



FALKLAND ISLANDS

Maritime Ordinance 2017

(No. 20 OF 2017)

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FALKLAND ISLANDS

Maritime Ordinance 2017

(assented to: 21 December 2017)

(commencement: in accordance with section 1)

(published: 31 January 2018)

AN ORDINANCE

To make comprehensive provision, to modernise and consolidate various enactments relating to merchant shipping, dumping and deposits at sea, Admiralty jurisdiction in the Falkland Islands, to incorporate different Orders in Council extending different provisions of UK legislation to the Falkland Islands as well as specifying international conventions which apply to Falkland Islands law, to repeal enactments rendered obsolete by the provisions of this Ordinance and for connected purposes.

ENACTED by the Legislature of the Falkland Islands –

PART 1 – PRELIMINARY

1. Title and commencement

(1) This Ordinance is the Maritime Ordinance 2017 and comes into force on a date (being a date not earlier than the approval of this Ordinance by an Order in Council under the provisions of section 735 of the Merchant Shipping Act 1894) as the Governor may appoint by notice published in the *Gazette*.

[s4/Ord.14/2019/w.e.f. 26.09.2019]

(2) Subject to subsection (1), the Governor may appoint different dates for different provisions and purposes.

[s4/Ord.14/2019/w.e.f. 26.09.2019]

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires –

“**Authority**” means the Falkland Islands Maritime Authority established by the Governor under the Harbours and Ports Ordinance 2017;

“**British citizen**”, “**British Overseas Territories citizen**”, “**British Overseas citizen**” have the same meaning assigned to them under the British Nationality Act 1981 of the United Kingdom;

“**British ship**” has the meaning given in section 5;

“**Chapter V of the Annex to the SOLAS Convention**” has the same meaning as given under section 84A(4);

[s5/Ord.14/2019/w.e.f. 26.09.2019]

“**commissioned military officer**” means a commissioned officer in Her Majesty’s land forces on full pay;

“**commissioned naval officer**” means a commissioned officer of Her Majesty’s Navy on full pay;

“**Commonwealth citizen**” has the same meaning as in the British Nationality Act 1981 of the United Kingdom;

“**conservancy authority**” includes all persons entrusted with the function of conserving, maintaining or improving the navigation of a tidal water;

“**consular officer**”, in relation to a foreign country, means the officer recognised by Her Majesty as a consular officer of that foreign country;

“**customs officer**” has the same meaning given under the Customs Ordinance 2003;

“**Department**” means a Department of the Government of the Falkland Islands;

“**Departmental inspector**” and “**Departmental officer**” have the meanings given in section 238(9);

“**Falkland Islands Government ship**” has the meaning given to it in section 5(3); and

[s5/Ord.14/2019/w.e.f. 26.09.2019]

“**Falkland Islands registered ship**” means a ship registered under Part 3 and “**Falkland Islands ship**” must be construed accordingly;

[s5/Ord.14/2019/w.e.f. 26.09.2019]

“**Falkland Island connection**” has the meaning given in section 14(10);

“**Falkland Islands waters**” means the sea or other waters within the seaward limits of the territorial sea of the Falkland Islands; and

“**fishing vessel**” means a vessel for the time being used (or, in the case of an application for registration, intended to be used) for, or in connection with, fishing for sea fish other than a

vessel used (or intended to be used) for fishing otherwise than for profit; and for the purposes of this definition “**sea fish**” includes shellfish, salmon and migratory trout (that is to say, any species of trout which migrates to or from the sea);

“**foreign ship**” means a ship which is not —

(a) a Falkland Islands ship; or

(b) a British ship;

“**harbour**” has the meaning assigned to it under the Harbours and Ports Ordinance 2017;

“**Marine Information Notice**” or “**Marine Guidance Notice**” means general guidance contained in a notice described as such, issued or adopted by the Governor or the Authority under section 307A, and includes a reference to any such document amending or replacing that notice from time to time;

[s5/Ord.14/2019/w.e.f. 26.09.2019]

“**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 skipper or any other 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;

“**Merchant Shipping Notice**” means mandatory guidance contained in a notice described as such, issued or adopted by the Governor or the Authority under section 307A, and includes a reference to any such document amending or replacing that notice from time to time;

[s5/Ord.14/2019/w.e.f. 26.09.2019]

“**national waters**”, in relation to the Falkland Islands, means Falkland Islands waters landward of the baselines for measuring the breadth of its territorial sea;

“**Organization**” means the International Maritime Organization;

“**port**” includes place;

“**proper officer**” means a consular officer, who must be duly appointed as a public officer in the Falkland Islands and, in relation to a port in a country outside the Falkland Islands which is not a foreign country, also any officer exercising in that port functions similar to those of a superintendent;

“**qualifying foreign ship**” has the meaning given in section 3;

“**register**” means the register maintained under section 13;

“**Registrar**”, “**Registrar General**” and “**Registrar General of Shipping and Seamen**” means the person appointed by the Governor as such and includes a person authorised by the Governor to act in that capacity;

“**registration regulations**” means regulations to be made under section 14;

“**relevant British possession**” means —

- (a) the Isle of Man;
- (b) any of the Channel Islands; and
- (c) any territory for which the United Kingdom is responsible, including the Falkland Islands;

“**safety regulations**” means regulations to be made under section 84(1);

“**seafarer**” includes every person (except masters and pilots) employed or engaged in any capacity on board any ship;

“**ship**” includes every description of vessel used in navigation;

“**skipper**” in relation to fishing vessel means the master or captain of a fishing vessel;”

“**small ship**” means a ship less than 24 metres in length (“length” having the same meaning as in the tonnage regulations);

“**superintendent**” means a mercantile marine superintendent appointed under section 293;

“**surveyor of ships**” has the meaning given in section 238(9);

“**the Act**” means the Merchant Shipping Act 1995 of the United Kingdom;

“**the tonnage regulations**” means regulations to be made under section 19;

“**treaty**” includes an international convention; and

“**United Kingdom Government ship**” has the meaning given to it in section 5(4);

[s5/Ord.14/2019/w.e.f. 26.09.2019]

“**wages**” includes emoluments.

(2) In this Ordinance “**right of innocent passage**”, “**right of transit passage**” and “**straits used for international navigation**” must be construed in accordance with the United Nations Convention on the Law of the Sea 1982 as amended from time to time.

(3) A vessel for the time being used (or intended to be used) wholly for the purpose of conveying persons wishing to fish for pleasure is not a fishing vessel.

3. Meaning of “qualifying foreign ship”

(1) In this Ordinance, “**qualifying foreign ship**” means any ship other than —

- (a) a British ship, or

(b) a ship which is not registered under Part 3 and which (although not by virtue of section 5(1)(e) a British ship) —

(i) is wholly owned by persons falling within subsection (2); and

(ii) is not registered under the law of a country outside the United Kingdom.

(2) The following persons fall within this subsection, namely —

(a) British citizens;

(b) British Overseas Territories citizens;

(c) British Overseas citizens;

(d) persons who, under the British Nationality Act 1981, are British subjects;

(e) British Nationals (Overseas) (within the meaning of the British Nationality Act 1981 Act);

(f) British protected persons (within the meaning of the British Nationality Act 1981 Act); or

(g) bodies corporate incorporated in the United Kingdom, the Falkland Islands or in any relevant British possession and having their principal place of business in the United Kingdom, the Falkland Islands or in any relevant British possession.

4. Persons qualified to own British ships

Where, for the purposes of any enactment the question arises whether a ship is owned by persons qualified to own British ships, the question must be determined by reference to registration regulations made under section 15(2)(a).

PART 2 – REGISTRATION OF BRITISH SHIPS IN THE FALKLAND ISLANDS

5. British ships

(1) A ship is a British ship if —

(a) the ship is registered in the Falkland Islands under Part 3;

(b) the ship is registered in the United Kingdom under Part II of the Act;

(c) the ship is, as a Falkland Islands Government ship, registered as a British ship under Part 3 or under regulations made under section 15;

(ca) the ship is, as a United Kingdom Government ship, registered in the United Kingdom in pursuance of an Order in Council made under section 308 of the Act;

(d) the ship is registered under the law of a relevant British possession;

(e) the ship —

(i) is not registered under Part 3, but

(ii) is wholly owned by qualified owners, and

(iii) is not registered under the law of a country outside the Falkland Islands.

[s6/Ord.14/2019/w.e.f. 26.09.2019]

(2) For the purposes of subsection (1)(e), “**qualified owners**” means persons of such description qualified to own British ships as prescribed by regulations.

(3) In this section “**Falkland Islands Government ship**” means a ship belonging to the Falkland Islands Government and registered as a British ship under Part 3.

[s6/Ord.14/2019/w.e.f. 26.09.2019]

(4) In this section “**United Kingdom Government ship**” means a ship not forming part of Her Majesty’s Navy which belongs to Her Majesty, or a ship held by any person on behalf of or for the benefit of the Crown (and for that reason cannot be registered under Part 3).

[s6/Ord.14/2019/w.e.f. 26.09.2019]

6. Falkland Islands ships

(1) A ship is a Falkland Islands ship for the purposes of this Ordinance if the ship is registered in the Falkland Islands in accordance with Part 3.

(2) A ship registered in the Falkland Islands in accordance with Part 3 is subject to all the responsibilities and, is entitled to all the rights and privileges afforded to British ships under section 1 of the Act.

[Merchant Shipping Act 1995 (UK), s. 1]

7. Falkland Islands registered ships - entitlement to fly the British flag

(1) As provided for under the Act, a ship registered in the Falkland Islands as a British ship under Part 3 is entitled to fly the red ensign (without any defacement or modification) and, subject to subsections (2) and (3), no other colours.

(2) Subsection (1) does not apply to United Kingdom Government ships and Falkland Islands Government ships.

[s46/Ord.14/2019/w.e.f. 26.09.2019]

(3) The following are also proper national colours for ships registered in the Falkland Islands, that is to say –

(a) any colours allowed to be worn in pursuance of a warrant from Her Majesty or the Secretary of State in relation to British ships registered in the Falkland Islands ; or

(b) the red ensign defaced with the arms of the Falkland Islands in accordance with article 2 of the Merchant Shipping (Falkland Islands Colours) Order 1998 (S.I. 1998/3147).

8. Offences relating to British character of ship

(1) If the master or owner of a ship which is not a British ship registered in the Falkland Islands does anything or permits anything to be done, for the purpose of causing the ship to appear to be a British ship registered in the Falkland Islands then, except as provided by subsections (2) and (3), the ship is liable to forfeiture and the master, owner and any charterer each commits an offence.

(2) No liability arises under subsection (1) where the assumption of British nationality has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.

(3) Where the registration of any ship has been terminated by virtue of any provision of the termination regulations, any marks that were prescribed by registration regulations and displayed on the ship must be disregarded for the purpose of subsection (1) within a period of 14 days beginning with the date of termination of that registration.

(4) If the master or owner of a British ship registered in the Falkland Islands does anything, or permits anything to be done, for the purpose of concealing the nationality of the ship, the ship is liable to forfeiture and the master, owner and any charterer of the ship each commits an offence.

(5) Without prejudice to the generality of subsections (1) and (4), those subsections apply in particular to acts or deliberate omissions as respects —

(a) the flying of a national flag;

(b) the carrying or production of certificates of registration or other documents relating to the nationality of the ship; or

(c) the display of marks required by the law of any country.

(6) Any person convicted of an offence under this section is liable to imprisonment for a term not exceeding two years or a fine not exceeding the maximum of level 11 on the scale set out in Schedule 7, or both.

(7) Subsection (6) applies equally to things done outside the Falkland Islands as it does to things done within the Falkland Islands, by a ship registered in the Falkland Islands; and the courts of the Falkland Islands are equally entitled to prosecute offences related to things done outside as within the Falkland Islands.

(8) Notwithstanding subsections (6) and (7), the courts of the Falkland Islands will not have jurisdiction to try offences related to things done outside the Falkland Islands by British ships registered in the Falkland Islands if the ship, in its capacity as a British ship, has already been convicted or acquitted of an offence related to the thing done by a court in any relevant British possession or in the United Kingdom.

9. Penalty for carrying improper colours

(1) If any of the following colours, namely —

(a) any distinctive national colours except —

(i) the red ensign or, in the case of a Falkland Islands ship, a red ensign defaced in accordance with the Merchant Shipping (Falkland Islands Colours) Order 1998 (S.I. 1998/3147).;

(ii) the Union flag (commonly known as the Union Jack) with a white border;

(iii) in the case of a ship registered in a relevant British possession, any colours authorised or confirmed under section 2(3)(b) of the Act in the form it has effect in the relevant British possession;

(b) any colours usually worn by Her Majesty's ships or resembling those of Her Majesty; or

(c) the pendant usually carried by Her Majesty's ships or any pendant resembling that pendant,

are hoisted on board any British ship registered in the Falkland Islands without warrant from Her Majesty or from the Secretary of State, the master of the ship, or the owner of the ship (if on board) and every other person hoisting them commits an offence.

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding the maximum of level 7 on the scale set out in Schedule 7.

(3) If any colours are hoisted on board a ship in contravention of subsection (1), any of the following, namely —

(a) any commissioned naval or military officer;

(b) any customs officer;

(c) any member of the Royal Falkland Islands Police Force; or

(d) any proper officer,

may board the ship and seize and take away colours.

(4) Any colours seized under subsection (3) are forfeited to the Crown and must be dealt with in such manner as the Governor may by order direct.

(5) In this section, "colours" includes any pendant.

[Merchant Shipping Act 1995 (UK), s. 4]

10. Duty to show British flag or Falkland Islands colours

(1) Subject to subsection (2), a ship registered in the Falkland Islands as a British ship must hoist the red ensign or the Falkland Islands colours —

(a) on a signal being made to the ship by one of Her Majesty's ships (including any ship under the command of a commissioned naval officer);

(b) on entering and leaving any foreign port; and

(c) in the case of ships of 50 or more tons gross tonnage, on entering or leaving any Falklands Islands port.

(2) Subsection (1)(c) does not apply to a small ship.

[Merchant Shipping Act 1995 (UK), s. 5]

11. Duty to declare national character of ship

(1) A customs officer must not grant clearance or transire for any ship until the master of the ship has declared to that officer the name of the nation to which the master claims that the ship belongs, after which that officer must enter that name on the clearance or transire.

(2) If a ship attempts to proceed to sea without a clearance or transire, the ship may be detained until the declaration is made.

[Merchant Shipping Act 1995 (UK), s. 6]

12. Proceedings on forfeiture of ship

(1) Where any ship has either wholly or as to any share in it becomes liable to forfeiture under this Part —

(a) any commissioned naval or military officer; or

(b) any person appointed by the Governor for the purposes of this section,

may seize and detain the ship and bring it for adjudication before the court.

(2) Where a ship is subject to adjudication under this section the court may —

(a) adjudge the ship and her equipment to be forfeited to the Crown; and

(b) make such order in the case as seems just.

(3) Any officer who brings proceedings under this section is not liable in damages in respect of the seizure or detention of the ship, notwithstanding that the ship has not been proceeded against or, if proceeded against, adjudicated not liable to forfeiture, if the court is satisfied that there were reasonable grounds for the seizure or detention.

(4) If the court is not satisfied it may award costs and damages to the party aggrieved and make such other order as the court thinks just.

(5) In this section, “court” means the Supreme Court of the Falkland Islands.
[*Merchant Shipping Act 1995 (UK), s. 7*]

PART 3 – REGISTRATION REQUIREMENTS

13. General - keeping of register

(1) There will continue to be a register of British ships at Stanley for all registrations of British ships in the Falkland Islands.

(2) Subject to subsection (3), the register must be maintained by the Registrar.

(3) The Governor may designate any person to discharge, on behalf of the Registrar, all or some of the Registrar’s functions as registrar of ships as the Governor may direct.

(4) The Governor may give the Registrar directions of a general nature as to the discharge of any of the Registrar’s functions.

(5) The register referred to under subsection (1) must be so constituted as to distinguish, in a separate part, registration of fishing vessels and may otherwise be divided into parts so as to distinguish between classes or descriptions of ships.

(6) The register must be maintained in accordance with —

(a) the registration regulations;

(b) the private law provisions for registered ships; and

(c) any directions given by the Governor under subsection (4).

(7) The register must be available for public inspection.

(8) Any document purporting to be a copy of any information contained in an entry in the register and certified as a true copy by the Registrar is evidence of the matters stated in the document.

