible substances or materials; or
  - (ii) any drugs contrary to the laws of the Falkland Islands;
- (d) remove or see to the removal of any vessel or other object which is sunk, stranded or abandoned in a port or the approach to the port which, in the opinion of the Harbour Master, is causing an obstruction or danger to navigation;
- (e) destroy or see to the destruction of any vessel or object, or part of any vessel or object, referred to in paragraph (d);
- (f) take possession of any vessel or object referred to in paragraph (d), and —
- (i) if so requested, deliver the vessel or object to its owner on payment of all the costs incurred in the recovery and delivery of the vessel or object; or
  - (ii) if no such request is received within three months from taking of possession, sell the vessel or object and any property found in it and after deduction of the cost of recovery and sale deposit the balance, if any, of the proceeds of the sale in the Consolidated Fund in trust for the person entitled to such proceeds;
- (g) seize and detain any vessel which the Harbour Master has reasonable cause to believe has entered the territorial sea or internal waters of the Falkland Islands in contravention of an order made under section 10.

## **8. Recovery of payments from owner in certain cases**

If, under this Ordinance or any regulations made under it, an owner of a vessel or any person is required to pay any penalty or expenses by reason of an act or omission of the master of the vessel or that person, the amount so paid and costs may be recovered by the owner from the person who committed the offence, did the wrongful act, or omitted to do anything by reason of which the owner was compelled to make payment.

## **9. Payments may be enforced by distress**

Where —

- (a) an order has been made under this Part for the payment by the master or owner of a vessel of any fine or other payment; and

(b) such fine has not been paid within —

(i) the time allowed by the court; or

(ii) if no time has been given, such time as may be reasonable,

the Senior Magistrate or not less than two justices of the peace may direct that the amount payable may be levied by the impounding and sale of the vessel, the vessel's equipment or any part of the vessel by the Harbour Master.

#### **10. Restriction of entry of vessels**

(1) The Governor may by order published in the *Gazette*, when the Governor considers it necessary in the interests of defence or internal security or other issues of national interest, prohibit the entry of any vessel or class of vessels into the territorial sea or internal waters of the Falkland Islands or any part or parts of them.

(2) An order made under subsection (1) comes into force on the day specified in it notwithstanding that such day may be prior to the publication of the order in the *Gazette*.

#### **11. Application of Part 4**

Part 4 applies to ports in the same manner as it applies to harbours.

#### **12. Offences and penalties**

(1) A person who —

(a) contravenes any provision of this Part;

(b) fails to comply with the requirements of this Part, including a prohibition under section 10; or

(c) obstructs the Harbour Master or any person acting on his or her behalf or any other person acting under the provisions of this Part,

commits an offence.

(2) A person who commits an offence under this Part is liable on conviction —

(a) to a fine not exceeding level 7 on the scale set out in the Schedule; or

(b) in the case of contravention of an order under section 10, to such fine or forfeiture of the vessel used in contravention of such order, or to both such fine and forfeiture.

### **13. Regulations in relation to ports**

- (1) The Governor may make regulations for the better carrying out of the provisions of this Part.
- (2) Without derogating from the generality of subsection (1), regulations made under this section may provide for —
- (a) the control of mooring, anchoring and berthing of vessels in a port;
  - (b) the restriction of the carrying, loading, discharging or holding of arms, ammunition or other combustible substances or materials on, from or in vessels entering or remaining in a port;
  - (c) the regulation of the speed of vessels moving in, into or out of a port;
  - (d) the watches to be maintained on vessels in a port;
  - (e) such matters as may appear necessary for protection of ships or other property; or
  - (f) the imposition of a fine not exceeding level 7 on the scale set out in the Schedule for the contravention of such regulations.

## **PART 4 – HARBOURS**

### *Designation of harbours*

### **14. Designation of harbours**

The Governor may by order designate and define the limits of a harbour.

### *Harbour directions: authority*

### **15. Directions**

- (1) The authority may give directions (“harbour directions”) in respect of ships —
- (a) within the harbour; or
  - (b) entering or leaving the harbour.
- (2) A harbour direction may relate to —

- (a) the movement of ships;
  - (b) mooring or unmooring;
  - (c) equipment (including nature and use); or
  - (d) the manning of ships.
- (3) A harbour direction may require the master of a ship to provide information to a specified person in a specified manner.
- (4) A harbour direction is subject to any direction given by the Harbour Master under section 18.
- (5) The authority may not give a harbour direction which conflicts with an enactment.
- (6) The authority may delegate the issuing of any directions to the Harbour Master subject to such conditions or restrictions as the authority may think fit.
- [Harbours Act 1964 (UK), s. 40A]*

## **16. Procedure of issuing harbour directions**

- (1) Harbour directions must be in writing.
- (2) Before giving harbour directions the authority must consult such representatives of users of the harbour as the authority thinks appropriate.
- (3) The authority must make such arrangements as it thinks appropriate for publicising a proposed harbour direction for at least 28 days before it is given.
- (4) Without limiting the arrangements the authority may make under subsection (3), the authority must as soon as is reasonably practicable after giving a harbour direction publish a notice in a newspaper in wide circulation within the Falkland Islands —
- (a) stating that a harbour direction has been given; and
  - (b) giving details of the arrangements for the inspection and supply of copies of the harbour direction.
- (5) The authority must —
- (a) make harbour directions available for inspection; and
  - (b) supply a copy to anyone who requests it.
- (6) The authority may charge a reasonable fee for the supply of copies.
- [Harbours Act 1964 (UK), s. 40B]*

## **17. Content of harbour directions**

(1) Harbour directions may make —

- (a) provisions that apply generally or only in relation to specified circumstances, areas, periods or descriptions of ship; and
- (b) different provisions for different circumstances, areas, periods or descriptions of ship.

(2) Harbour directions may be varied or revoked by subsequent harbour directions.

*[Harbours Act 1964 (UK), s. 40C]*

### *Control of movement of ships in harbour: directions by Harbour Master*

## **18. Powers of Harbour Master - general**

(1) Subject to subsection (2), the Harbour Master may give directions for all or any of the following purposes —

- (a) for regulating the time at which and the manner in which any vessel may enter into, go out of, or lie in or at the harbour, dock, or pier, and within the prescribed limits, if any, and its position, mooring or unmooring, placing and removing, whilst at the harbour, dock, or pier;
- (b) for regulating the position in which any vessel must take in or discharge its cargo or any part of it, or must take in or land its passengers, or must take in or deliver ballast within or on the harbour, dock, or pier;
- (c) for regulating the manner in which any vessel entering the harbour or dock or coming to the pier must be dismantled, as well for the safety of such vessel as for preventing damage to other vessels, and to the harbour, dock, or pier, and the moorings;
- (d) for removing unserviceable vessels and other obstructions from the harbour, dock, or pier, and keeping the same clear; or
- (e) for regulating the quantity of ballast or dead weight in the hold which each vessel in or at the harbour, dock, or pier must have during the delivery of her cargo, or after having discharged the same.

(2) Nothing in this Ordinance authorises the Harbour Master to do or cause to be done any act in any way repugnant to or inconsistent with the Customs Ordinance 2003.

*[Harbours, Dock and Piers Clauses Act 1847 (UK), s. 52]*

## **19. Penalty on masters not complying with directions of the Harbour Master**

(1) The master of every vessel within the harbour or dock, or at or near the pier, or within the prescribed limits, if any, must regulate the vessel according to the directions of the Harbour Master.

(2) Any master of a vessel who, after being served with a notice by the Harbour Master, fails to comply with the Harbour Master's direction commits an offence and is liable to a penalty not exceeding level 3 on the scale set out in the Schedule.

*[Harbours, Dock and Piers Clauses Act 1847 (UK), s. 53]*

## **20. Directions by Harbour Master concerning dangerous vessels, etc.**

(1) Subject to section 18 and without prejudice to any other power already conferred upon the Harbour Master, the Harbour Master may give directions prohibiting the entry into, or requiring the removal from, the harbour of any vessel if in the Harbour Master's opinion the condition of that vessel or the nature or condition of anything it contains is such that its presence in the harbour might involve —

(a) grave and imminent danger to the safety of any person or property; or

(b) grave and imminent risk that the vessel may, by sinking or foundering in the harbour, prevent or seriously prejudice the use of the harbour by other vessels.

(2) The directions referred to in subsection (1) may be given as respects the vessel in question to —

(a) the owner of the vessel, or to any person in possession of the vessel;

(b) the master of the vessel; or

(c) any salvor in possession of the vessel, or to any person who is the servant or agent of any salvor in possession of the vessel, and who is in charge of the salvage operation,

and in paragraph (b) of this subsection, "master" means the person having command or charge of the vessel, but does not include a pilot (that is to say, a person not belonging to the vessel who has conduct of it).

(3) In determining whether to give any direction under subsection (1) in any particular case, a Harbour Master must have regard to all the circumstances of that case and, in particular, the Harbour Master must have regard to the safety of any person or vessel (whether that person or vessel is in or outside the harbour and including the vessel in question in that case).

(4) Directions may be given under subsection (1) in any such reasonable manner as the Harbour Master thinks fit.

(5) At the time any directions under subsection (1) are given to any person, the Harbour Master giving the directions must inform that person of the grounds for giving them.

*[Dangerous Vessels Act 1985 (UK), s. 1]*

## **21. Loss or damage occurring outside harbour**

(1) Any loss or damage which occurs outside a harbour in consequence of directions given by the Harbour Master in purported exercise of the Harbour Master's powers is deemed to have occurred in that harbour.

(2) Subject to the provisions of this Part, the authority is liable for any loss or damage arising in the circumstances referred to under subsection (1).

*[Dangerous Vessels Act 1985 (UK), s. 2]*

## **22. Further directions by Governor**

(1) Where a Harbour Master has given directions under section 20 as respects any vessel, the Governor may, for the purposes of securing the safety of any person or vessel (including the vessel to which those directions relate), give directions under this section to that Harbour Master requiring him or her —

(a) to permit the vessel to which the directions given under section 20 relate to enter and remain, or (as the case may be) to remain, in the harbour in question; and

(b) to take such action (if any) as may be specified in the directions given under this section, for the purpose of enabling the vessel to do so for any connected purpose,

and the directions under section 20 will cease to have effect.