[*Merchant Shipping Act 1995 (UK), s. 8*]

14. Registration of ships in the Falkland Islands as British ships: basic provisions

(1) Subject to the provisions of this Part, a ship is entitled, upon an application for registration in respect of it being duly made, to be registered in the register of British ships at Stanley if —

(a) it is owned, to the prescribed extent, by persons qualified to own British ships; and

(b) such other conditions as are prescribed under subsection (2)(b) are satisfied.

(2) The Governor must by regulations (to be known as “registration regulations”) —

(a) determine —

(i) the persons who are qualified to be owners of British ships and prescribe the extent of the ownership required for compliance with subsection (1)(a);

(ii) British ships of any class or description which can be registered in the register of British ships at Stanley (that is to say, ships registered in the Falkland Islands as British ships); and

(b) prescribe other requirements designed to secure that, taken into account with the requisite ownership, only ships having a Falkland Islands connection are registered in that register.

(3) Notwithstanding subsection (2)(b), the following are deemed to have a Falkland Islands connection —

(a) vessels owned by the United Kingdom Research Institute (or any successor body); and

(b) any vessels owned by organisations which the Governor may prescribe by order from time to time.

[s7/Ord.14/2019/w.e.f. 26.09.2019]

(4) Notwithstanding any provision of the registration regulations, the Registrar may, if the Governor so directs, refuse to register or terminate the registration of a ship.

(5) The Governor may give a direction under subsection (4) if he or she is satisfied that having regard to any relevant requirements of this Ordinance or of any law of the Falkland Islands it would be inappropriate for the ship to be or, as the case may be, to remain registered.

[s7/Ord.14/2019/w.e.f. 26.09.2019]

(6) Subject to subsection (7), where a ship becomes registered at a time when it is already registered in a country outside the Falkland Islands, the owner must take all reasonable steps to secure the termination of the ship's registration in the other country as provided for under the law of that country.

(7) Subsection (6) does not apply to a ship which becomes registered on a transfer of registration to the register from the United Kingdom or a relevant British possession.

(8) Any person who contravenes subsection (6) commits an offence and is liable on conviction to a fine not exceeding level 3 on the scale set out in Schedule 7.

(9) In this section, "relevant requirement" in relation to this Ordinance and any other law of the Falkland Islands means —

(a) in relation to any ship —

(i) the requirements as to the condition of ships or their equipment so far as relevant to their safety or any risk of pollution; and

(ii) the requirements as to the safety, health and welfare of persons employed or engaged in the ships; and

(b) in relation to a fishing vessel, additionally, the requirements in relation to the possession of or compliance with the conditions of a licence in relation to any fishing operations carried on by the fishing vessel in respect of which a licence is required to be held and, compliance in respect of the vessel with any conservation measures imposed by or under any law of the Falkland Islands or required by any such law to be complied with.

(10) In this Part, references to a ship having a Falkland Islands connection are references to compliance with the conditions of entitlement imposed by subsection (1)(a) and (b) and **“declaration of Falkland Islands connection”** is to be construed accordingly.

[Merchant Shipping Act 1995 (UK), s. 9]

[s7/Ord.14/2019/w.e.f. 26.09.2019]

15. Registration regulations

(1) The Governor must by registration regulations make provision for and in connection with the registration of ships in the Falkland Islands as British ships as provided for under section 14.

(2) Without prejudice to the generality of subsection (1), registration regulations may, in particular, make provision with respect to any of the following matters —

(a) the person by whom and the manner in which applications in connection with registration are to be made;

(b) the information and evidence (including declarations of Falkland Islands connection) to be provided in connection with such applications and any supplementary information or evidence as may be required by the Authority;

(c) the shares in the property in, and the number of owners (including joint owners) of, a ship permitted for the purposes of registration and the persons required or permitted to be registered in respect of a ship or to be so registered in specified circumstances;

(d) the issue of certificates (including provisional certificates) of registration, their production and surrender;

(e) restricting and regulating the names of ships registered or to be registered;

(f) the marking of ships registered or to be registered, including marks for identifying Stanley as the port to which the ship is to be treated as belonging;

(g) the period for which registration is to remain effective without renewal;

(h) the production to the Registrar of declarations of Falkland Islands connection or other information relating to that, as respects registered ships, at specified intervals or at the Registrar's request;

- (i) the survey and inspection of ships registered or to be registered and the recording of their tonnage as ascertained (or re-ascertained) under the tonnage regulations;
- (j) the refusal, suspension and termination of registration in specified circumstances;
- (k) matters arising out of the expiration, suspension or termination of registration (including the removal of marks and the cancellation of certificates);
- (l) the charging of fees in connection with registration or registered ships;
- (m) the transfer of the registration of ships to and from the register from and to registers or corresponding records in countries other than the Falkland Islands;
- (n) inspection of the register; and
- (o) any other matter which is authorised or required by this Part to be prescribed in registration regulations.

(3) Registration regulations —

- (a) may make different provision for different classes or descriptions of ships and for different circumstances;
- (b) may without prejudice to paragraph (a), make provision for the granting of exemptions or dispensations by the Governor from specified requirements of the regulations, subject to such conditions (if any) as the Governor thinks fit to impose;
- (c) may make such transitional, incidental or supplementary provision as appears to the Governor to be necessary or expedient, including provision authorising investigations and conferring powers of inspection for verifying the Falkland Islands connection of a ship;
- (d) may make provision for the registration of any class or description of ships to be such as to exclude the application of the private law provisions for registered ships and, if they do, may regulate the transfer, transmission or mortgaging of ships of the class or description so excluded;
- (e) may make provision for any matter which is authorised or required by provisions made under paragraph (d) to be prescribed by registration regulations;
- (f) must make provision precluding notice of any trust being entered in the register or being receivable by the Registrar except as respects specified classes or descriptions of ships or in specified circumstances;
- (g) may create offences subject to the limitation that no offence so created is punishable by imprisonment for a term exceeding six months or by a fine exceeding level 7 on the scale set out in Schedule 7, or both;
- (h) may provide for —

(i) the approval of forms by the Registrar;

(ii) the discharge of specified functions by specified authorities or persons;

(i) may provide for any of their provisions to extend to places outside the Falkland Islands; or

(j) may provide that any reference in any other United Kingdom Act or Ordinance or in any instrument made under any United Kingdom Act or Ordinance to the port of registry or to the port to which the ship belongs must be construed as a reference to the port of registry identified by the marks required by the registration regulations.

(k) may provide for the manner in which Falkland Island Government ships may be registered as British ships under this Part, subject to any exceptions and modifications which may be made by the regulations, either generally or as respects any special class of government ships.

[s8/Ord.14/2019/w.e.f. 26.09.2019]

[Merchant Shipping Act 1995 (UK), s. 10]

16. Status of certificate of registration

A certificate of registration for a ship registered in accordance with this Part and issued under the registration regulations made under section 15(2)(d) must only be used for the lawful navigation of the ship, and can not be the subject of detention to secure any private right or claim.

[Merchant Shipping Act 1995 (UK), s. 13]

Tonnage of ships

17. Requirement to ascertain tonnage of ships

(1) The tonnage of any ship to be registered under this Part must be ascertained in accordance with regulations made by the Governor (to be known as “tonnage regulations”).

(2) Tonnage regulations may —

(a) make different provisions for different descriptions of ships or for the same description of ships in different circumstances;

(b) make any regulation dependent on compliance with such conditions, to be evidenced in such manner, as may be specified in the regulations;

(c) prohibit or restrict the carriage of goods stored in spaces not included in the registered tonnage and may provide for making the master and the owner each liable to a fine not exceeding level 3 on the scale set out in Schedule 7 where such prohibition or restriction is contravened.

[Merchant Shipping Act 1995 (UK), s. 19]

18. Tonnage ascertained for registration to be tonnage of ship

(1) When the tonnage of any ship has been ascertained and registered in accordance with the tonnage regulations that tonnage must be treated as the tonnage of the ship except so far as

registration regulations provide, in specified circumstances, for the ship to be re-measured and the register amended accordingly.

[Merchant Shipping Act 1995 (UK), s. 11]

(2) Where an Order in Council has been made under section 12 of the Act in relation to ships of a foreign country, the Governor must make an order providing that the ships of that foreign country, without being re-measured in the Falkland Islands must be treated as being of the tonnage denoted by the ships' certificates of registration or other national papers, to the same extent, and for the same purposes as the tonnage denoted in the certificate of registration of a Falkland Islands ship as being the tonnage of that ship.

(3) The Governor may amend an order made under subsection (2) whenever an Order in Council is made in relation to the ships of a foreign country as is authorised by section 12 of the Act.

19. Tonnage regulations

(1) Tonnage regulations may make provision —

(a) for assigning to a ship, either instead of or as an alternative to the tonnage ascertained in accordance with the other provisions of the regulations, a lower tonnage applicable where the ship is not loaded to the full depth to which it can be safely loaded;

(b) for indicating on the ship, by such mark as may be specified in the regulations, that such lower tonnage has been assigned to it; and

(c) where the lower tonnage has been assigned to it as an alternative, for indicating on the ship the depth to which the ship may be loaded for the lower tonnage to be applicable.

(2) Tonnage regulations may provide for the measurement and survey of ships to be undertaken, in such circumstances as may be prescribed in the regulations, by persons appointed by such organisations as may be authorised for the purpose by the Governor.

(3) Tonnage regulations may provide for the issue, by the Governor or by a person appointed by such organisations as may be authorised for the purpose by the Governor, of certificates of the registered tonnage of any ship or of the tonnage which is to be taken for any purpose specified in the regulations as the tonnage of a ship not registered in the Falkland Islands, and for the cancellation and delivery up of such certificates in such circumstances as may be prescribed by the regulations.

(4) Regulations requiring the delivery up of any certificate may make failure to comply with the requirements an offence punishable with a fine not exceeding level 3 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 19]

20. Offences in relation to a ship's British ownership and Falkland Islands connection

(1) Any person who, in relation to any matter relevant to the British ownership or Falkland Islands connection of a ship —

(a) makes to the Registrar a statement which the person knows to be false or recklessly makes a statement which is false; or

(b) furnishes to the Registrar information which is false,

commits an offence.

(2) If at any time there occurs, in relation to a registered ship, any change affecting the British ownership of the ship or any change affecting the Falkland Islands connection of the ship, the owner must, as soon as practicable after the change occurs, notify the registrar of that change, and if the owner fails to do so he or she commits an offence.

(3) Any person who intentionally alters, suppresses, conceals or destroys a document which contains information relating to the British ownership of the ship or the Falkland Islands connection of the ship and which the person has been required to produce to the Registrar in pursuance of registration regulations commits an offence.

(4) A person convicted of an offence under this section is liable to imprisonment for a term not exceeding two years or a fine not exceeding level 11 on the scale set out in Schedule 7, or both.

(5) This section applies to things done outside, as well as to things done within, the Falkland Islands.

[Merchant Shipping Act 1995 (UK), s. 14]

21. Supplementary provisions as respects fishing vessels

(1) The skipper, owner and charterer of a fishing vessel that is being or has been used in the course of fishing for profit in Falkland Islands waters each commits an offence if that fishing vessel —

(a) is entitled to be registered in the Falkland Islands;

(b) is wholly owned by persons who under this Ordinance are qualified to be owners of ships registered in the Falkland Islands in the part of the register relating to fishing vessels; and

(c) is not registered either under —

(i) this Ordinance in the part of the register relating to fishing vessels of the law of any country outside the Falkland Islands; or

(ii) the law of any country outside the Falkland Islands.

(2) Where an offence under subsection (1) is committed, the fishing vessel involved is liable to forfeiture.

(3) Subsections (1) and (2) do not apply to fishing vessels of such classes or descriptions in such circumstances as may be specified in regulations made by the Governor.

(4) If the skipper or owner of a fishing vessel which is not registered in the Falkland Islands does anything, or permits anything to be done, for the purpose of permitting the vessel to appear to be a vessel registered in the Falkland Islands, then, subject to subsection (5), the vessel is liable to forfeiture and the skipper, the owner and the charterer each commits an offence.

(5) Any marks prescribed by registration regulations to be displayed on a fishing vessel will cease to be valid and must be disregarded for purposes of subsection (3) within the period of 14 days from the date of termination of the registration of that fishing vessel.

(6) Any person convicted of an offence under this section is liable to imprisonment for a term not exceeding two years or to a fine not exceeding level 11 on the scale set out in Schedule 7, or both.

(7) This section applies to things done outside, as well as things done within, the Falkland Islands.

[Merchant Shipping Act 1995 (UK), s. 15]

22. Private law provisions for registered ships and liability of owner

(1) Schedule 1 (which makes provision relating to the title to, and the registration of mortgages over, ships) has effect.

(2) Schedule 1 does not apply in relation to ships which are excluded from its application by registration regulations under paragraphs (d) to (f) of section 12(3).

(3) Where any person is beneficially interested, otherwise than as a mortgagee, in any ship or in any share in a ship registered in the name of some other person as owner, the person so interested, as well as the registered owner, is liable to any penalties imposed by or under this or any other Ordinance, or any United Kingdom Act, on the owners of registered ships.

(4) Where the registration of any ship terminates by virtue of any provision of registration regulations, the termination of that registration must not affect any entry made in the register so far as relating to any undischarged registered mortgage of that ship or of any share in it.

(5) In this Part, “**the private law provisions for registered ships**” means the provisions of Schedule 1 and registration regulations made for the purposes of that Schedule or the provisions of registration regulations made under section 15(3)(d).

[Merchant Shipping Act 1995 (UK), s. 16]

Ships on bareboat charter

23. Ships bareboat chartered by British or Falkland Islands charterers

(1) This section applies to any ship which is —

(a) registered under the law of a country other than the Falkland Islands whose merchant shipping law is compatible with this Ordinance (“**the country of original registration**”);

(b) chartered on bareboat charter to a charterer who is a person qualified to own a British ship or register the ship in the Falkland Islands; and

(c) so chartered in circumstances where the conditions of entitlement to registration prescribed under section 14(2)(b), read with the requisite modifications, are satisfied in respect of the charterer and the ship.

(2) The “**requisite modifications**” of those conditions are the substitution for any requirement to be satisfied by or as respects the owner of a ship of a corresponding requirement to be satisfied by or as respects the charterer of the ship.

(3) A ship to which this section applies is entitled to be registered if an application for registration is duly made, but section 14(4) applies also in relation to registration by virtue of this section.

[s8A/Ord.14/2019/w.e.f. 26.09.2019]

(4) The registration of a ship registered by virtue of this section remains in force (unless terminated earlier by virtue of registration regulations and subject to any suspension under the registration regulations) until the end of the charter period and terminates by virtue of this subsection.

(5) Section 14(6) does not apply in relation to a ship registered by virtue of this section but registration regulations must include provision for securing that the authority responsible for the registration of ships in the country of original registration is notified of the registration of the ship and of the termination of its registration whether by virtue of subsection (4) or registration regulations.

[s8A/Ord.14/2019/w.e.f. 26.09.2019]

(6) During the period for which the ship is registered by virtue of this section —

(a) the ship is, as a British ship, entitled to fly the British flag as specified in section 7;

(b) this Ordinance applies, subject to subsections (7) and (8), to the ship as a British ship or as a Falkland Islands registered ship as it applies to other British ships and to Falkland Islands registered ships; and

(c) any other enactment applicable to British ships or ships registered under this Ordinance apply, subject to subsection (8), to the ship as a British ship or as a Falkland Islands registered ship.

(7) The private law provisions for registered ships set out in Schedule 1 do not apply to a ship registered by virtue of this section and any matters or questions corresponding to those for which the private law provisions for registered ships make provision must be determined by reference to the law of the country of original registration.

(8) The Governor may, subject to subsection (9), by Order provide that any enactment falling within subsection (6)(b) or (c) must not have effect —

(a) in accordance with that subsection in relation to a ship registered by virtue of this section;
or

(b) subject to such modifications (if any) as may be specified in the Order.

(9) Provision must not be made by an Order under subsection (8) which would have the effect of relaxing the relevant requirements of this Ordinance (as defined in section 8(8)) in their application to a ship to which this section applies.

(10) An Order under subsection (8) may make such transitional, incidental or supplementary provision as appears to the Governor to be necessary or expedient (including provision divesting or providing for the divestment or ownership in the ship).

(11) In this section —

“**bareboat charter terms**” in relation to a ship, means the hiring of the ship for a stipulated period on terms which give the charter possession and control of the ship, including the right to appoint the master and crew; and

“**the charter period**” means the period during which the ship is chartered on bareboat charter terms.

[Merchant Shipping Act 1995 (UK), s. 17]

24. Proceedings on the forfeiture of a ship

Section 16 applies in relation to ships or shares in ships which become liable to forfeiture under this Part as it applies in relation to ships or shares in ships which become liable to forfeiture under Part 2.

[Merchant Shipping Act 1995 (UK), s. 20]

25. Disclosure of information relating to registration

(1) No obligation as to secrecy or other restriction on the disclosure of information (whether imposed by statute or otherwise) precludes any Falkland Islands government department or public officer from disclosing to —

(a) the Governor;

(b) the Registrar; or

(c) any public officer authorised by the Governor to request or receive the same,

information for the purpose of the performance of any functions of the Governor or of the Registrar under this Part.

(2) Information obtained by any person in pursuance of subsection (1) must not be disclosed by the person to any other person except where the disclosure is made —

(a) to a person to whom the information could have been disclosed in accordance with subsection (1); or

(b) for the purpose of any legal proceedings arising out of this Part.

[Merchant Shipping Act 1995 (UK), s. 21]

PART 4 ...

[s9/Ord.14/2019/w.e.f. 26.09.2019]

26. ...

[s9/Ord.14/2019/w.e.f. 26.09.2019]

27. ...

[s9/Ord.14/2019/w.e.f. 26.09.2019]

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[s9/Ord.14/2019/w.e.f. 26.09.2019]

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83. ...

[s9/Ord.14/2019/w.e.f. 26.09.2019]

PART 5 – SAFETY

Safety and health on ships

84. Safety and health on ships

(1) The Governor may by regulations (to be known as “safety regulations”) make such provision as the Governor considers appropriate for securing the safety of —

(a) ships registered in the Falkland Islands and persons on them, and for protecting the health of persons in the Falkland Islands; or

(b) other ships and persons on them while they are within Falkland Islands waters and for protecting the health of persons on ships other than ships registered in the Falkland Islands while they are within Falkland Islands waters.

(2) Except as provided by subsection (3), safety regulations do not apply in relation to —

(a) a qualifying foreign ship while it is exercising —

(i) the right of innocent passage; or

(ii) the right of transit passage through straits used for international navigation; or

(b) persons on a qualifying foreign ship while it is exercising any right specified under paragraph (a).

(3) Safety regulations apply in relation to a qualifying foreign ship, and persons on such a ship, even though the ship is exercising a right mentioned in subsection (2)(a), to the extent that the safety regulations give effect to any provisions of an international agreement extended to the Falkland Islands so far as it relates to the safety of ships or persons on them or to the protection of the health of persons on ships.

(4) In subsection (1) “**ship registered in the Falkland Islands**” includes a ship which is not registered in another country but is wholly owned by persons each of whom is —

(a) a person with Falkland Islands status; or

(b) a body corporate which is established under the law of the Falkland Islands and has its principal place of business in the Falkland Islands.

(5) Safety regulations may make provision with respect to any of the following matters, that is to say —

(a) the design, construction, maintenance, repair, alteration, inspection, surveying and marking of ships and their machinery and equipment;

(b) the packaging, marking, loading, placing, moving, inspection, testing and measuring of cargo and anything on a ship which is not cargo, machinery or equipment;

(c) the carrying out of any operation involving a ship;

(d) the use of the machinery and equipment of a ship and of anything on a ship which is not cargo, machinery or equipment;

(e) the manning of ships, including the employment on ships of persons qualified to attend to the health and safety of persons on the ships;

(f) the arrangements for ensuring communication between persons in different parts of a ship and between persons in the ship and other persons;

(g) the access to, presence in and egress from a ship, and different parts of it, of persons of any description;

(h) the ventilation, temperature and lighting of different parts of a ship;

(i) the steps to be taken to prevent or control noise, vibration and radiation in and from a ship and the emission in or from a ship of smoke, gas and dust;

(j) the steps to be taken to prevent, detect and deal with outbreaks of fire on a ship;

(k) the steps to be taken to prevent any collision involving a ship and in consequence of any collision involving a ship;

(l) the steps to be taken, in a case where a ship is in distress or stranded or wrecked, for the purpose of saving the ship and its machinery, equipment and cargo and the lives of persons on or from the ship, including the steps to be taken by other persons for giving assistance in such a case;

(m) the removal, by jettisoning or otherwise, of its equipment and of other things from a ship for the purpose of avoiding, removing or reducing danger to persons or property;

(n) the steps to be taken, in a case where danger of any kind occurs or is suspected on a ship, for removing or reducing the danger and for warning persons who are not on the ship of the danger or suspected danger;

(o) the making of records and the keeping of documents relating to ships and the keeping and use on a ship of information to facilitate the navigation of the ship;

(p) the keeping of registers and the issue of certificates in cases for which registration or a certificate is required by virtue of the regulations; and

(q) the furnishing of information,

but the mention of specific matters in this subsection must not be construed as restricting the generality of the power conferred by paragraph (a) or (b) of subsection (1).

(6) The power to make regulations conferred by subsection (1) extends also to the making of regulations for the prevention of collisions between seaplanes on the surface of water and between ships and seaplanes and subsection (3)(k) and (5) and to subsection (7) and section 85(1) has effect accordingly.

(7) Safety regulations —

(a) may make provision in terms of approvals given by the Governor or another person and in terms of any document which the Governor or another person considers relevant from time to time;

(b) may provide for the cancellation of an approval given in pursuance of the regulations and for the alteration of the terms of such an approval; and

(c) must provide for any approval in pursuance of the regulations to be given in writing and to specify the date on which it takes effect and the conditions (if any) on which it is given.

(8) Without prejudice to section 85(1)(b), safety regulations may provide for —

(a) the granting by the Governor, on such terms (if any) as the Governor may specify, of exemptions from specified provisions of the regulations for classes of cases or individual cases; and

(b) the alteration or cancellation of exemptions granted in pursuance of the regulations.

(9) Safety regulations may provide that —

(a) in such cases as are prescribed by the regulations a ship is liable to be detained and that section 271 has effect, with such modifications (if any) as may be prescribed by the regulations, in relation to the ship;

(b) a contravention of the regulations is an offence punishable on conviction by a fine not exceeding level 7 on the scale set out in Schedule 7 or to imprisonment for a term not exceeding two years and a fine;

(c) in such cases as are prescribed by the regulations, such persons as are so prescribed commit an offence created by virtue of paragraph (b) or (c);

[Merchant Shipping Act 1995 (UK), s. 85]

84A. Powers to give effect to Chapter V of the Annex to the SOLAS Convention

(1) The Governor may make such regulations as he or she considers appropriate for the purpose of giving effect to Chapter V of the Annex to the SOLAS Convention on the safety of navigation for all vessels at sea.

(2) Regulations made under this section may include requirements for the Authority to put measures in place with respect to the following matters —

(a) navigational warnings;

(b) meteorological services information and warnings to ships;

(c) search and rescue;

(d) lifesaving signals;

(e) hydrographic services;

(f) the use of ship routing systems;

- (g) ship reporting systems
- (h) vessel traffic services;
- (i) the establishment and operation of aids to navigation; and
- (j) coordination in distress situations.

(3) Regulations made under subsection (1) may —

- (a) make different provision for different circumstances and, in particular, make provision for an individual case;
- (b) be made so as to apply only in such circumstances as are prescribed by the regulations; and
- (c) specify that a contravention of the regulations is an offence punishable on conviction by a fine not exceeding level 7 on the scale set out in Schedule 7 or to imprisonment for a term not exceeding two years, or both.”.

(4) In this section —

“**Chapter V of the Annex to the SOLAS Convention**” means Chapter V, Safety of Navigation, of the Annex to the International Convention for the Safety of Life at Sea (SOLAS V) 2002 as amended; and

“**SOLAS Convention**” means the International Convention for the Safety of Life at Sea, 1974 as amended.

[s10/Ord.14/2019/w.e.f. 26.09.2019]

85. Provisions supplementary to section 84: general

(1) Safety regulations may —

- (a) make different provision for different circumstances and, in particular, make provision for an individual case;
- (b) be made so as to apply only in such circumstances as are prescribed by the regulations;
- (c) be made so as to extend outside the Falkland Islands;
- (d) contain such incidental, supplemental and transitional provisions as the Governor considers appropriate;
- (e) make provision for compensation to be paid, where a signal is used or displayed otherwise than in accordance with the regulations, for any expense or loss caused in consequence of the signal's being taken for a signal of distress,

and any compensation falling to be paid by virtue of regulations under paragraph (e) may, without prejudice to any other remedy, be recovered in the same manner as salvage.

(2) Nothing in section 84(3) to (6) or subsection (1) is to be construed as prejudicing the generality of section 84(1).

(3) Before the Governor makes safety regulations or gives an approval in pursuance of safety regulations, it is the duty of the Governor before giving effect to the proposal, to consult such persons in the Falkland Islands (if any) as the Governor considers will be affected by the proposal.

[Merchant Shipping Act 1995 (UK), s. 86]

86. Provisions supplementary to section 84: dangerous goods

(1) Where any dangerous goods have been sent or carried, or attempted to be sent or carried, on board any ship, whether or not the ship is registered in the Falkland Islands —

- (a) without being marked as required by safety regulations;
- (b) without such notice having been given as is required by safety regulations;
- (c) under a false description; or
- (d) with a false description of their sender or carrier,

the Supreme court (by virtue of its having Admiralty jurisdiction under section 256) may declare the goods, and any package or receptacle in which they are contained, to be forfeited.

(2) On a declaration of forfeiture being made, the goods must be forfeited and they must be disposed of as the Supreme court directs.

(3) Subject to subsection (4), the powers conferred on the Supreme court by subsections (1) and (2) are exercisable notwithstanding that the owner of the goods —

- (a) has not committed any offence under safety regulations relating to dangerous goods;
- (b) is not before the court; and
- (c) has no notice of the proceedings,

and notwithstanding that there is no evidence to show to whom the goods belong.

(4) Nevertheless, the court may, in their discretion, require such notice as they may direct to be given to the owner or shipper of the goods before they are forfeited.

(5) In this section “dangerous goods” means goods designated as dangerous goods by safety regulations.

[Merchant Shipping Act 1995 (UK), s. 87]

87. Safety of submersible and supporting apparatus

- (1) This section applies to any submersible or supporting apparatus —
 - (a) operated within Falkland Islands waters; or
 - (b) launched or operated from, or comprising, a ship registered in the Falkland Islands.
- (2) The Governor may make regulations for —
 - (a) the safety of submersible and supporting apparatus;
 - (b) the prevention of accidents in or near submersible or supporting apparatus;
 - (c) the safety, health and welfare of persons on or in submersible and supporting apparatus;
 - (d) prohibiting or otherwise restricting the operation of any submersible apparatus except in accordance with the conditions of a licence granted under the regulations;
 - (e) the registration of submersible apparatus;
 - (f) all matters relevant to the maintenance of a register of submersible apparatus;
 - (g) the issue of certificates of registration or exemption, and the custody, surrender, production or display of the certificates or copies of the certificates;
 - (h) the period for which any registration exemption remains effective without renewal;
 - (i) the alteration or cancellation in any prescribed circumstances of registration or exemption or of any conditions attached to the registration or exemption;
 - (j) the person by whom and the manner in which applications in connection with any registration or exemption are to be made, and information and evidence to be furnished in connection with the applications;
 - (k) the marking or other means of identification of any submersible apparatus; and
 - (l) matters arising out of the termination of any registration or exemption, or any conditions attached to the termination of any registration or exemption.
- (3) Subject to sub-section (2), regulations made under this section may provide for —
 - (a) the creation of offences;
 - (b) in respect of any description of offence created by the regulations, such defence (if any) as may be prescribed; and
 - (c) the contravention of the regulations to be an offence which is punishable on conviction by a fine not exceeding level 11 on the scale set out in Schedule 7 or to imprisonment for a term not exceeding two years and a fine.

(4) The operation of any regulations made under this section may be excluded in whole or in part in relation to any class or description of submersible or supporting apparatus by regulations, or in relation to any particular apparatus by the direction of the Governor given in such manner as the Governor thinks appropriate.

(5) Any exemption or exclusion by regulations or by directions of the Governor under this paragraph may be made subject to the imposition of conditions specified by the regulation or direction.

(6) Where, in pursuance of this paragraph, a person is exempted or excluded from the requirements of the provisions of regulation made under this section but subject to a condition, and the condition is not observed, the exemption or exclusion will not have effect, and accordingly proceedings may be brought in respect of any offence created by the regulations.

(7) In this section —

“**apparatus**” includes any vessel, vehicle or hovercraft, any structure, any diving plant or equipment and any other form of equipment;

“**specified**” means specified in regulations made by the Governor for the purposes of this section;

“**submersible apparatus**” means any apparatus used, or designed for use, in supporting human life on or under the bed of any waters or elsewhere under the surface of any waters; and

“**supporting apparatus**” means any apparatus used, or designed for use, in connection with the operation of any submersible apparatus.

[*Merchant Shipping Act 1995 (UK), s. 88*]

Special provisions

88. Report of dangers to navigation

(1) Every person in charge of a controlled station for wireless telegraphy must, on receiving the signal prescribed under safety regulations relating to dangers to navigation, which indicates that a message is about to be sent under those regulations, —

(a) refrain from sending messages for a time sufficient to allow other stations to receive the message, and, if so required by the Governor; and

(b) transmit the message in such manner as may be required by the Governor.

(2) Compliance with subsection (1) is deemed to be a condition of every wireless telegraphy licence.

(3) In this section —

“**controlled station for wireless telegraphy**” means a station for wireless telegraphy as defined in the Wireless Telegraphy Ordinance 1994; and

“**wireless telegraphy licence**” has the same meaning as in the Wireless Telegraphy Ordinance 1994.

[Merchant Shipping Act 1995 (UK), s. 91]

Assistance at sea

89. Duty of ship to assist the other in case of collision

(1) In the case of a collision between two ships, it is the duty of the master of each ship, if and so far as the master can do so without danger to the ship under the master’s control, its crew and passengers (if any) —

(a) to render to the other ship, its master, crew and passengers (if any) such assistance as may be practicable, and may be necessary to save them from any danger caused by the collision, and to stay by the other ship until the master has ascertained that it has no need of further assistance; and

(b) to give to the master of the other ship the name of the ship under his control and also the names of the ports from which it comes and to which it is bound.

(2) The duties imposed on the master of a ship by subsection (1) apply to the masters of ships registered in the Falkland Islands and to the masters of foreign ships when in Falkland Islands waters.

(3) The failure of the master of a ship to comply with the provisions of this section does not raise any presumption of law that the collision was caused by the master’s wrongful act, neglect, or default.

(4) A master who fails without reasonable excuse to comply with

(a) subsection (1)(a), is liable on conviction, to a fine not exceeding level 7 on the scale set out in Schedule 7 or imprisonment for a term not exceeding six months, or both;

(b) subsection (1)(b), is liable on conviction, to a fine not exceeding level 7 on the scale set out in Schedule 7,

and in either case if the master is a certified officer, an inquiry into his or her conduct may be held, and his or her certificate cancelled or suspended.

[Merchant Shipping Act 1995 (UK), s. 92]

90. Duty to assist aircraft in distress

(1) The master of a ship, on receiving at sea, a signal of distress from an aircraft or information from any source that an aircraft is in distress, must proceed with all speed to the assistance of the persons in distress (informing them if possible that he or she is doing so) unless the master is unable, or in the special circumstances of the case considers it unreasonable or unnecessary, to do so, or unless the master is released from this duty under subsection (4) or (5).

(2) The duties imposed on the master of a ship by subsection (1) apply to the masters of ships registered in the Falkland Islands and to the masters of foreign ships when in Falkland Islands waters.

(3) A master is released from the duty imposed by subsection (1) if the master is informed by the persons in distress, or by the master of any ship that has reached the persons in distress, that assistance is no longer required.

(4) A master who fails to comply with this section is liable on conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 7 on the scale set out in Schedule 7, or both.

(5) Compliance by the master of a ship with the provisions of this section does not affect the master's right, or the right of any other person, to salvage.

[Merchant Shipping Act 1995 (UK), s. 93]

Unsafe ships

91. Meaning of “dangerously unsafe ship”

(1) For the purposes of sections 92, 93, 94 and 95 a ship in port is “**dangerously unsafe**” if, having regard to the nature of the service for which it is intended, the ship is, by reason of the matters mentioned in subsection (2), unfit to go to sea without serious danger to human life.