(2) A Harbour Master to whom any directions are given under this section must give notice of those directions as respect the vessel in question to the person to whom the directions under section 20 were given or failing that, to any of the other persons mentioned in section 20(2), in any such reasonable manner as the Harbour Master thinks fit; and it is the duty of —

(a) the Harbour Master, to take any reasonable action in relation to that vessel specified in those directions; and

(b) the Harbour Master and the authority, to take all such further action as may be reasonably necessary to enable that vessel to enter and remain, or to remain, in the harbour.

*[Dangerous Vessels Act 1985 (UK), s. 3]*

## **23. Saving for certain vessels**

No directions under section 20 apply in relation to —

(a) any vessel belonging to Her Majesty, or employed in the service of the Crown for any purpose, including any such vessel in the possession of a salvor; or

(b) any vessel which is a pleasure boat of 24 metres or less in length.

*[Dangerous Vessels Act 1985 (UK), s. 6]*

## **24. Harbour Master may remove vessels within harbour, docks or pier**

(1) If —

(a) the master or owner of any vessel in or at the harbour, dock, or pier, or within prescribed limits, if any, does not moor, unmoor, place or remove the same according to the directions of the Harbour Master; or

(b) there is no person on board of any such vessel to attend to the directions,

the Harbour Master may cause such vessel to be moored, unmoored, placed or removed as he or she thinks fit, within or at the harbour, dock, or pier, or with the prescribed limits.

(2) For the purpose of subsection (1), the Harbour Master may cast off, unloose, or cut the rope or unshackle or break the chain, by which any such vessel is moored or fastened.

(3) All expenses incurred while attending the mooring, unmooring, placing, or removing of the vessel must be paid by the master or owner of the vessel.

(4) Before the Harbour Master unlooses or cuts any rope, or unshackles or breaks any chain, by which any vessel without any person on board to protect it is moored or fastened, he or she must cause a sufficient number of persons to be put on board of such vessel for the protection of the same.

*[Harbour, Docks and Piers Clauses Act 1847 (UK), s. 58]*

*Services to be provided at the harbour: lighthouses, beacons and buoys*

## **25. Power to erect lighthouses and lay down buoys, with consent of authority**

(1) The authority must make provision for the erection of lighthouses and the laying down of buoys for the guidance of vessels within the limits of any harbour, dock or pier in the Falkland Islands.

(2) The buoys must be of such character for preserving and improving any harbour, dock or pier in the Falkland Islands.

*[Harbour, Docks and Piers Clauses Act 1847 (UK), s. 77]*

## **26. Lights, beacons, or sea-marks not to be exhibited or altered without sanction of authority**

(1) The authority must sanction the erection of any lighthouse or beacon, or the exhibition or allow to be exhibited any light, beacon, or sea-mark.

(2) Any light, beacon, or sea-mark exhibited with the sanction of the authority under subsection (1) must not be altered without the authority's sanction.

(3) Every light, beacon, and sea-mark must be of such power and description, and may be discontinued or altered, as the authority directs.

*[Harbour, Docks and Piers Clauses Act 1847 (UK), s. 78]*

### *Harbour Charges*

#### **27. Authority to impose charges**

(1) Subject to section 26 the authority has, in relation to any ship at a harbour in the Falkland Islands, the power to impose charges and in particular the power to demand, take and recover such ship, passenger and goods charges as the authority thinks fit.

(2) Any ship, passenger or goods charges which were payable and due for payment immediately before this section comes into operation are deemed to have been imposed by virtue of this section.

*[Harbours Act 1964 (UK), s. 26]*

#### **28. Charges of authority to be reasonable**

(1) The charges (other than excepted charges) that may be imposed by the authority at a harbour under section 27 must be reasonable.

(2) For the purposes of subsection (1) the following are excepted charges —

(a) ship, passenger and goods charges;

(b) charges arising from the running of a ferry service in or from a harbour; and

(c) such other charges, dues or duties as the Governor may by order declare to be excepted.

*[Harbours Act 1964 (UK), s. 27]*

#### **29. Duty of authority to make available for inspection, and to keep for sale, copies of lists of certain charges**

(1) The authority must keep a list showing the ship, passenger and goods charges for the time being chargeable by virtue of section 27.

(2) The list under subsection (1) must —

(a) be kept at the authority's office; and

(b) be open for inspection by any person during reasonable hours without charge.

(3) The authority may sell copies of the list at such price as may be prescribed.

(4) The authority may not impose any ship, passenger or goods charge if, at the time at which it is chargeable, the authority has failed to comply with the requirements of subsection (1) and (2) with respect to the keeping of a list at its office or the charge is not shown in that list.

(5) The authority may supply a copy of a list referred to under subsection (1) to the Governor without charge.

*[Harbours Act 1964 (UK), s. 30]*

### **30. Right of objection to ship, passenger and goods charges**

(1) This section applies to ship, passenger and goods charges.