(2) For the purposes of subsection (1) a ship at sea is “**dangerously unsafe**” if, having regard to the nature of the service for which it is being used or is intended, the ship is, by reason of the matters mentioned in subsection (3), either —

(a) unfit to remain at sea without serious danger to human life; or

(b) unfit to go on a voyage without serious danger to human life.

(3) Those matters are —

(a) the condition, or the unsuitability for its purpose, of —

(i) the ship or its machinery or equipment; or

(ii) any part of the ship or its machinery or equipment;

(b) undermanning;

(c) overloading or unsafe or improper loading;

(d) any other matter relevant to the safety of the ship,

and are referred to in the sections referred to in subsection (1), in relation to any ship, as “the matters relevant to its safety”.

(4) Any reference in the sections referred to in subsection (1) to “going to sea” must, in a case where the service for which the ship is intended consists of going on voyages or excursions that do not involve going to sea, be construed as a reference to going on such a voyage or excursion.

[Merchant Shipping Act 1995 (UK), s. 94]

92. Power to detain dangerously unsafe ship

(1) Where a ship which is —

(a) in a port in the Falkland Islands; or

(b) at sea in Falkland Islands waters,

appears to a relevant inspector to be a dangerously unsafe ship, the ship may be detained.

(2) Subject to subsection (3), the power of detention conferred by subsection (1) is exercisable in relation to foreign ships as well as ships registered in the Falkland Islands.

(3) The power of detention conferred by subsection (1)(b) is not exercisable in relation to a qualifying foreign ship while the ship is exercising —

(a) the right of innocent passage; or

(b) the right of transit passage through straits used for international navigation.

(4) The officer detaining the ship must serve on the master of the ship a detention notice which must —

(a) state that the relevant inspector is of the opinion that the ship is a dangerously unsafe ship;

(b) specify the matters which, in the relevant inspector’s opinion, make the ship a dangerously unsafe ship; and

(c) require the ship to comply with the terms of the notice until it is released by a competent authority.

(5) In the case of a foreign ship (which is not a British ship) the officer detaining the ship must cause a copy of the detention notice to be sent as soon as practicable to the nearest consular officer for the country to which the ship belongs.

(6) In this section “relevant inspector” means any person mentioned in section 238.

[Merchant Shipping Act 1995 (UK), s. 95]

93. References of detention notices to arbitration

(1) Any question as to whether any of the matters specified in relation to a ship in a detention notice in pursuance of section 92(4)(b) in connection with any opinion formed by the relevant inspector constituted a valid basis for that opinion must, if the master or owner of the ship so

requires, by a notice given to the relevant inspector within 21 days from the service of the detention notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by the relevant inspector.

(2) Where a notice is given by the master or owner of the ship in accordance with subsection (1), the giving of the notice will not suspend the operation of the detention notice unless, on the application of the person requiring the reference, the arbitrator so directs.

(3) The arbitrator must have regard, in coming to a decision, to any other matters not specified in the detention notice which appear to him or her to be relevant to whether the ship was or was not a dangerously unsafe ship.

(4) Where on a reference under this section the arbitrator decides, as respects any matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the inspector's opinion, the arbitrator must either cancel the detention notice or affirm it with such modifications as the arbitrator in the circumstances thinks fit; and in any other case the arbitrator must affirm the notice in its original form.

(5) The arbitrator must include in his or her decision a finding whether there was or was not a valid basis for the detention of the ship as a dangerously unsafe ship.

(6) A person is not qualified for appointment as an arbitrator under this section unless the person —

(a) holds a certificate of competency as a master mariner or as a marine engineer officer class 1 (issued by the appropriate authority in, and in accordance with the relevant laws of the United Kingdom), or a person holding a certificate equivalent to any such certificate;

(b) is a naval architect in accordance with the relevant laws of the United Kingdom;

(c) falls within subsection (7); or

(d) has special experience of shipping matters, of the fishing industry, or of activities carried on in ports.

(7) For the purposes of subsection (6)(c) a person falls within this subsection if —

(a) the person has a 10 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990); or

(b) the person is a legal practitioner (within the meaning of section 2 of the Legal Practitioners Ordinance 1988) with special experience of shipping matters, of the fishing industry, or of activities carried on in harbours and ports.

(8) In connection with his or her functions under this section an arbitrator has the powers conferred on an inspector by section 240.

(9) In this section —

“**competent authority**” means any officer mentioned in section 270(1); and

“**relevant inspector**” has the same meaning as in section 238.

[Merchant Shipping Act 1995 (UK), s. 96]

94. Compensation in connection with invalid detention of ship

(1) If on a reference under section 93 relating to a detention notice in relation to a ship —

(a) the arbitrator decides that any matter did not constitute a valid basis for the relevant inspector’s opinion; and

(b) it appears to the arbitrator that there were no reasonable grounds for the inspector to form that opinion,

the arbitrator may award the owner of the ship such compensation, as the arbitrator thinks fit, in respect of any loss suffered by the owner of the ship in consequence of the detention of the ship.

(2) Any compensation awarded under this section is payable out of the Consolidated Fund.

(3) In this section “**relevant inspector**” has the same meaning as in section 92.

[Merchant Shipping Act 1995 (UK), s. 97]

95. Owner and master liable in respect of dangerously unsafe ship

(1) If a ship which —

(a) is in a port in the Falkland Islands; or

(b) is registered in the Falkland Islands and is in any other port,

is dangerously unsafe, then, subject to subsections (4) and (5), the master and the owner of the ship each commits an offence.

(2) Where, at the time when a ship is dangerously unsafe, any responsibilities of the owner with respect to the matters relevant to its safety have been assumed (whether wholly or in part) by any person or persons other than the owner, and have been so assumed by that person or (as the case may be) by each of those persons either —

(a) directly, under the terms of a charter-party or management agreement made with the owner; or

(b) indirectly, under the terms of a series of charter-parties or management agreements, the reference to the owner in subsection (1) must be construed as a reference to that other person or (as the case may be) to each of those other persons.

(3) A person convicted of an offence under this section is liable on conviction, to a fine not exceeding level 10 on the scale set out in Schedule 7.

(4) It is a defence in proceedings for an offence under this section to prove that at the time of the alleged offence —

(a) arrangements had been made which were appropriate to ensure that before the ship went to sea it was made fit to do so without serious danger to human life by reason of the matters relevant to its safety which are specified in the charge; or

(b) it was reasonable for such arrangements not to have been made.

(5) It is also a defence in proceedings for an offence under this section to prove —

(a) that, under the terms of one or more charter-parties or management agreements entered into by the accused, the relevant responsibilities, namely —

(i) where the accused is the owner, his or her responsibilities with respect to the matters relevant to the ship's safety; or

(ii) where the accused is liable to proceedings under this section by virtue of subsection (2), so much of those responsibilities as had been assumed by the accused as mentioned in that subsection,

had at the time of the alleged offence been wholly assumed by some other person or persons party to the charter or the agreement; and

(b) that in all the circumstances of the case the accused had taken such steps as it was reasonable for him or her to take, and exercised such diligence as it was reasonable for him or her to exercise, to secure the proper discharge of the relevant responsibilities during the period during which they had been assumed by some other person or persons as mentioned in paragraph (a),

and, in determining whether the accused had done so, regard must be had in particular to the matters mentioned in subsection (6).

(6) Those matters are —

(a) whether prior to the time of the alleged offence the accused was, or in all the circumstances ought reasonably to have been, aware of any deficiency in the discharge of the relevant responsibilities; and

(b) the extent to which the accused was or was not able, under the terms of any such charter-party or management agreement as is mentioned in subsection (5)(a) —

(i) to terminate it; or

(ii) to intervene in the management of the ship,

in the event of any such deficiency, and whether it was reasonable for the accused to place himself or herself in that position.

(7) In this section —

“**management agreement**”, in relation to a ship, means any agreement (other than a charter-party or a contract of employment) under which the ship is managed, either wholly or in part, by a person other than the owner (whether on behalf of the owner or on behalf of some other person); and

“**relevant responsibilities**” must be construed in accordance with subsection (5).

(8) References in this section to responsibilities being assumed by a person under the terms of a charter-party or management agreement are references to their being so assumed by the person whether or not the person has entered into a further charter-party or management agreement providing for them to be assumed by some other person.

[Merchant Shipping Act 1995 (UK), s. 98]

96. Use of unsafe lighters, etc.

(1) If any person uses or causes or permits to be used in navigation any lighter, barge or like vessel when, because of —

- (a) the defective condition of its hull or equipment;
- (b) overloading or improper loading; or
- (c) undermanning,

it is so unsafe that human life is endangered, the person is liable on conviction, to a fine not exceeding level 7 on the scale set out in Schedule 7.

(2) This section does not affect the liability of the owners of any lighter, barge or like vessel in respect of loss of life or personal injury caused to any person carried in the vessel.

[Merchant Shipping Act 1995 (UK), s. 99]

97. Owner liable for unsafe operation of ship

(1) It is the duty of the owner of a ship to which this section applies to take all reasonable steps to secure that the ship is operated in a safe manner.

(2) This section applies to any ship —

- (a) registered in the Falkland Islands; and
- (b) which —
 - (i) is registered under the law of any country outside the Falkland Islands; and
 - (ii) is within Falkland Islands waters while proceeding to or from a port in the Falkland Islands,

unless the ship is not able to proceed as a result of weather conditions or any other unavoidable circumstances.

(3) If the owner of a ship to which this section applies fails to discharge the duty imposed on him or her by subsection (1), he or she is liable on conviction, to a fine not exceeding level 10 on the scale set out in Schedule 7.

(4) Where any such ship —

(a) is chartered by demise; or

(b) is managed, either wholly or in part, by a person other than the owner under the terms of a management agreement within the meaning of section 95,

any reference to the owner of the ship in subsection (1) or (3) must be construed as including a reference —

(i) to the charterer under the charter by demise;

(ii) to any such manager as is referred to in paragraph (b); or

(iii) to both the charterer and any such manager if the ship is both chartered and managed as mentioned,

and accordingly the reference in subsection (1) to the taking of all reasonable steps must, in relation to the owner, the charterer or any such manager, be construed as a reference to the taking of all such steps as it is reasonable for him or her to take in the circumstances of the case.

[Merchant Shipping Act 1995 (UK), s. 100]

Temporary exclusion zones

98. Power to establish temporary exclusion zones

(1) Subsection (2) applies where a ship, structure or other thing —

(a) is in Falkland Islands waters or a part of the sea specified in an Order in Council made under section 129(2)(b) of the Act; and

(b) is wrecked, damaged or in distress.

(2) If it appears to the Governor —

(a) that significant harm will or may occur as a direct or indirect result of the relevant casualty being wrecked, damaged or in distress; and

(b) that if access to an area around the relevant casualty were restricted in accordance with section 99, significant harm, or the risk of such harm, would be prevented or reduced,

the Governor may by order identify an area to which access is so restricted (“a **temporary exclusion zone**”).

(3) In this section —

(a) “**significant harm**” means —

(i) significant pollution in the Falkland Islands, in Falkland Islands waters or in a part of the sea specified in an Order in Council made under section 129(2)(b) of the Act; or

(ii) significant damage to persons or property; and

(b) in section 99 “**the relevant casualty**” means that ship, structure or other thing.

(4) A temporary exclusion zone may not include any area which is neither within Falkland Islands waters nor within a part of the sea specified in an Order in Council made under section 129(2)(b) of the Act.

(5) If it appears to the Governor at any time after a temporary exclusion zone is established that the zone is larger than is needed for the purpose of preventing or reducing significant harm, or the risk of such harm, the Governor must through an order vary the order establishing the zone accordingly.

(6) Subject to subsections (4) and (5), a temporary exclusion zone may be identified by reference to the position of the relevant casualty from time to time.

(7) If it appears to the Governor at any time after a temporary exclusion zone is established that the zone is not needed for the purpose of preventing or reducing significant harm, or the risk of such harm, the Governor must through another order revoke the order establishing the zone.

(8) Where the Governor makes an order under this section, the Governor must —

(a) as soon as practicable, publish it in such manner as he or she considers appropriate for bringing it to the attention of persons likely to be affected by it; and

(b) within the period of 24 hours from making the order, send a copy of it to the International Maritime Organization.

(9) This section applies alongside an order made under section 4 of the Protection of Wrecks Ordinance 1977 which designates an area around a vessel as a prohibited area.
[Merchant Shipping Act 1995 (UK), s. 100A]

99. Temporary exclusion zones: offences

(1) If an order establishing a temporary exclusion zone contains a statement of a description mentioned in subsection (2), then, subject to subsection (4), no ship is permitted to enter or remain in the zone.

(2) The statement referred to under subsection (1) is one to the effect that the direction is given for the purpose of preventing or reducing significant pollution, or the risk of significant pollution, in the Falkland Islands, in Falkland Islands waters or in a part of the sea specified by virtue of section 129(2)(b) of the Act.

(3) If an order establishing a temporary exclusion zone does not contain a statement of a description mentioned in subsection (2), then, subject to subsections (4) and (5) —

(a) no ship is permitted to enter or remain in any part of the zone that is in Falkland Islands waters; and

(b) no ship registered in the Falkland Islands is permitted to enter or remain in any part of the zone that is in a part of the sea specified by virtue of section 129(2)(b) of the Act.

(4) A ship may enter or remain in a temporary exclusion zone or a part of such a zone if it does so —

(a) in accordance with the order establishing the zone;

(b) with the consent of the Governor; or

(c) in accordance with regulations made by the Governor for the purposes of this section.

(5) A qualifying foreign ship may enter a temporary exclusion zone or a part of the zone if in doing so it is exercising the right of transit passage through straits used for international navigation.

(6) If a ship enters or remains in a temporary exclusion zone or a part of such a zone in contravention of subsection (1) or (3) then, subject to subsection (7), its owner and its master each commits an offence and is liable on conviction, to a fine not exceeding level 11 on the scale set out in Schedule 7 or to imprisonment for a term not exceeding two years, or to both.

(7) It is a defence for a person charged with an offence under this section to prove that the existence or area of the temporary exclusion zone was not, and would not on reasonable enquiry have become, known to the master or the owner.

[Merchant Shipping Act 1995 (UK), s. 100B]

Power to require ships to be moved

100. Power to require ships to be moved

(1) The powers conferred by this section are exercisable where a ship in Falkland Islands waters—

(a) is not a qualifying foreign ship; or

(b) is a qualifying foreign ship but appears to the Governor to be exercising neither of the following rights —

(i) the right of innocent passage; and

(ii) the right of transit passage through straits used for international navigation.

(2) Subject to subsection (3), the Governor may, for any one or more of the purposes specified in subsection (4), give directions to any of the persons specified in subsection (5) requiring —

(a) that the ship is to be moved, or is to be removed from a specified area or locality or from Falkland Islands waters; or

(b) that the ship is not to be moved to a specified place or area within Falkland Islands waters, or over a specified route within Falkland Islands waters.

(3) The power of the Governor under subsection (2)(a) to require a ship to be removed from Falkland Islands waters is not exercisable in relation to a ship registered in the Falkland Islands.

(4) The purposes referred to in subsection (2) are —

(a) the purpose of securing the safety of the ship or of other ships, of persons on the ship or other ships, or of any other persons or property, or of preventing or reducing any risk to such safety; and

(b) the purpose of preventing or reducing pollution in the Falkland Islands, in Falkland Islands waters or in a part of the sea specified by virtue of section 129(2)(b) of the Act, or of preventing or reducing any risk of such pollution.

(5) The persons referred to in subsection (2) are —

(a) the owner of the ship or any person in possession of the ship; or

(b) the master of the ship.

(6) If in the opinion of the Governor the powers conferred by subsection (2) are, or have proved to be, inadequate for any of the purposes specified in subsection (4), the Governor may for that purpose take any such action as he or she has power to require to be taken by a direction under this section.

(7) The powers of the Governor under subsection (6) are also exercisable by such persons as may be authorised for the purpose by the Governor.

(8) Every person concerned with compliance with directions given, or with action taken, under this section must use his or her best endeavours to avoid any risk to human life.

(9) Any action taken as respects a ship which is under arrest or as respects the cargo of the ship, being action duly taken in pursuance of a direction given under this section, or being any action taken under subsection (6) or (7) —

(a) does not constitute contempt of court; and

(b) does not in any circumstances make the Admiralty Marshal liable in any civil proceedings.

(10) In this section unless a contrary intention appears, “**specified**” in relation to a direction under this section, means specified by the direction.

[Merchant Shipping Act 1995 (UK), s. 100C]

101. Offences in relation to section 100

(1) If the person to whom a direction is given under section 101 contravenes, or fails to comply with, any requirement of the direction, he or she commits an offence.

(2) If a person intentionally obstructs any person who is —

(a) acting on behalf of the Governor in connection with the giving or service of a direction under section 100;

(b) acting in compliance with a direction under that section; or

(c) acting under section 100(6) or (7),

he or she commits an offence.

(3) In proceedings for an offence under subsection (1), it is a defence for the accused to prove that he or she has used all due diligence to ensure compliance with the direction, or that he or she had reasonable cause for believing that compliance with the direction would have involved a serious risk to human life.

(4) A person convicted of an offence under this section is liable on conviction, to a fine not exceeding level 10 on the scale set out in Schedule 7;

[Merchant Shipping Act 1995 (UK), s. 100D]

102. Service of directions under section 100

(1) If the Governor is satisfied that a company or other body is not one to which section 437 of the Companies Act 1948 or section 5 of the Company Law and Partnership Ordinance applies so as to authorise the service of a direction on that body under either of those sections, the Governor may give a direction under section 100 to that body, as the owner of, or the person in possession of, a ship, by serving the direction on the master of the ship.

(2) For the purpose of giving or serving a direction under section 101 to or on any person on a ship, a person acting on behalf of the Governor has the right to go on board the ship.

[Merchant Shipping Act 1995 (UK), s. 100E]

103. Requirements to be met by ships in respect of which trans-shipment licences in force

(1) In this section and section 104 “**trans-shipment licence**” has the same meaning as in the Fisheries (Conservation and Management) Ordinance (No. 14 of 2005).

(2) The Governor may, —

(a) for all or any of the purposes specified in subsection (3); and

(b) on being advised by the Director of Fisheries in exercise of that Director's powers under section 46(4) of the Fisheries (Conservation and Management) Ordinance,

by regulations prescribe requirements to be met by ships in respect of which trans-shipment licences are in force.

(3) The purposes referred to under subsection (2) are —

(a) securing the safety of ships in respect of which trans-shipment licences are in force and persons on them;

(b) protecting the health of persons on such ships;

(c) securing the safety of any other persons or property;

(d) preventing or reducing pollution; and

(e) securing employment and providing for the terms and conditions of employment of Falkland Islands status holders in the provision of trans-shipment services.

(4) The matters with respect to which requirements may be prescribed under subsection (2) include, in particular, the construction and equipment of ships, the manning of ships, and operational matters.

(5) Without prejudice to the generality of subsection (2), regulations under that subsection may apply, in relation to a ship in respect of which a trans-shipment licence is in force, any requirements contained in —

(a) safety regulations;

(b) regulations under section 133; or

(c) any international agreement,

whether or not those requirements would otherwise apply in relation to that ship.

[Merchant Shipping Act 1995 (UK), s. 100F]

104. Failure to comply with prescribed standards in respect of ship in respect of which trans-shipment licence is in force

(1) If it appears to the Governor that any requirement of regulations under section 103(2) or regulations under section 202 is being contravened in respect of a ship in respect of which a trans-shipment licence is in force, he or she may serve on the master a notice under subsection (2).

(2) A notice under this subsection must specify the contravention by reason of which it is given and must prohibit —

(a) the receiving by the ship of fish trans-shipped from another ship;

(b) the processing of fish on the ship; or

(c) both such receiving and such processing.

(3) The Governor must revoke a notice under subsection (2) if the Governor is satisfied that the contravention specified in it has been remedied.

(4) If a trans-shipment licence ceases to be in force in respect of a ship to which a notice under subsection (2) relates, the notice is revoked by virtue of this subsection.

(5) If without reasonable excuse the master of a ship causes or permits any prohibition imposed by a notice under subsection (2) to be contravened in respect of the ship, he or she is liable on conviction, to a fine not exceeding level 7 on the scale set out in Schedule 7.

(6) The obligation imposed by regulations under section 103(2) is not enforceable except in accordance with this section, but this subsection does not limit the powers conferred by section 239.

[Merchant Shipping Act 1995 (UK), s. 100G]

Control of, and returns as to, persons on ships

105. Offences in connection with passenger ships

(1) A person commits an offence if, in relation to a ship to which this section applies, the person does any of the following things, that is to say, if —

(a) being drunk or disorderly, the person has been on that account refused admission to the ship by the owner or any person in his or her employment, and, after having the amount of his or her fare (if the person has paid it) returned or tendered to him or her, nevertheless persists in attempting to enter the ship;

(b) being drunk or disorderly on board the ship, the person is requested by the owner or any person in the owner's employment to leave the ship at any place in the Falkland Islands at which the person can conveniently do so, and, after having the amount of his or her fare (if the person has paid it) returned or tendered to him or her, does not comply with the request;

(c) on board the ship, after warning by the master or other officer in the ship, he or she molests or continues to molest any passenger;

(d) after having been refused admission to the ship by the owner or any person in his or her employment on account of the ship being full, and having had the amount of his or her fare (if the person has paid it) returned or tendered to him or her, the person nevertheless persists in attempting to enter the ship;

(e) having gone on board the ship at any place, and being requested, on account of the ship being full, by the owner or any person in his or her employment to leave the ship before it

has left that place, and having had the amount of his or her fare (if the person has paid it) returned or tendered to him or her, the person does not comply with that request;

(f) on arriving in the ship at a point to which the person has paid his or her fare, the person knowingly and intentionally refuses or neglects to leave the ship; or

(g) on board the ship the person fails, when requested by the master or other officer in the ship, either to pay his or her fare or show such ticket or other receipt, if any, showing the payment of his or her fare, as is usually given to persons travelling by and paying their fare for the ship,

but the person's liability in respect of any such offence does not prejudice the recovery of any fare payable by him or her.

(2) A person commits an offence if, on board any ship to which this section applies he or she intentionally does or causes to be done anything in such a manner as to —

(a) obstruct or damage any part of the machinery or equipment of the ship, or

(b) obstruct, impede or molest the crew, or any of them, in the navigation or management of the ship, or otherwise in the execution of their duty on or about the ship.

(3) The master or other officer of any ship to which this section applies, and all persons called by the master or other officer to his or her assistance, may, without any warrant, detain any person who commits any offence against subsection (1) or (2) and whose name and address are unknown to the master or officer, and deliver that person to a constable.

(4) A person convicted of an offence against subsection (1) or (2) is liable, on conviction, to a fine not exceeding level 2 on the scale set out in Schedule 7.

(5) If any person commits an offence against subsection (1) or (2) and on the application of the master of the ship, or any other person in the employment of the owner of the ship, refuses to give his or her name and address, or gives a false name or address, that person is liable, on conviction, to a fine not exceeding level 2 on the scale set out in Schedule 7.

(6) This section applies to a ship for which there is in force a Passenger Ship Safety Certificate or Passenger Certificate, as the case may be, issued under or recognised by safety regulations.

[Merchant Shipping Act 1995 (UK), s. 101]

106. Power to exclude drunken passengers from certain passenger ships

(1) The master of any ship to which this section applies may refuse to receive on board any person who by reason of drunkenness or otherwise is in such a state, or misconducts himself or herself in such a manner, as to cause annoyance or injury to passengers on board, and if any such person is on board, may put him or her on shore at any convenient place.

(2) A person so refused admittance or put on shore is not entitled to the return of any fare he or she has paid.

(3) This section applies to a ship (whether or not a ship registered in the Falkland Islands) carrying more than 12 passengers and employed in carrying passengers between places for the time being defined in regulations made under section 50 by the Governor.

[Merchant Shipping Act 1995 (UK), s. 102]

107. Stowaways

(1) If a person, without the consent of the master or of any other person authorised to give it, goes to sea or attempts to go to sea in a ship registered in the Falkland Islands, he or she is liable on conviction to a fine not exceeding level 3 on the scale set out in Schedule 7.

(2) Nothing in section 267 is to be taken to limit the jurisdiction of any court in the Falkland Islands to deal with an offence under this section which has been committed in a country outside the Falkland Islands by a person who is not from the Falkland Islands.

[Merchant Shipping Act 1995 (UK), s. 103]

108. Unauthorised presence on board ship

Where a ship registered in the Falkland Islands or in any other country is in a port in the Falkland Islands and a person who is neither in Her Majesty's service nor authorised by law to do so —

(a) goes on board the ship without the consent of the master or of any other person authorised to give it; or

(b) remains on board the ship after being requested to leave by the master, a police officer, an officer authorised by the Governor or a customs officer,

he or she is liable on conviction to a fine not exceeding level 5 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 104]

109. Master's power of arrest

The master of any ship registered in the Falkland Islands may cause any person on board the ship to be put under restraint if and for so long as it appears to the master necessary or expedient in the interest of safety or for the preservation of good order or discipline on board the ship.

[Merchant Shipping Act 1995 (UK), s. 105]

110. Unauthorised persons: offences relating to safety

(1) Where a person goes to sea in a ship without the consent of the master or of any other person authorised to give it or is conveyed in a ship in pursuance of section 75(5)(b), sections 61 and 62 apply as if the person were a seafarer employed in the ship.

(2) Subsection (1), in its application to section 61 so far as that section applies to ships which are not sea-going ships, has effect —

(a) with the omission of the words “goes to sea in a ship”; and

(b) with the insertion, after the words “to give it”, of the words “ is on board a ship while it is on a voyage or excursion ”.

(3) This section does not apply to fishing vessels.
[Merchant Shipping Act 1995 (UK), s. 106]

111. Return to be furnished by masters of ships as to passengers

(1) The master of every ship, whether or not the ship is registered in the Falkland Islands, which carries any passenger to a place in the Falkland Islands from any place out of the Falkland Islands, or from any place in the Falkland Islands to any place out of the Falkland Islands, must furnish to such person and in such manner as the Governor directs a return —

- (a) giving the total number of any passengers so carried;
- (b) distinguishing, if so directed by the Governor, the total number of any class of passengers so carried; and
- (c) giving, if the Governor so directs, such particulars with respect to passengers as may be for the time being required by the Governor.

(2) A passenger must furnish the master of the ship with any information required by the master for the purpose of the return.

(3) If —

- (a) the master of a ship fails to make a return as required by this section, or makes a false return; or
- (b) any passenger refuses to give any information required by the master of the ship for the purpose of the return required by this section, or, for that purpose, gives to the master information which he or she knows to be false or recklessly gives to the master information which is false,

the master or (as the case may be) passenger is liable on conviction to a fine not exceeding level 2 on the scale set out in Schedule 7 in the case of a failure or refusal and level 3 on the scale set out in Schedule 7 in the case of a false return or false information.

[Merchant Shipping Act 1995 (UK), s. 107]

112. Returns of births and deaths in ships, etc.

(1) The Governor may make regulations under the following provisions of this section in relation to births and deaths in the circumstances specified in those provisions.

(2) Regulations under this section may require the master of any ship registered in the Falkland Islands to make a return to a superintendent or proper officer of —

- (a) the birth or death of any person occurring in the ship; and
- (b) the death of any person employed in the ship, wherever occurring outside the Falkland Islands,

and to notify any such death to such person (if any) as the deceased may have named to the superintendent or proper officer as the deceased's next of kin.

(3) Regulations under this section may require the master of any ship not registered in the Falkland Islands which calls at a port in the Falkland Islands in the course of or at the end of a voyage to make a return to a marine superintendent of any birth or death of a British citizen, a British Overseas Territories citizen or a British Overseas citizen which has occurred in the ship during the voyage.

(4) The returns referred to in subsections (2) and (3) must be transmitted to the Registrar General of Shipping.

(5) Regulations under this section may require the Registrar General of Shipping to record information as may be specified in the regulations about a death referred to in subsection (2) in a case where —

(a) it appears to the Registrar General of Shipping that the master of the ship cannot perform his or her duty under that subsection because the master has died or is incapacitated or missing; and

(b) any of the circumstances specified in subsection (6) exists.

(6) Those circumstances are that —

(a) the death in question has been the subject of —

(i) an inquest held by a coroner; or

(ii) an inquiry held in pursuance of section 253;

and the findings of the inquest or inquiry include a finding that the death occurred; or

(b) the deceased's body has been the subject of a post-mortem examination in the Falkland Islands and in consequence the coroner is satisfied that an inquest is unnecessary.

(7) Regulations under this section may require the Registrar General of Shipping to send a certified copy of any return or record to the Registrar General.

(8) The Registrar General, on receipt of certified copies referred to under subsection (7) —

(a) must record the information contained in the copies in the marine register; and

(b) may record in the marine register, any additional information as appears to him or her desirable for the purpose of ensuring the completeness and correctness of the register,

and the Registration Ordinance 1949 has effect as if the marine register is a register of births (other than stillbirths) or deaths or certified copies of entries in such a register has been transmitted to the Registrar General in accordance with the Registration Ordinance .

(9) Contravention of any provisions of regulations made under this section is an offence punishable on conviction with a fine not exceeding level 2 on the scale set out in Schedule 7.

(10) Regulations under this section may contain provisions authorising the registration of the following births and deaths occurring outside the Falkland Islands in circumstances where no return is required to be made under subsections (1) to (9) of this section —

(a) any birth or death of a British citizen, a British Overseas Territories citizen or a British Overseas citizen which occurs in a ship not registered in the Falkland Islands;

(b) any death of any such citizen who has been employed in a ship not registered in the Falkland Islands which occurs elsewhere than in the ship; and

(c) any death of a person who has been employed in a ship registered in the Falkland Islands which occurs elsewhere than in the ship.

(11) References in this section to deaths occurring in a ship include references to deaths occurring in a ship's boat.

[Merchant Shipping Act 1995 (UK), s. 108]

PART 6 – FISHING VESSELS

Chapter I - Skipper and Seafarers

[s11/Ord.14/2019/w.e.f. 26.09.2019]

Engagement and discharge of crews

113. Interpretation

(1) In this Part —

“**crew agreement**” has the meaning given to it by section 114(2);

“**engaged**” means engaged under a contract, other than a contract of employment with a shipowner, in the circumstances described in subsection (2); and “**engagement**” is to be construed accordingly;

“**relief and maintenance**” include the provision of surgical or medical treatment and such dental and optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency; and

“**ship's boat**” includes a life-raft.

(2) The circumstances referred to in the definition of “**engaged**” are that —

(a) the person or seafarer engaged under the contract undertakes to do or perform personally any work or services in a fishing vessel; and

(b) the undertaking referred to in paragraph (a) is provided to —

(i) the shipowner; or

(ii) another person who is a party to the contract.

(3) For the purposes of the definition of “**engaged**” in subsection (1), a contract can be —

(a) express; or

(b) implied; and

(c) if it is express, made orally or in writing.

[s11/Ord.14/2019/w.e.f. 26.09.2019]

114. Crew agreements

(1) Except as provided for under section 115, any person who employs or engages a person to work as a seafarer in a fishing vessel registered in the Falkland Islands must enter into an agreement in writing with that person and the agreement must be signed by both parties.

(2) The agreements made under this section with the several persons employed or engaged in a fishing vessel as seafarers must be contained in one document (in this Part referred to as a “**crew agreement**”) except that, in such cases as the Governor may approve —

(a) the agreements to be made under this section with seafarers may be contained in more than one crew agreement; and

(b) one crew agreement may relate to more than one fishing vessel.

(3) The provisions and form of a crew agreement must be of a kind approved by the Governor; and different provisions and forms may be approved for different circumstances.

(4) Subject to section 115, a crew agreement must be carried in the fishing vessel to which it relates, whenever it goes to sea.

[Merchant Shipping Act 1995 (UK), s. 25]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

115. Regulations relating to crew agreements

(1) The Governor may make regulations providing for exemptions from the requirements of section 114 —

(a) with respect to such descriptions of fishing vessels as may be specified or with respect to voyages in such areas or such description of voyages as may be so specified; or

(b) with respect to such descriptions of seafarers as may be specified,

and the Governor may grant other exemptions from those requirements (whether with respect to particular seafarers or with respect to seafarers employed or engaged by a specified person or in a specified fishing vessel or in the fishing vessels of a specified person) in cases where the Governor is satisfied that the seafarers to be employed or engaged otherwise than under a crew agreement will be adequately protected.

(2) Any fishing vessel that is exempted by the Governor from carrying a crew agreement under this section must carry a document which shows that it has been exempted (in this Part referred to as an “**exemption document**”).

(3) Regulations made under this section may —

(a) enable fishing vessels required under this section to carry a crew agreement to comply with the requirement by carrying a copy of it, certified in such manner as may be provided by the regulations; and

(b) specify the form of the exemption document.