(2) Subject to subsection (10), the provisions of subsection (3) to (6) have effect where a written objection to a charge to which this section applies imposed by the authority is lodged with the Governor by —

(a) a person appearing to have a substantial interest; or

(b) a body representing persons with a substantial interest,

and the objection is expressed to be made on all or any of the following grounds —

(i) the charge ought not to be imposed at all;

(ii) the charge ought to be imposed at a lower rate;

(iii) according to the circumstances of the case, ships, passengers or goods of a class specified in the objection ought to be excluded from the scope of the charge either generally or in specified circumstances;

(iv) according to the circumstances of the case, the charge ought to be imposed either generally or in circumstances specified in the objection on ships, passengers or goods of a class so specified at a rate lower than that at which it is imposed on others.

(3) The Governor must, immediately after the objection is lodged, send a copy to the authority and must give notice to the objector that, as a condition precedent to the taking by the Governor of further steps in the matter of the objection, the objector must publish in a specified newspaper a notice (in the form specified, if one is specified) stating that —

(a) the objector has lodged with the Governor an objection to the charge (and specifying the ground or grounds on which it is expressed to be made); and

(b) the person or body who desires to make representations to the Governor in the matter, that is to say, a person having a substantial interest and a body representing persons who have such an interest, should do so in writing within the time specified in the notice (which must not be less than 42 days from the publication of the notice).

(4) Where the proper notice concerning the objection has been duly published, then as soon as practicable after the expiration of the time specified in the notice (but subject to the next following subsection), the Governor must —

(a) proceed to consider the charge and any representations made, unless —

(i) the objection has been withdrawn before the expiration of that time; and

(ii) no written representations in the matter have been made to the Governor by any such person or body as is mentioned in subsection (3)(b) before the expiration of that time; and

(b) cause an inquiry to be held, unless the Governor is satisfied that he or she can properly proceed to a decision in the matter without causing an inquiry to be held with respect to it.

(5) Where written representations are made as mentioned in subsection (4), the Governor must send copies of them to the authority and except where the objection has been withdrawn to the objector, and must not proceed to consideration of the charge until such period for consideration of, and comment upon, the representations by the authority and by the objector (if the objection has not been withdrawn) as the Governor thinks reasonable has elapsed.

(6) The Governor must, after effect has been given to subsection (4), either —

(a) approve the charge but set a limit (not being later than the expiration of 12 months from the date on which they approve it) to the period during which the approval is to be of effect, and give to the authority written notice that they have approved it, stating the limit set; or

(b) give to the authority such direction with respect to the charge as would meet the objection to it made on any of the grounds specified in subsection (2) (whether that is or is not the ground, or is or is not included amongst the grounds, on which the objection whose lodging gives rise to the proceedings is expressed to be made).

(7) A direction given under subsection (6) to an authority must be in writing and must specify a date for its coming into operation and the period from that date (which must not exceed twelve months) during which it is to have effect, and the authority must comply with it.

(8) If the authority fails to comply with an obligation to which it is subject to by virtue of subsection (7) the authority commits an offence and is liable, on summary conviction, to a fine not exceeding level 7 on the standard scale.

(9) Immediately after complying on any occasion with subsection (6), the Governor must publish the notice of the direction given to the authority in the same newspaper which published the notice lodging the objection which gave rise to proceedings that resulted in the direction being given.

(10) Where, by virtue of this section, a charge imposed at a harbour is approved, subsections (3) to (6) do not have effect by virtue of the lodging of a further objection to the charge during the period which the approval is of effect, and where, by virtue of this section, a direction is given with respect to a charge so imposed, the said subsections do not have effect by virtue of the lodging of a further objection to that charge during the period which, the direction has effect or

of the lodging, during that period, of an objection to a charge that has come into existence by virtue of the direction.

(11) Where the Governor is in the course of giving effect to subsections (3) to (5) as a result of an objection to a charge having been lodged, and a further objection to that charge is lodged with the Governor, subsections (3) to (6) do not have effect by virtue of the lodging of that further objection.

*[Harbours Act 1964 (UK), s. 31]*

### **31. Special provisions with respect to certain aviation charges**

Section 27(2) so far as regards charges regulated by the provisions of an Order in Council made under section 8(2)(o) of the Civil Aviation Act 1949 (regulation of charges for use of licensed aerodromes and for services provided at an aerodrome) has effect subject to that provision; and sections 28 and 30 do not apply to any charges regulated under that Act.

*[Harbours Act 1964 (UK), s. 37]*

### **32. Master to report arrival of vessel**

(1) The master of a vessel must report the arrival of a vessel to the Harbour Master within such time as may be specified by the Harbour Master.

(2) A master who fails to make a report within the specified time commits an offence and is liable to a penalty not exceeding level 1 on the scale set out in the Schedule.