(4) If a fishing vessel goes to sea or attempts to go to sea in contravention of the requirements of this section the skipper or the person who employs or engages the crew commits an offence and is liable on conviction to a fine not exceeding level 4 on the scale set out in Schedule 7 and the fishing vessel, if in the Falkland Islands, may be detained.

(5) The Governor may make regulations —

(a) prescribing the procedure to be followed in connection with the making of crew agreements between persons employed or engaged in fishing vessels registered in the Falkland Islands and persons employing or engaging them; and

(b) prescribing the places where such crew agreements are to be made or where an agreement with any person may be added to those contained in such a crew agreement.

(6) Contravention of any provision of regulations made under this section is an offence punishable on conviction with a fine not exceeding level 3 on the scale set out in Schedule 7 or such lesser amount as may be specified in the regulations.

[Merchant Shipping Act 1995 [UK], s. 109]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

116. Discharge of seafarers

(1) The Governor may make regulations prescribing the procedure to be followed in connection with the discharge of seafarers from fishing vessels registered in the Falkland Islands.

(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision —

(a) requiring notice of such a discharge to be given, at such time as may be specified in the regulations, to the superintendent or proper officer at a place specified in or determined under the regulations;

(b) requiring such a discharge to be recorded, whether by entries in the crew agreement and discharge book or otherwise, and requiring copies of any such entry to be given to a superintendent or proper officer or the Registrar.

(3) Regulations under this section may provide that in such cases as may be specified in the regulations, or except in such cases as may be specified in or determined under the regulations, a seafarer must not be discharged outside the Falkland Islands from a fishing vessel registered in the Falkland Islands without the consent of the proper officer.

(4) Regulations made under this section may make a contravention of any provision of those regulations an offence punishable, on conviction, with a fine not exceeding level 3 on the scale set out in Schedule 7 or such lesser amount as may be specified in the regulations.

[Merchant Shipping Act 1995 (UK), s. 27]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

117. Seafarers left behind abroad otherwise than on discharge

Regulations made under section 116 may apply any provision of that section, with such modifications as appear to the Governor to be appropriate, to cases where a seafarer employed or engaged in a Falkland Islands fishing vessel is left behind outside the Falkland Islands otherwise than on being discharged from the fishing vessel.

[Merchant Shipping Act 1995 (UK), s. 28]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

118. Discharge of seafarers when fishing vessel ceases to be registered in the Falkland Islands

Where a fishing vessel registered in the Falkland Islands ceases to be so registered, any seafarer employed or engaged in the fishing vessel must be discharged from the vessel unless the seafarer consents in writing to continue his or her employment or engagement in the fishing vessel.

[Merchant Shipping Act 1995 (UK), s. 29]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

Wages etc.

119. Payments of seafarers' wages

Except as provided for under the Maritime Labour Ordinance 2019 or any other enactment, the wages due to a seafarer under a crew agreement relating to a fishing vessel registered in the Falkland Islands must be paid to the seafarer in full.

[Merchant Shipping Act 1995 (UK), s. 110]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

120. Regulations relating to wages: deductions

(1) The Governor may make regulations —

(a) authorising deductions to be made from the wages due to a seafarer under a crew agreement (in addition to any authorised by any provision of the Maritime Labour Ordinance 2019 or any other enactment for the time being in force) in cases where a breach of the seafarer's obligations under the agreement is proved against the seafarer and such conditions, if any, as may be specified in the regulations are complied with, or in such other cases as may be specified in the regulations;

(b) regulating the manner in which any amounts deducted under the regulations are to be dealt with;

(c) prescribing the manner in which wages due to a seafarer under a crew agreement are to be or may be paid;

(d) regulating the manner in which such wages are to be dealt with and accounted for in circumstances where a seafarer leaves the fishing vessel from which the seafarer is employed or engaged in the Falkland Islands otherwise than on being discharged from it; or

(e) prescribing the form and manner in which any account required to be delivered by section 121 is to be prepared and the particulars to be contained in the form (which may include estimated amounts).

[Merchant Shipping Act 1995 (UK), s. 32]

(2) The power to make regulations under subsection (1) includes power to provide that the amount of a deduction of a description specified in the regulations from wages in respect of employment or engagement in a fishing vessel is to be determined by a body established or approved by the Governor in pursuance of regulations made under section 124AA.

[Merchant Shipping Act 1995 (UK), s. 111]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

121. Accounts of wages and catch

(1) The persons employing or engaging any seafarer under a crew agreement relating to a fishing vessel registered in the Falkland Islands must deliver to the seafarer at a time prescribed by regulations made under this section an account of the wages due to the seafarer under that crew agreement and of the deductions subject to which the wages are payable.

(2) Where the wages of any person employed or engaged in a fishing vessel registered in the Falkland Islands are in any manner related to the catch, the persons employing or engaging the seafarer must —

(a) deliver to the skipper an account (or, if the skipper is the person employing or engaging him or her, make out an account) showing how those wages (or any part of the wages related to the catch) are arrived at; and

(b) make the account available to the crew in such manner as may be prescribed by the regulations,

at a time prescribed by regulations made under this section.

(3) Where there is a partnership between the skipper and any members of the crew of a fishing vessel registered in the Falkland Islands the owner of the vessel must at a time prescribed by regulations made under this section make out an account showing the sums due to each partner in respect of his or her share and must make the account available to the partners.

(4) The Governor may make regulations prescribing the time at which any account required by this section is to be delivered or made out and the manner in which the account required by subsections (2) and (3) is to be made available.

(5) If a person fails without reasonable excuse to comply with this section, the person is liable on conviction to a fine not exceeding level 2 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 112]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

122. Restriction on assignment of and charge upon wages

(1) As respects the wages due or accruing to a seafarer employed or engaged in a fishing vessel registered in the Falkland Islands —

(a) the wages are not subject to attachment;

(b) an assignment of the wages before they have accrued does not bind the seafarer and the payment of the wages to the seafarer is valid notwithstanding any previous assignment or charge; and

(c) a power of attorney or authority for the receipt of the wages is revocable.

(2) Nothing in this section affects section 124C with respect to allotment notes.

(3) Nothing in this section applies to any disposition relating to the application of wages —

(a) in the payment of contributions to a fund declared by regulations made by the Governor to be a fund to which this section applies; or

(b) in the payment of contributions in respect of the membership of a body declared by regulations made by the Governor to be a body to which this section applies; or

(c) to anything done or to be done for giving effect to such a disposition.

(4) Nothing in this section affects the operation of any written law of the Falkland Islands providing for the attachment of earnings in relation to wages due to a person employed or engaged in a fishing vessel.

[Merchant Shipping Act 1995 (UK), s. 34 and 113]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

123. Right, or loss of right, to wages in certain circumstances

(1) Where a fishing vessel registered in the Falkland Islands is wrecked or lost and a seafarer whose employment or engagement in the vessel is as a result terminated before the date contemplated in the agreement under which the seafarer is employed or engaged, the seafarer is,

subject to subsection (3), entitled to wages at the rate payable under the agreement at the date of the wreck or loss for every day on which the seafarer is unemployed in the two months following that date.

(2) Where a fishing vessel registered in the Falkland Islands is sold while outside the Falkland Islands or ceases to be registered in the Falkland Islands and a seafarer's employment or engagement in the vessel is as a result terminated before the date contemplated in the agreement under which the seafarer is employed or engaged, then, unless it is otherwise provided in the agreement, the seafarer is, subject to subsection (3), entitled to wages at the rate payable under the agreement at the date on which the seafarer's employment or engagement is terminated for every day on which the seafarer is unemployed in the two months following that date.

(3) A seafarer is not entitled to wages by virtue of subsection (1) or (2) for a day on which the seafarer was unemployed, if it is shown —

(a) that the unemployment was not due to the wreck or loss of the fishing vessel or, as the case may be, the termination of the seafarer's employment or engagement on the sale of the fishing vessel or its ceasing to be registered in the Falkland Islands; or

(b) that the seafarer was able to obtain suitable employment or engagement for that day but unreasonably refused or failed to take it.

(4) This section applies to a skipper as it does to a seafarer.

[Merchant Shipping Act 1995 (UK), s. 38, s. 114]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124. Power of superintendent or proper officer to decide disputes about wages

(1) Any dispute relating to the amount payable to a seafarer employed or engaged under a crew agreement may be submitted by the parties to a superintendent or proper officer for decision.

(2) The superintendent or proper officer is not bound to accept a dispute submitted to him or her under subsection (1) where he or she is of the opinion that the dispute, whether by reason of the amount involved or for any other reason, ought not to be decided by him or her.

(3) The decision of a superintendent or proper officer on a dispute submitted to him or her under this section is final.

[Merchant Shipping Act 1995 (UK) s. 33]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124A. Power of court to award interest on wages due otherwise than under crew agreement

In any proceedings by the skipper of a fishing vessel or a person employed or engaged in a fishing vessel otherwise than under a crew agreement for the recovery of any sum due to that person as wages the court, unless it appears to it that the delay in paying the sum was due to—

(a) a reasonable mistake;

(b) a reasonable dispute as to liability;

(c) the act or default of the person claiming the amount; or

(d) any other cause, not being the wrongful act or default of the persons liable to make the payment or their servants or agents,

may order them to pay, in addition to the sum due, interest on it at the rate of 10 per cent per annum or such lower rate as the court may specify, for the period beginning seven days after the sum became due and ending when the sum is paid.

[Merchant Shipping Act 1995 (UK), s. 35]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124B. Allotment notes

(1) Subject to this section, a seafarer may, by means of an allotment note issued in accordance with regulations made by the Governor, allot to any person or persons part of the wages to which the person or persons will become entitled in the course of the seafarer's employment or engagement in a fishing vessel registered in the Falkland Islands.

(2) A seafarer's right to make an allotment under this section is subject to such limitations as may, by virtue of this section, be imposed by regulations made by the Governor.

(3) Regulations made by the Governor for the purposes of this section may prescribe the form of allotment notes and may —

(a) limit the circumstances in which allotments may be made;

(b) limit (whether by reference to an amount or by reference to a proportion) the part of the wages that may be allotted and the number of persons to whom the wages may be allotted to and may prescribe the method by which that part of the wages is to be calculated;

(c) limit the persons to whom allotments may be made by a seafarer to persons of such descriptions or persons standing to the seafarer in such relationships as may be prescribed by the regulations; or

(d) prescribe the times and the intervals at which payments under allotment notes are to be made.

(4) Regulations under this section may make different provision in relation to different descriptions of seafarers and different circumstances relating to the seafarers.

[Merchant Shipping Act 1995 (UK), s. 36]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124C. Right of person named in allotment to sue in own name

(1) A person to whom any part of a seafarer's wages has been allotted by an allotment note issued in accordance with regulations made under section 124B has the right to recover that part in the person's own name and for that purpose has the same remedies as the seafarer has for the recovery of his or her wages.

(2) In any proceedings brought by a person named in such an allotment note as the person to whom any part of a seafarer's wages has been allotted it must be presumed, unless the contrary is shown, that the seafarer is entitled to the wages specified in the note and that the allotment has not been varied or cancelled.

[Merchant Shipping Act 1995 (UK), s. 37]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124D. Protection of certain rights and remedies

(1) A seafarer's lien, remedies for the recovery of wages, right to wages in case of the wreck or loss of a fishing vessel on which the seafarer is employed or engaged, and any right the seafarer may have or obtain in the nature of salvage is not capable of being renounced by any agreement.

(2) Subsection (1) does not affect the terms of any agreement made with the seafarer belonging to a fishing vessel who, in accordance with the agreement, is to be employed or engaged on salvage service, that provide for the remuneration to be paid to the seafarer for salvage services rendered by that fishing vessel.

[Merchant Shipping Act 1995 (UK), s. 39]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124E. Claims against seafarer's wages for maintenance, etc. of dependants

(1) Where, during a seafarer's employment or engagement in a fishing vessel, expenses are incurred by a responsible authority for the benefit of any dependant of the seafarer and the expenses are of a kind specified in regulations under this section and such further conditions, if any, as may be so specified are satisfied, the responsible authority may by notice in writing complying with the regulations require the persons employing or engaging the seafarer —

(a) to retain for a period specified in the notice such proportion of the seafarer's net wages as may be so specified; and

(b) to give to the responsible authority, as soon as may be practicable, notice in writing of the seafarer's discharge from the fishing vessel;

and the persons employing or engaging the seafarer must comply with the notice (subject to subsection (3)) and give notice in writing of its contents to the seafarer.

(2) For the purposes of this section —

(a) the following persons, and no others, must be taken to be a seafarer's dependants, that is to say, the seafarer's spouse and any person under the age of 19 whom the seafarer is liable, for the purposes of any enactment in any part of the Falkland Islands, to maintain or in respect of whom the seafarer is liable under any such enactment to make contributions to the responsible authority; and

(b) expenses incurred for the benefit of any person include (in addition to any payments made to the seafarer or on the seafarer's behalf) expenses incurred for providing the seafarer with accommodation or care or for exercising supervision over the seafarer,

but no expenses are permitted to be specified in regulations made under this section unless they are such that the Magistrate's Court has power under any enactment in force in the Falkland Islands to order the making of payments in respect of those expenses.

(3) Not more than the following proportion of a seafarer's net wages is permitted to be retained under subsection (1) (whether in pursuance of one or more notices) —

(a) one-half, if the notice or notices relate to one dependant only; or

(b) two-thirds, if the notice or notices relate to two or more dependants.

(4) Where the responsible authority has served a notice under this section on the persons employing or engaging a seafarer, the Magistrate's Court may, on the application of the responsible authority, make an order for the payment to the responsible authority of such sum, not exceeding the proportion of the seafarer's wages which those persons were required by virtue of this section to retain, as the court thinks fit, having regard to the expenses incurred by the responsible authority and the seafarer's means.

(5) Any sums paid out of a seafarer's wages in pursuance of an order under this section must be deemed to be paid to the seafarer in respect of the seafarer's wages; and the service, on the persons who employed or engaged the seafarer, of such an order or of an order dismissing an application for such an order terminates the period for which they were required to retain the wages.

(6) An application for an order under this section for the payment of any sum by the persons who employed or engaged a seafarer must be deemed, for the purposes of any proceedings, to be an application for an order against the seafarer; but the order, when served on those persons, must have effect as an order against them and may be enforced accordingly.

(7) Any notice or order under this section may be served by registered post or recorded delivery service.

(8) The Governor may make regulations specifying —

(a) the expenses in respect of which a notice may be served by a responsible authority under subsection (1);

(b) any conditions that must be satisfied if such a notice is to be served;

(c) the period that may be specified in such a notice (being a period beginning with the service of the notice and ending a specified number of days after the seafarer's discharge from the fishing vessel);

(d) the form of the notice and the information to be contained in the notice; and

(e) the amounts to be deducted from a seafarer's wages in computing his or her net wages for the purposes of this section, including the amounts allotted by allotment notes issued under section 122.

(9) In this section “**responsible authority**” means the Governor or such other person or authority as the Governor may by order appoint under this section.

[Merchant Shipping Act 1995 (UK), s. 40]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124F. Remedies of skipper for remuneration, disbursements and liabilities

The skipper of a fishing vessel has the same lien for his or her remuneration, and all disbursements or liabilities properly made or incurred by him or her on account of a fishing vessel, as a seafarer has for the seafarer’s wages.

[Merchant Shipping Act 1995 (UK), s. 41]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

Health, safety and welfare

124G. Hours of work

(1) The Governor may make regulations prescribing maximum periods of duty and minimum periods of rest for seafarers employed or engaged in fishing vessels registered in the Falkland Islands, and the regulations may make different provision for different descriptions of fishing vessels or seafarers employed or engaged in them or for fishing vessels and seafarers of the same description in different circumstances.

(2) If any provision of regulations made under this section is contravened in the case of any seafarer employed or engaged in a fishing vessel the persons employing or engaging the seafarer and the skipper are each liable on conviction to a fine not exceeding level 4 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 115]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124H. Obligation of shipowners as to seaworthiness

(1) In every contract of employment or contract for services between the owner of a fishing vessel registered in the Falkland Islands and the skipper of that fishing vessel, or any seafarer employed or engaged in the fishing vessel, there is an implied obligation on the owner of the fishing vessel that —

- (a) the owner of the fishing vessel;
- (b) the skipper of the fishing vessel; and
- (c) every agent charged with —
 - (i) the loading of the fishing vessel;
 - (ii) the preparing of the fishing vessel for sea; or
 - (iii) the sending of the fishing vessel to sea,

must use all reasonable means to ensure the seaworthiness of the fishing vessel for the voyage at the time when the voyage commences and to keep the fishing vessel in a seaworthy condition during the voyage.