*[Harbour, Docks and Piers Clauses Act 1847 (UK), s. 35]*

## *Goods arriving at harbours*

### **33. Masters of vessels to give accounts of goods intended to be unshipped within the limits**

(1) When any goods are intended to be unshipped within the limits of the harbour, dock, or pier, the master of the vessel containing such goods must, within 24 hours after the arrival of the vessel within the limits of the harbour, dock, or pier, —

(a) deliver to the Collector of Customs the name of the consignee of the goods intended to be unshipped, or other person to whom the same are to be delivered, and,

(b) if —

(i) the whole cargo is intended to be unshipped, deliver a copy of the bill of lading or manifest of the cargo; or

(ii) only part of the cargo is intended to be unshipped, give the best account in writing of the kinds, weights, and quantities of the several goods intended to be unshipped.

(2) Every master must, if required so to do by the Collector of Customs, give to the Collector of Customs 24 hours' notice of the time at which the cargo of the vessel that he or she has charge of, or any part of the vessel, is intended to be unshipped.

*[Harbour, Docks and Piers Clauses Act 1847 (UK), s. 37]*

### *Protection of the harbour, dock, or pier*

#### **34. Owners of vessels responsible for damages to works**

(1) The owner of every vessel or float of timber is answerable to the authority for any damage done by such vessel or float of timber, or by any person employed by the owner of the vessel, to the harbour, dock, or pier, or the quays or works connected with the harbour, dock, or pier.

(2) The master or person having charge of the vessel or float of timber through whose wilful act or negligence any damage is done or caused to the harbour, dock, or pier is also liable to make good the damage.

(3) Subject to subsection (4), the authority may detain any vessel or float of timber until sufficient security has been given for the amount of damage done by the vessel.

(4) Nothing in this section extends to impose any liability for any damage upon the owner of any vessel, where such vessel at the time when the damage is caused is in charge of a duly licensed pilot whom such owner or master is bound by law to employ and put in charge of his or her vessel.

*[Harbour, Docks and Piers Clauses Act 1847 (UK), s. 74]*

#### **35. Control of works and dredging**

Only a person licensed to do so under Part 6, or the authority may —

- (a) carry out any works including making any alterations or renewals; or
- (b) dredge,

on, under or over tidal waters or tidal land below the level of high water in any harbour.

### *Wrecks*

#### **36. Harbour Master may remove wrecks**

Where a vessel or boat is sunk, stranded or abandoned in any harbour or tidal water, or in or near any approach to the harbour or tidal water, in such a manner as, in the opinion of the Governor in Council, is an obstruction or a danger to navigation, the Harbour Master may —

(a) take possession of and raise, remove or destroy the whole or any part of the vessel or boat;

(b) light or buoy any such vessel or boat or part until the raising, removal or destruction of the vessel or boat; and

(c) deliver to the owner on demand and on payment of all expenses incurred, or in the absence of such demand and payment sell, in such manner as the Harbour Master thinks fit, any vessel or boat or part so raised or removed, and also any other property recovered in the exercise of his or her powers under this section, and out of the proceeds of the sale reimburse the expenses incurred in relation to and deposit in the Treasury the surplus (if any) of the proceeds in trust for the persons entitled to that surplus:

Provided that the Harbour Master is entitled to recover from the owner of any vessel or boat raised, removed or destroyed or sold under this section all expenses incurred by the Harbour Master in relation to the raising, removal or destruction of that vessel or boat in excess of the proceeds of such sale.

*[Harbours Ordinance 1902, s. 11]*

### *Offences*

#### **37. Failure to comply with directions**

(1) A person who without reasonable excuse contravenes or fails to comply with any directions given under section 19 commits an offence and is liable on summary conviction to a fine not exceeding level 7 on the scale set out in the Schedule.

(2) It is a defence for a person charged under this section to show that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

*[Dangerous Vessels Act 1985 (UK), s. 5]*

#### **38. False declaration**

Any person who signs a declaration required by this Ordinance, or by any regulation made under this Ordinance, containing any wilfully false, misleading or inaccurate statement, commits an offence and is liable on conviction to a fine not exceeding level 7 on the scale set out in the Schedule.

#### **39. Restrictions before pratique**

(1) It is an offence to receive anything from any vessel arriving from ports outside the Falkland Islands before the person has received free pratique.

(2) It is an offence for any unauthorised person other than the pilot, to board or leave, or make fast to any vessel before the person has received pratique.

(3) A person who commits an offence under this section is liable on conviction to a fine not exceeding level 10 on the scale set out in the Schedule.

*[Harbours Ordinance 1902, s. 6]*

#### **40. Obstructing the Harbour Master**

A person who obstructs the Harbour Master in the due execution of the Harbour Master's duty so as to resist or impede him or her in the proper performance of his or her duty commits an offence and is liable on conviction to a fine not exceeding level 7 on the scale set out in the Schedule.

*[Harbours Ordinance 1902, s. 7]*

#### **41. Damaging moorings, etc.**

Any person who wilfully and unlawfully cuts, breaks, destroys, damages or removes, except for the purposes of this Ordinance, the mooring or securing of any vessel, boat or hulk, or any sea mark, commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding level 10 on the scale set out in the Schedule or both such imprisonment and fine, and the penalties are not a bar to, or prejudice any action at law which may be brought by any person who has suffered injury or loss.