(2) The obligation imposed by subsection (1) applies notwithstanding any agreement to the contrary.

(3) No liability on the owner of a fishing vessel arises under subsection (1) in respect of the fishing vessel being sent to sea in an unseaworthy state where, owing to special circumstances, the sending of the fishing vessel to sea in such a state was reasonable and justifiable.

[Merchant Shipping Act 1995 (UK), s. 42]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124I. Crew accommodation

(1) The Governor may make regulations with respect to the crew accommodation to be provided in fishing vessels registered in the Falkland Islands.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may, in particular —

(a) prescribe the minimum space per person which must be provided by way of sleeping accommodation for seafarers and the maximum number of persons by whom a specified part of such sleeping accommodation may be used;

(b) regulate the position in the fishing vessel in which the crew accommodation or any part of that accommodation may be located and the standards to be observed in the construction, equipment and furnishing of any accommodation;

(c) require the submission to a surveyor of ships of plans and specifications of any works proposed to be carried out for the purpose of the provision or alteration of any such accommodation and authorise the surveyor to inspect any such works; and

(d) provide for the maintenance and repair of crew accommodation and prohibit or restrict the use of any such accommodation for purposes other than those for which it is designed.

(3) Regulations made under this section may make different provision with respect to different descriptions of fishing vessels or with respect to fishing vessels which were registered in the Falkland Islands at different dates or the construction of which was begun at different dates and with respect to crew accommodation provided for seafarers of different descriptions.

(4) Regulations made under this section may exempt fishing vessels of any description from any requirements of the regulations and the Governor may grant other exemptions from any such requirement with respect to any fishing vessel.

(5) Regulations under this section may require the skipper of the fishing vessel or any officer authorised by the skipper for the purpose to carry out inspections of the crew accommodation as may be prescribed by the regulations.

(6) If the provisions of any regulations under this section are contravened, the owner or skipper is liable, on conviction, to a fine not exceeding level 5 on the scale set out in Schedule 7 and the fishing vessel, if in the Falkland Islands, may be detained.

(7) In this section —

“**crew accommodation**” includes sleeping rooms, mess rooms, sanitary accommodation, hospital accommodation, recreation accommodation, store rooms and catering accommodation provided for the use of seafarers but does not include any accommodation which is also used by or provided for the use of passengers;

“**surveyor of ships**” means such person as the Governor may from time to time appoint to survey ships and fishing vessels, and whose appointment may be on terms determined by the Governor.

[Merchant Shipping Act 1995 (UK), s. 43]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124J. Complaints about provisions or water

(1) If three or more seafarers employed or engaged in a fishing vessel registered in the Falkland Islands consider that the provisions or water provided for the seafarers employed or engaged in that fishing vessel are not in accordance with safety regulations containing requirements as to the provisions and water to be provided on fishing vessels (whether because of bad quality, unfitness for use or deficiency in quantity) they may complain to the skipper, who must investigate the complaint.

(2) If the seafarers are dissatisfied with the action taken by the skipper as a result of the skipper’s investigation or by the skipper’s failure to take any action they may inform the skipper about —

(a) their dissatisfaction with the skipper’s decision; and

(b) their intention to complain to a superintendent or proper officer,

after which the skipper must make adequate arrangements to enable the seafarer to make the complaint as soon as the service of the fishing vessel permits.

(3) The superintendent or proper officer to whom a complaint has been made under this section must investigate the complaint and may examine the provisions or water or cause them to be examined.

(4) If the skipper fails without reasonable excuse to comply with the provisions of subsection (2), the skipper is liable on conviction to a fine not exceeding level 3 on the scale set out in Schedule 7 and if the skipper has been notified in writing by the person making an examination under subsection (3) that any provisions or water are found to be unfit for use or not of the quality required by the regulations, then —

(a) if they are not replaced within a reasonable time, the skipper or owner is liable on conviction to a fine not exceeding level 4 on the scale set out in Schedule 7 unless the skipper proves that the failure to replace them was not due to the skipper's neglect or default; or

(b) if the skipper, without reasonable excuse after having been notified, permits them to be used the skipper is liable on conviction to a fine not exceeding level 4 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 44]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124K. Expenses of medical and other treatment during voyage

(1) If a person, while employed or engaged in a fishing vessel registered in the Falkland Islands, receives outside the Falkland Islands, any surgical or medical treatment or such dental or optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency, the reasonable expenses of that treatment must be borne by the person who employed or engaged the person.

(2) If a person dies while employed or engaged in a fishing vessel registered in the Falkland Islands and is buried or cremated outside the Falkland Islands, the expenses of the person's burial or cremation must also be borne by the person's employers or by the person who engaged him or her.

(3) The reference in subsection (2) to dying in a fishing vessel includes a reference to dying in a ship's boat.

[Merchant Shipping Act 1995 (UK), s. 45]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

Manning and qualifications

124L. Manning

(1) Subject to subsection (2), the Governor may make regulations —

(a) requiring fishing vessels to which this section applies to carry such number of qualified officers of any description, qualified doctors and qualified cooks and such number of other seafarers or qualified seafarers of any description as may be specified in the regulations; or

(b) prescribing standards of competence to be attained and other conditions to be satisfied (subject to any exceptions allowed by or under the regulations) by officers and other seafarers of any description in order to be qualified for the purposes of this section.

(2) The Governor must not exercise his or her power to make regulations requiring fishing vessels to carry seafarers other than doctors and cooks except to the extent that it appears to him or her necessary or expedient in the interests of safety.

(3) Regulations made under this section may make different provision for different descriptions of fishing vessels or for fishing vessels of the same description in different circumstances.

(4) Without prejudice to the generality of subsection (1)(b), the conditions prescribed or specified under that paragraph may include conditions as to nationality, and regulations made for the purposes of that paragraph may make provision for —

(a) the manner in which the attainment of any standard or the satisfaction of any other condition is to be evidenced;

(b) the conduct of any examinations, the conditions for admission to the examinations and the appointment and remuneration of examiners; and

(c) the issue, form and recording of certificates and other documents,

and different provisions may be so made or enabled to be made for different circumstances.

(5) If a person makes a statement which the person knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for that or another person a certificate or other document which may be issued under this section, the person is liable on conviction to a fine not exceeding level 5 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 47]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124M. Power to exempt from manning requirements

(1) The Governor may exempt any fishing vessel or description of fishing vessel from any of the requirements of regulations made under section 124L.

(2) An exemption given under this section may be limited to a particular period or to one or more particular voyages.

[Merchant Shipping Act 1995 (UK), s. 48]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124N. Prohibition of going to sea undermanned

(1) Subject to section 124M, if a fishing vessel to which this section applies goes to sea or attempts to go to sea without carrying the officers and other seafarers as it is required to carry under section 124L, the owner or skipper is liable on conviction, to a fine not exceeding level 7 on the scale set out in Schedule 7; and the fishing vessel, if in the Falkland Islands, may be detained.

(2) This section, in its application to fishing vessels which are not sea-going ships, has effect as if for the words “goes to sea or attempts to go to sea” were substituted for the words “goes on a voyage or excursion or attempts to do so” and the words “if in the Falkland Islands” were omitted.

[Merchant Shipping Act 1995 (UK), s. 49]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124O. Production of crew certificates and other documents of qualification

(1) Any person serving or engaged to serve in a fishing vessel registered in the Falkland Islands who holds any certificate or other document which is evidence that the person is qualified for the purposes of section 124L must on demand, produce it to a fishery officer.

(2) If the person fails without reasonable excuse to produce any certificate or other document required under subsection (1), he or she is liable on conviction to a fine not exceeding level 3 on the scale set out in Schedule 7.

(3) In this section “**fishery officer**” has the same meaning as under sections 2 and 4 of the Fisheries (Conservation and Management) Ordinance 2005.

[Merchant Shipping Act 1995 (UK), s. 116]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124P. Crew’s knowledge of English

(1) Where in the opinion of a superintendent or proper officer the crew of a fishing vessel to which this section applies consists of or includes persons who may not understand orders given to them in the course of their duty because of their insufficient knowledge of English and the absence of adequate arrangements for transmitting the orders in a language of which they have sufficient knowledge, then —

(a) if the superintendent or proper officer has informed the skipper of that opinion, the fishing vessel must not go to sea; and

(b) if the fishing vessel is in the Falkland Islands, it may be detained.

(2) If a fishing vessel goes to sea or attempts to go to sea in contravention of this section the owner or skipper commits an offence and is liable on conviction to a fine not exceeding level 5 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 51]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124Q. Unqualified persons going to sea as qualified officers or seafarers

(1) If a person goes to sea as a qualified officer or seafarer of any description without being such a qualified officer or seafarer the person is liable on conviction, to a fine not exceeding level 7 on the scale set out in Schedule 7.

(2) In this section “**qualified**” means qualified for the purposes of section 124L.

[Merchant Shipping Act 1995 (UK), s. 52]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124R. Medical treatment on board fishing vessel

Where a fishing vessel registered in the Falkland Islands does not carry a doctor among the seafarers employed or engaged in it, the skipper must make arrangements for securing that any medical attention on board the fishing vessel is given either by the skipper or under his or her supervision by a person appointed by the skipper for that purpose.

[Merchant Shipping Act 1995 (UK), s. 53]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124S. Special certificates of competence

(1) The Authority may issue and record documents certifying the attainment of any standard of competence relating to fishing vessels registered in the Falkland Islands or their operation,

notwithstanding that the standard is not among those prescribed or specified under section 124L(1)(b).

(2) If a person makes a statement which he or she knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or herself or another person a document which may be issued under this section the person is liable on conviction to a fine not exceeding level 5 on the scale set out in Schedule 7.
[Merchant Shipping Act 1995 (UK), s. 54]
[s11/Ord.14/2019/w.e.f. 26.09.2019]

124T. Young persons

(1) Subject to subsection (2), a person under the school-leaving age must not be employed or engaged in any fishing vessel registered in the Falkland Islands except as permitted by regulations under this section.

(2) The Governor may make regulations —

(a) prescribing circumstances in which and conditions subject to which persons under school leaving age who have attained such age as may be specified in the regulations may be employed or engaged in a fishing vessel which is not a sea-going vessel registered in the Falkland Islands in such capacities as may be so specified;

(b) prescribing circumstances and capacities in which persons over school leaving-age but under the age of 18 or under such lower age as may be specified in the regulations must not be employed or engaged in a fishing vessel registered in the Falkland Islands which is not a sea-going vessel or may be so employed or engaged only subject to such conditions as may be specified in the regulations;

(c) prescribing circumstances and capacities in which persons of at least the age of 16 but under the age of 18 or under such lower age as may be specified in the regulations must not be employed or engaged in a sea-going vessel registered in the Falkland Islands or may be so employed or engaged only subject to such conditions as may be specified in the regulations.

(3) Regulations made for the purposes of this section may make different provision for different employments or engagements and different descriptions of fishing vessels and any other different circumstances.

(4) If any person is employed or engaged in a fishing vessel in contravention of this section or if any condition subject to which a person may be employed or engaged under regulations made for the purposes of this section is not complied with, the owner or skipper is liable on conviction to a fine not exceeding level 3 on the scale set out in Schedule 7.

(5) For the purposes of this section a person employed or engaged in a fishing vessel is deemed—

(a) to be over the school-leaving age if the person has attained the age which is the upper limit of compulsory school age under the enactments for the time being in force relating to education in the Falkland Islands, and if the person is treated for the purposes of those

enactments as not having attained that age, the person must be so treated also for the purposes of this section; or

(b) under the school-leaving age if the person has not attained the age which is the upper limit of compulsory school age under the enactments referred to in paragraph (a), as may be applicable.

[Merchant Shipping Act 1995 (UK), s. 55]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124U. Financial assistance for training

(1) Subject to funds being provided for in accordance with section 299, the Governor may give any person or body of persons of any description determined by the Governor for the purposes of this section financial assistance in respect of expenses incurred or to be incurred by any such person or body in connection with the training (whether in the Falkland Islands or elsewhere) of officers and ratings for service in fishing vessels, including expenses incurred or to be incurred by any such person in connection with the person's undergoing any such training.

(2) Assistance under this section may be given by way of a grant or a loan or otherwise; and in giving any such assistance the Governor may impose such conditions as the Governor thinks fit, including conditions requiring a grant to be repaid in specified circumstances.

(3) This section is without prejudice to any other power of the Governor to give financial assistance in connection with any such training as is mentioned in subsection (1).

(4) In providing assistance in accordance with this section the Governor must have regard to the maintenance and development of the Falkland Islands' fishery fleet and marine related business and for that purpose must —

(a) keep under review all aspects of that fleet and business; and

(b) seek the advice of those who appear to the Governor to have experience of that fleet or business.

(5) In this section, “**marine related business**” means any trade, business or other activity concerned with the manufacture of, or the provision of goods and services for, or the operation or use of, ships; and includes maritime educational establishments, marine classification societies, marine equipment suppliers, marine surveyors, marine and naval architects, marine insurance companies, protection and indemnity clubs, providers of maritime financial or legal services, the operators of ports and harbours and shipbrokers.

[Merchant Shipping Act 1995 (UK), s. 56]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

Offences by seafarers

124V. Conduct endangering fishing vessels, structures or individuals

(1) This section applies —

(a) to the skipper of, or any seafarer employed or engaged in, a fishing vessel registered in the Falkland Islands; and

(b) to the skipper of, or any seafarer employed or engaged in, a fishing vessel which —

(i) is registered in any country outside the Falkland Islands; and

(ii) is in a port in the Falkland Islands or within Falkland Islands waters while proceeding to or from that port.

(2) If a person to whom this section applies, while on board the fishing vessel or in its immediate vicinity —

(a) does any act which causes or is likely to cause —

(i) the loss or destruction of or serious damage to the fishing vessel, its machinery or navigational, fishing or safety equipment;

(ii) the loss or destruction of or serious damage to any other fishing vessel, ship or any structure;

(iii) the death of or serious injury to any person; or

(b) omits to do anything required —

(i) to preserve the fishing vessel, its machinery or navigational, fishing or safety equipment from being lost, destroyed or seriously damaged;

(ii) to preserve any person on board the fishing vessel from death or serious injury; or

(iii) to prevent the fishing vessel from causing the loss or destruction of, or serious damage to, any other fishing vessel, ship or any structure, or the death of or serious injury to any person not on board the fishing vessel,

and either of the conditions specified in subsection (3) is satisfied with respect to that act or omission, the person (subject to subsections (6) and (7)) commits an offence.

(3) Those conditions are that —

(a) the act or omission was deliberate or amounted to a breach or neglect of duty;

(b) the skipper or seafarer in question was under the influence of drink or a drug at the time of the act or omission.

(4) If a person to whom this section applies —

(a) discharges any of his or her duties, or performs any other function in relation to the operation of his or her fishing vessel or its machinery or equipment, in such a manner as to

cause, or to be likely to cause, any such loss, destruction, death or injury as is mentioned in subsection (2)(a); or

(b) fails to discharge any of his or her duties, or to perform any such function, properly to such an extent as to cause, or to be likely to cause, any of those things,

the person (subject to subsections (6) and (7)) commits an offence.

(5) A person convicted of an offence under this section is liable on conviction, to a fine not exceeding level 7 on the scale set out in Schedule 7 or to imprisonment for a term not exceeding two years, or both.

(6) In proceedings for an offence under this section it is a defence to prove —

(a) in the case of an offence under subsection (2) where the act or omission alleged against the accused constituted a breach or neglect of duty, that the accused took all reasonable steps to discharge that duty;

(b) in the case of an offence under subsection (2), that at the time of the act or omission alleged against the accused, the accused was under the influence of a drug taken by the accused for medical purposes and either that the accused took it on medical advice and complied with any directions given as part of that advice or that the accused had no reason to believe that the drug might have the influence it had;

(c) in the case of an offence under subsection (4), that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence; or

(d) in the case of an offence under either of those subsections —

(i) that the accused could have avoided committing the offence only by disobeying a lawful command; or

(ii) that in all the circumstances the loss, destruction, damage, death or injury in question, or (as the case may be) the likelihood of its being caused, either could not reasonably have been foreseen by the accused or could not reasonably have been avoided by him or her.