*[Harbours Ordinance 1902, s. 8]*

#### **42. Regulations**

The Governor may make regulations on all or any of the following —

- (a) the use of harbours, docks or piers;
- (b) the exercise of powers vested in the Harbour Master;
- (c) the admission of vessels into or near the harbour, dock, or pier, and their removal out of and from the same, and for the good order and control of such vessels whilst within the harbour or dock, or at or near the pier;
- (d) the shipping and unshipping, landing, warehousing, stowing, depositing, and removing of all goods within the limits of the harbour, dock or pier, and the premises within the harbour, dock or pier;
- (e) setting out (with the consent of the Collector of Customs) the hours during which the gates or entrances or outlets to the harbour, dock, or pier must be open;
- (f) the duties and conduct of all persons who are employed in the harbour, dock or pier or the premises within the harbour, dock or pier;
- (g) the use of lights and other navigational aids within the harbour, dock, or pier, and the premises within the harbour, dock or pier, and within the prescribed limits (if any);
- (h) preventing damage or injury to any vessel or goods within the harbour or dock, or at or near the pier, or on premises;

- (i) the use of cranes, weighing machines, weights and measures;
- (j) the exercise of port state control by the authority over foreign vessels; or
- (k) the duties and conduct of the persons employed on the premises within the harbour, dock or pier and fixing the rates to be paid to those persons for carrying any goods, articles, or things from or to the same.

## **PART 5 – PILOTAGE**

### *Provision of pilotage services*

#### **43. General duties as to provision of pilotage services**

- (1) The authority must keep under consideration —
  - (a) whether any and, if so, what pilotage services need to be provided to secure the safety of ships navigating in or in the approaches to a harbour; and
  - (b) whether, in the interests of safety, pilotage should be compulsory for ships navigating in any part of harbour or its approaches; and if so, for which ships and in which circumstances and what pilotage services need to be provided for those ships.
- (2) Without prejudice to the generality of subsection (1), the authority must, in performing its functions under that subsection, have regard in particular to the hazards involved in the carriage of dangerous goods or harmful substances by ships.
- (3) The authority must provide such pilotage services as it considers necessary in accordance with subsection (1).

*[Pilotage Act 1987 (UK), s. 2]*

#### **44. Authorisation of pilots**

- (1) Subject to subsection (3) and section 43, the authority may authorise a number of persons to act as pilots in or in any part of harbour as it considers are suitably qualified to do so; and the authorisation must specify the area within which it has effect and may specify that it only has effect in relation to ships of a particular description.
- (2) The authority may —
  - (a) determine the qualifications in respect of age, physical fitness, length of service, local knowledge, skill, character and any other requirements that a person must have in order to apply for authorisation as a pilot; and

(b) provide for the examination of persons applying to provide pilotage services.

(3) The authority may suspend or revoke an authorisation granted under this section if it appears to it that —

(a) the authorised person is guilty of any incompetence or misconduct affecting the capability of the person as a pilot;

(b) the authorised person has ceased to have the qualifications required from persons applying for authorisation by it under this section or has failed to provide evidence that he or she continues to have those qualifications; or

(c) it is appropriate to do so by virtue of the termination of any contract or other arrangement under which the services of pilots are provided within the harbour.

(4) Before suspending or revoking an authorisation under subsection (3)(a) or (b), a harbour authority must give written notice of its intention to do so to the authorised person, stating the reasons for which it proposes to act, and must give the person a reasonable opportunity of making representations.

(5) Where the authority suspends or revokes an authorisation of any person by virtue of subsection (5)(c), it must give the person notice in writing —

(a) stating that the suspension or revocation was by virtue of that paragraph; and

(b) specifying the duration of the authorisation in question and any previous authorisations granted to that person by the authority.

(6) If any person who is not an authorised pilot for an area holds themselves out as if he or she is in that area as a pilot or so holds himself or herself out as to indicate or be reasonably understood to indicate that the person is such a pilot, the person commits an offence and is liable on summary conviction to a fine not exceeding level 6 on the scale set out in the Schedule.

(7) In this section —

“recognised assistant pilot” means a person who acts as an assistant to pilots and is recognised as such by the authority.

*[Pilotage Act 1987 (UK), s. 3]*

#### **45. Employment, etc. of authorised pilots**

The authority may make such arrangements as it considers appropriate for the provision of the services of authorised pilots in any harbour within the Falkland Islands (whether under a contract of employment or a contract for services).

*[Pilotage Act 1987 (UK), s. 4]*

#### **46. Pilot boats**

(1) Any ship employed in providing pilotage services provided by or on behalf of the authority (in this Ordinance referred to as “pilot boat”) must —

- (a) if operated by the authority, be approved by that authority; and
- (b) otherwise, be licensed by it,

and the authority must not approve or licence any ship under this subsection unless it is satisfied that it is suitable for use as a pilot boat.

(2) The Governor may make regulations for the operation of pilot boats.

*[Pilotage Act 1987 (UK), s. 6]*

#### *Compulsory pilotage*

#### **47. Pilotage directions**

(1) Subject to the provisions of this section, if the authority considers that in the interests of safety it should do so, it must direct that pilotage is compulsory for ships navigating in any area or part of an area of a harbour; and such a direction is referred to in this Ordinance as a “pilotage direction”.

(2) A pilotage direction —

- (a) may, subject to subsection (3), apply to all ships or ships of a description specified in the direction (subject to any exceptions as may be specified);
- (b) must specify the area of the harbour and circumstances in which it applies;
- (c) may specify the circumstances in which an authorised pilot in charge of a ship to which it applies is to be accompanied by an assistant who is also an authorised pilot; and
- (d) may contain such supplementary provisions as the authority considers appropriate.

(3) Before giving a pilotage direction the authority must consult —

- (a) the owners of ships which customarily navigate in the area to which the proposed direction would apply; and
- (b) any other persons who carry on harbour operations within the harbour,

or, in either case, such persons as it considers to be representative of them.

(4) If the authority considers that pilotage should be compulsory for ships navigating in any area outside the harbour, it must apply for a harbour revision order to be made to extend the limits

within which the authority has jurisdiction for the purposes of pilotage to include that area and a pilotage direction given by it does not apply to that area unless the limits have been so extended.

(5) The authority must arrange for any pilotage direction given by it to be published in such manner as to bring it to the notice of those persons likely to be interested.

*[Pilotage Act 1987 (UK), s. 7]*

#### **48. Pilotage exemption certificates**

(1) Subject to subsection (3), the authority which has given a pilotage direction may, on application by any person who is bona fide the master or first mate of any ship, grant a certificate (in this Ordinance referred to as a “pilotage exemption certificate”) to the person if it is satisfied (by examination or by reference to such other requirements as it may reasonably impose) —

(a) that the applicant’s skill, experience and local knowledge are sufficient for the applicant to be capable of piloting the ship of which the applicant is master or first mate (or that and any other ships specified in the certificate) within the harbour or a part of the harbour as may be specified; and

(b) in any case where it appears to the authority to be necessary in the interests of safety, that the applicant’s knowledge of English is sufficient for that purpose.

(2) The requirements imposed under subsection (1) must not be —

(a) unduly onerous having regard to the difficulties and danger of navigation in the harbour in question; and

(b) more onerous than those required to be met by a person (other than a person who immediately before the appointed day was a recognised assistant pilot within the meaning of section 42).

(3) If the Governor is satisfied, on request by the authority, that it is appropriate to do so by reason of the unusual hazards involved in shipping movements within the harbour, the Governor may make an order suspending the granting of pilotage exemption certificates for a period not exceeding three years.

(4) Where an order is made under subsection (3) any pilotage exemption certificate granted by the authority ceases to have effect and the authority must notify the holders of such certificates of that fact.

(5) A pilotage exemption certificate will not remain in force for more than one year from the date on which it is granted, but —

(a) if the holder continues to be the master or first mate of a ship and the requirements under subsection (1) are met, the authority may renew it annually; and

(b) on the application of the holder, may be altered so as to refer to different ships from those to which it previously referred if the authority is satisfied the requirements under subsection (1) as respect to those ships are met.

(6) The authority may suspend or revoke a pilotage exemption certificate if the holder has been found guilty of any incompetence or misconduct which affects the holder's capability to pilot the ship of which he or she is master or first mate or any other ships specified in the certificate.

(7) Before refusing an application by any person under this section for the grant, renewal or alteration of a certificate or suspending or revoking a certificate held by any person, the authority must give the applicant written notice of its intention to do so, stating the reasons for which it proposes to act, and must give the applicant a reasonable opportunity to make representations.

(8) The authority may charge such fees in respect of any examination required to be taken for the purposes of this section or the grant, renewal or alteration of any pilotage exemption certificate as the authority considers reasonable for the purposes of meeting its administrative costs in connection with the granting of pilotage exemption certificates.

*[Pilotage Act 1987 (UK), s. 8]*

#### **49. Prevention of discrimination in favour of authority's ships**

The authority must ensure that any ship owned or operated by it and used by it in the exercise of its functions otherwise than under this Ordinance is subject to the same obligations as respects pilotage whilst navigating within any harbour in the Falkland Islands as required for any other ship.

*[Pilotage Act 1987 (UK), s. 9]*

#### **50. Compulsory pilotage**

(1) A ship which is being navigated in an area and in circumstances in which pilotage is compulsory for it by virtue of a pilotage direction must be under the pilotage of —

(a) an authorised pilot accompanied by such an assistant, if any, as is required by virtue of the direction; or

(b) a master or first mate possessing a pilotage exemption certificate in respect of that area and ship.

(2) If any ship is not under pilotage as required by subsection (1) after an authorised pilot has offered to take charge of the ship, the master of the ship commits an offence and liable on summary conviction to a fine not exceeding level 6 on the scale set out in the Schedule.

(3) If the master of a ship navigates the ship in an area and in circumstances in which pilotage is compulsory as required under a pilotage direction without notifying the authority which gave the direction that he or she proposes to do so, the master commits an offence and is liable on summary conviction to a fine not exceeding level 6 on the scale set out in the Schedule.

*[Pilotage Act 1987 (UK), s. 15]*

### **51. Liability for ships under compulsory pilotage**

The fact that a ship is being navigated in an area and in circumstances in which pilotage is compulsory for it does not affect any liability of the owner or master of the ship for any loss or damage caused by the ship or by the manner in which it is navigated.

*[Pilotage Act 1987 (UK), s. 16]*

### **52. Regulations**

The Governor may make regulations to provide for —

- (a) the authorisation and qualifications of pilots under section 44;
- (b) the employment of authorised pilots;
- (c) the making of applications for exemption certificates under section 48;
- (d) the licensing and approval of pilot boats;
- (e) the making of pilotage directions; and
- (f) any other matter which is to be prescribed to give effect to this Part.

## **PART 6 – DREDGING AND OTHER WORKS**

### **53. Licensing requirements**

(1) Subject to section 35 and this Part, a licence is required under this Part for —

- (a) the carrying out of any works within a harbour; or
- (b) dredging.

(2) The Governor may designate the authority or appoint a public officer to be the licensing authority for the purposes of this Part and if no designation of the authority or appointment of a public officer has been done, the Governor will, for the time being, be the licensing authority.

(3) In determining whether to issue a licence, the licensing authority —

- (a) must have regard to the need to —
  - (i) protect the marine environment, the living resources which it supports, and human health;
  - (ii) prevent interference with legitimate uses of the harbour in particular with regard to public rights; and

(b) may have regard to such other matters as the licensing authority considers relevant.

(4) Without prejudice to the generality of subsection (3), where it appears to the licensing authority that in carrying out any proposed works or dredging, there is a likelihood of interference with or damage to any apparatus belonging to or maintained by the authority or anything that will obstruct or impede the safe navigation of ships within the harbour, the licensing authority must, in determining whether to issue a licence, have regard to the practical availability of any alternative methods.

(5) The licensing authority —

(a) must include such provisions in a licence as appear to the licensing authority to be necessary or expedient to —

(i) protect the marine environment, the living resources which it supports, and human health; and

(ii) prevent interference with legitimate uses of the sea; and

(b) may include in a licence such other conditions as the licensing authority considers appropriate which may include the alternative methods referred to under subsection (4).

(6) Without prejudice to the generality of subsection (5), the licensing authority may include in a licence conditions requiring —

(a) that no operations authorised by the licence must be carried out until the licensing authority has given such further consent or approval of the operation as the licence may specify; and

(b) consultation with users of the harbour or any other persons as may be specified.

#### **54. Offences relating to licensing**

(1) A person commits an offence who —

(a) does anything for which a licence is needed —

(i) despite not being the holder of the licence needed; or

(ii) in a manner that is not in accordance with the terms of the required licence which the person holds; or

(b) causes or permits any other person to do any such thing except in pursuance of a licence and in accordance with its provisions.

(2) A person commits an offence who, for the purpose of procuring the issue of a licence or in purporting to carry out any duty imposed on the person by the provisions of a licence makes a statement which the person knows to be false in a material particular.

(3) Any person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 6 on the scale set out in the Schedule.

#### **55. Power to take remedial action**

(1) The Governor may authorise the carrying out of any operation which appears to the Governor may be necessary or expedient for the purpose of —

(a) protecting the marine environment, the living resources which it supports, and human health; or

(b) preventing interference with the legitimate use of the sea,

in any case where anything for which a licence is needed appears to have been done otherwise than in pursuance of a licence and in accordance with its provisions.

(2) If any such operation as is provided for in subsection (1) is carried out, the Government may recover any expenses reasonably incurred in carrying it out from any person who has been convicted of an offence in consequence of the act or omission which made it necessary or expedient for the operation to be carried out.

*[Marine Environment (Protection) Ordinance (Title 34.6), s. 8]*

#### **56. Regulations with regards to licences**

The Governor may make regulations —

(a) to provide for the licensing of works under this Part;

(b) to provide for licences to carry out dredging operations;

(c) to set requirements for consultations under section 53(6);

(d) to provide for requirements which must be in place to safeguard the environment

(e) for any other matter necessary to give effect to this Part.

### **PART 7 – MISCELLANEOUS PROVISIONS**

#### **57. Repeals and savings**

(1) The Harbours Ordinance 1902 is repealed.

(2) Notwithstanding subsections (1) —

(a) any person appointed as the Harbour Master under the Ordinance repealed under this section continues to hold such appointment as specified in their instrument of appointment;

(b) any regulations or orders made under the Ordinance repealed under this section which are in force before the commencement of this section continue in force in so far as they are not inconsistent with this Ordinance or until they are revoked.

**SCHEDULE**  
**SCALE OF FINES FOR OFFENCES UNDER THIS ORDINANCE**

<b>Level</b>	<b>Maximum Fine</b>
1	£2,500
2	£5,000
3	£10,000
4	£20,000
5	£40,000
6	£100,000
7	£175,000
8	£250,000
9	£500,000
10	£1,250,000
11	£2,500,000
12	£6,500,000