(7) In the application of this section to any person falling within subsection (1)(b), subsections (2) and (4) have effect as if subsection (2)(a)(i) and (b)(i) were omitted; and no proceedings for any offence under this section can be instituted against any such person except by or with the consent of the Attorney General.

(8) In this section —

“**breach or neglect of duty**”, except in relation to a skipper, includes any disobedience to a lawful command;

“**duty**” —

(a) in relation to a skipper or seafarer, means any duty falling to be discharged by the seafarer in his or her capacity as such; and

(b) in relation to a skipper, includes his or her duty with respect to the good management and safety of operation of the fishing vessel, its machinery and equipment; and

“**structure**” means any fixed or movable structure (of whatever description) other than a ship or fishing vessel.

[Merchant Shipping Act 1995 (UK), s. 58]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124W. Concerted disobedience and neglect of duty

(1) If a seafarer employed or engaged in a fishing vessel registered in the Falkland Islands combines with other seafarers employed or engaged in that fishing vessel to impede, at such a time, the progress of a voyage or the navigation of the fishing vessel, the seafarer is liable on conviction, to a fine not exceeding level 11 on the scale set out in Schedule 7 or to imprisonment for a term not exceeding two years or both.

(2) For the purposes of this section, a fishing vessel must be treated as being at sea at any time when it is not securely moored in a safe berth.

[Merchant Shipping Act 1995 (UK), s. 59]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124X. Drunkenness on duty

(1) Subject to subsection (2) if the skipper of or a seafarer employed or engaged in a fishing vessel registered in the Falkland Islands is, while on board the vessel, under the influence of drink or a drug to such an extent that his or her capacity to fulfil his or her responsibility for the vessel or, as the case may be, carry out the duties of his or her employment or engagement is impaired, he or she is liable on conviction, to a fine not exceeding level 7 on the scale set out in Schedule 7.

(2) In proceedings for an offence under this section it is a defence to prove that at the time of the act or omission alleged against the accused he or she was under the influence of a drug taken by the accused for medical purposes and either that the accused took it on medical advice and complied with any directions given as part of that advice or that the accused had no reason to believe that the drug might have the influence it had.

[Merchant Shipping Act 1995 (UK), s. 117]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124Y. Unauthorised liquor

(1) A person who, in the Falkland Islands or elsewhere —

(a) takes any unauthorised liquor on board a fishing vessel registered in the Falkland Islands;

(b) has any unauthorised liquor in his or her possession on board such a vessel;

(c) permits another person to take on board such a vessel, or to have in his or her possession on board such a vessel, any unauthorised liquor; or

(d) intentionally obstructs another person in the exercise of powers conferred on the other person by subsection (5),

commits an offence, subject to subsections (3) and (4).

(2) A person convicted of an offence under subsection (1) is liable on conviction, to a fine not exceeding level 7 on the scale set out in Schedule 7.

(3) It is a defence in proceedings for an offence under subsection (1)(a) or (b) to prove that the accused —

(a) believed that the liquor in question was not unauthorised liquor in relation to the vessel in question and that he or she had reasonable grounds for the belief; or

(b) did not know that the liquor in question was in his or her possession.

(4) It is a defence in proceedings for an offence under subsection (1)(c) to prove that the accused believed that the liquor in question was not unauthorised liquor in relation to the vessel in question and that he or she had reasonable grounds for the belief.

(5) If an authorised person has reason to believe that an offence under subsection (1)(a) or (b) has been committed by another person in connection with a fishing vessel, the authorised person—

(a) may go on board the vessel and search it and any property on it and may, if the other person is on board the vessel, search him or her in an authorised manner; and

(b) may take possession of any liquor which he or she finds on the vessel and has reason to believe is unauthorised liquor and may detain the liquor for the period needed to ensure that the liquor is available as evidence in proceedings for the offence.

(6) In this section —

“**an authorised manner**” means a manner authorised by regulations made by the Governor;

“**authorised person**”, in relation to a vessel, means —

(a) a superintendent;

(b) a proper officer;

(c) a person appointed in pursuance of section 240(1)(c);

(d) the skipper of the vessel in question;

(e) the owner of the vessel in question; or

- (f) a person instructed by the skipper or owner to discharge the functions under subsection (5) and prevent the commission of offences under subsection (1) in relation to the vessel;

“**liquor**” means spirits, wine, beer, cider, perry and any other fermented, distilled or spirituous liquor; and

“**unauthorised liquor**” means, in relation to a vessel, liquor as to which permission to take it on board the vessel has not been given by the skipper, the owner of the vessel or by a person authorised by the owner of the vessel to give such permission.

(7) Any reference in subsection (6) to the owner of a vessel must be construed —

(a) as excluding any member of the crew of the vessel; and

(b) subject to that, as a reference to the person or all the persons who, in the certificate of registration of the vessel, is or are stated to be the registered owner or owners of the vessel.

[Merchant Shipping Act 1995 (UK), s. 118]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

Disciplinary offences

124Z. Disciplinary offences

(1) The Governor may make regulations to provide for the hearing on shore in the Falkland Islands, by a disciplinary body, of a complaint by the skipper or owner of a fishing vessel against a seafarer alleging that during his or her employment or engagement in the vessel, the seafarer contravened a local industrial agreement relating to his or her employment or engagement on the vessel and for requiring the disciplinary body to have regard to the agreement in determining whether the allegation is proved.

(2) The alleged contravention referred to under subsection (1) may be one on or off the fishing vessel and in the Falkland Islands or elsewhere.

(3) Regulations under section 124AA may include provision authorising persons to determine, for the purposes of that section in its application to fishing vessels registered in the Falkland Islands, what agreements are or were local industrial agreements and which local industrial agreement relates or related to a person’s employment or engagement in a particular vessel.

[Merchant Shipping Act 1995 (UK), s. 119]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

Disciplinary offences – Prospective

124AA. Breaches by seafarers of codes of conduct

(1) The Governor may make regulations under the provisions of this section for the purpose of maintaining discipline on board fishing vessels registered in the Falkland Islands; and in this section “**disciplinary body**” means a body established or approved by the Governor under subsection (7).

(2) Regulations may provide for the hearing on shore in the Falkland Islands, by a disciplinary body, of a complaint by the skipper or owner of a fishing vessel registered in the Falkland Islands, against a seafarer alleging that during his or her employment or engagement on board the fishing vessel, the seafarer contravened a provision of a code of conduct approved by the Governor for the purposes of this section.

(3) The alleged contravention may be one on or off the fishing vessel and in the Falkland Islands or elsewhere.

(4) Regulations may enable a disciplinary body —

(a) to dismiss the complaint if it finds the allegation not proved;

(b) if it finds the allegation proved —

(i) to warn the seafarer;

(ii) to reprimand the seafarer; or

(iii) to recommend to the Governor that the seafarer must, either for a period specified in the recommendation or permanently, cease to be entitled to a discharge book in pursuance of section 124TT and is required to surrender any such book which has been issued to the seafarer.

(5) Regulations may —

(a) enable the seafarer to appeal against such a recommendation to another disciplinary body (an “**appellate body**”);

(b) enable an appellate body —

(i) to confirm the recommendation;

(ii) to cancel the recommendation; or

(iii) in the case of a recommendation that the seafarer ceases to be entitled to a discharge book permanently or for a particular period, to substitute for it a recommendation that the seafarer ceases to be so entitled, instead of permanently, for a period specified in the substituted recommendation or, instead of for the particular period, for a shorter period so specified.

(6) Regulations may make provision for securing that a recommendation that the seafarer permanently ceases to be entitled to a discharge book is not submitted to the Governor unless it has been confirmed, either on appeal or otherwise, by an appellate body.

(7) Regulations may make provision for the establishment or approval for the purposes of this section of such number of bodies as the Governor thinks fit and with respect to the composition, jurisdiction and procedure of any such body.

(8) Regulations may, subject to funds being provided for in accordance with section 299, make provision for the payment of such remuneration and allowances as the Governor may determine to any member of such a body.

(9) Regulations may make different provisions for different circumstances and may contain such incidental and supplemental provisions as the Governor considers appropriate.

(10) Without prejudice to the generality of the preceding provisions, regulations may include provision for any proceedings to take place notwithstanding the absence of the seafarer to whom they relate.

(11) Nothing in the regulations or done in pursuance of the regulations are to be construed as affecting any power to institute, prosecute, entertain or determine proceedings (including criminal proceedings) under any other enactment or at common law.

[Merchant Shipping Act 1995 (UK), s. 60]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124BB. Inquiry into fitness or conduct of officer

(1) If it appears to the Governor that an officer —

(a) is unfit to discharge his or her duties, whether by reason of incompetence or misconduct or for any other reason;

(b) has been seriously negligent in the discharge of his or her duties; or

(c) has failed to comply with the provisions of section 88,

the Governor may cause an inquiry to be held by one or more persons appointed by the Governor and, may, if the Governor thinks fit, suspend, pending the outcome of the inquiry, any certificate issued to the officer in pursuance of section 124L and require the officer to deliver it to the Governor.

(2) Where a certificate issued to an officer has been suspended under subsection (1) the suspension may, on the application of the officer, be terminated by the Supreme Court and the decision of the court on such an application is final.

(3) An inquiry under this section must be conducted in accordance with rules made under section 124FF(1) and those rules must require the persons holding the inquiry to hold it with the assistance of one or more assessors.

(4) The persons holding an inquiry under this section into the fitness or conduct of an officer—

(a) may, if satisfied of any of the matters mentioned in paragraphs (a) to (c) of subsection (1), cancel or suspend any certificate issued to the officer under section 124L or censure the officer;

(b) may make such order with regard to the costs of the inquiry as they think just; and

(c) must make a report on the case to the Governor,

and if the certificate is cancelled or suspended the officer (unless he or she has delivered it to the Governor in pursuance of subsection (1)) must deliver it forthwith to the persons holding the inquiry or to the Governor.

(5) Any costs which a person is ordered to pay under subsection (4)(b) may be recovered from him or her by the Governor.

[Merchant Shipping Act 1995 (UK), s. 61]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124CC. Disqualification of holder of certificate other than officer

(1) Where it appears to the Governor that a person who is the holder of a certificate to which this section applies, is unfit to be the holder of such a certificate, whether by reason of incompetence or misconduct or for any other reason, the Governor may give the person notice in writing that the Governor is considering the suspension or cancellation of the certificate.

(2) The notice must state the reasons why it appears to the Governor that that person is unfit to be the holder of such a certificate and must state that within a period specified in the notice, or such longer period as the Governor may allow, the person may make written representations to the Governor or claim to make oral representations to the Governor.

(3) After considering any representations made in pursuance of subsection (2), the Governor must decide whether or not to suspend or cancel the certificate and must give the holder of it written notice of his or her decision.

(4) Where the decision is to suspend or cancel the certificate the notice must state the date from which the cancellation is to take effect, or the date from which and the period for which the suspension is to take effect, and must require the holder to deliver the certificate to the Governor not later than the date so specified unless before that date the holder has required the case to be dealt with by an inquiry under section 124DD.

(5) Where, before the date specified in the notice, the holder requires the case to be dealt with by such an inquiry, then, unless the holder withdraws the requirement, the suspension or cancellation will not take effect except as ordered in pursuance of the inquiry.

(6) The Governor may make regulations prescribing the procedure to be followed with respect to the making and consideration of representations in pursuance of this section, the form of any notice to be given under this section and the period to be specified in any such notice as the period within which any steps are to be taken.

(7) This section applies to every certificate issued under section 124S and to any certificate issued under section 124L other than one certifying that a person is qualified as an officer.

[Merchant Shipping Act 1995 (UK), s. 62]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124DD. Inquiry into fitness or conduct of seafarer other than officer

(1) Where a person has, before the date mentioned in section 124AA(4), required his or her case to be dealt with by an inquiry under this section, the Governor must cause an inquiry to be held by one or more persons appointed by the Governor.

(2) An inquiry under this section must be conducted in accordance with rules made under section 124FF(1) and those rules must require the persons holding the inquiry to hold it with the assistance of one or more assessors.

(3) The persons holding an inquiry under this section —

(a) may confirm the decision of the Governor and cancel or suspend the certificate accordingly;

(b) may, where the decision was to cancel the certificate, suspend it instead;

(c) may, where the decision was to suspend the certificate, suspend it for a different period;

(d) may, instead of confirming the decision of the Governor, censure the holder of the certificate or take no further action;

(e) may make such order with regard to the costs of the inquiry as they think just; and

(f) must make a report on the case to the Governor,

and if the certificate is cancelled or suspended, it must be delivered forthwith to the persons holding the inquiry or to the Governor.

(4) Any costs which a person is ordered to pay under subsection (3)(e) may be recovered from the person by the Governor.

[Merchant Shipping Act 1995 (UK), s. 63]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124EE. Re-hearing of and appeal from inquiries

(1) Where an inquiry has been held under section 124BB or 124DD, the Governor may order the whole or part of the case to be reheard, and must do so —

(a) if new and important evidence which could not be produced at the inquiry has been discovered; or

(b) if there appear to the Governor to be other grounds for suspecting that a miscarriage of justice may have occurred.

(2) An order under subsection (1) may provide for the re-hearing, if the inquiry was held in the Falkland Islands, to be by the persons who held it, by a wreck commissioner or by the Supreme Court.

(3) Any re-hearing under this section which is not held by the Supreme Court must be conducted in accordance with rules made under section 124FF(1).

(4) Where the persons holding the inquiry have decided to cancel or suspend the certificate of any person or have found any person at fault, then, if no application for an order under subsection (1) has been made or such an application has been refused, that person or any other person who, having an interest in the inquiry, has appeared at the hearing and is affected by the decision or finding, may appeal to the Supreme Court.

[Merchant Shipping Act 1995 (UK), s. 64]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124FF. Rules as to inquiries and appeals

(1) The Governor may make rules for the conduct of inquiries under sections 124BB and 124DD and for the conduct of any re-hearing under section 124EE which is not held by the Supreme Court.

(2) Without prejudice to the generality of subsection (1), rules under this section may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected.

(3) Rules of court made for the purpose of re-hearings under section 124EE which are held by the Supreme Court, or of appeals to the Supreme Court, may require the court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a re-hearing or hear such an appeal with the assistance of one or more assessors.

[Merchant Shipping Act 1995 (UK), s. 65]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124GG. Failure to deliver cancelled or suspended certificate

If a person fails to deliver a certificate as required under sections 124BB, 124CC and 124DD the person is liable on conviction to a fine not exceeding level 3 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 66]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124HH. Power to restore certificate

Where a certificate has been cancelled or suspended under section 124BB, 124CC, 124DD, or 124EE, the Governor, if of the opinion that the justice of the case requires it, may re-issue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate.

[Merchant Shipping Act 1995 (UK), s. 67]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124II. Power to summon witness to inquiry into fitness or conduct of officer or other seafarer

(1) The persons holding an inquiry under section 124BB or 124DD may —

(a) by summons require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in the person's custody or under the person's control which relate to any matter in question at the inquiry; and

(b) take evidence on oath (and for that purpose administer oaths) or, instead of administering an oath, require the person examined to make a solemn affirmation.

(2) If on the failure of a person to attend such an inquiry in answer to a summons under this section —

(a) the persons holding the inquiry are satisfied by evidence on oath that —

(i) the person in question is likely to be able to give material evidence or produce any document which relates to any matter in question at the inquiry;

(ii) the person has been duly served with the summons;

(iii) a reasonable sum has been paid or tendered to the person for costs and expenses; and

(b) it appears to them that there is no just excuse for the failure,

they may issue a warrant to arrest and bring the person before the inquiry at a time and place specified in the warrant.

(3) If any person attending or brought before such an inquiry refuses without just excuse to be sworn or give evidence, or to produce any document, the persons holding the inquiry may commit the person to custody until the end of such period not exceeding one month as may be specified in the warrant or until the person gives evidence or produces the document (whichever occurs first), or impose on the person a fine not exceeding level 1 on the scale set out in Schedule 7 or both.

(4) A fine imposed under subsection (3) must be treated for the purposes of its collection, enforcement and remission as having been imposed by the Magistrate's Court for the area in which the inquiry in question was held, and the persons holding the inquiry must, as soon as practicable after imposing the fine, give particulars of it to the proper officer of that court.

(5) In subsection (1) "**proper officer**" means, in relation to the Magistrate's Court, the head of the courts and tribunal service.

[*Merchant Shipping Act 1995 (UK)*, s. 68]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

Civil liability of seafarers for offences

124JJ. Civil liability for absence without leave

(1) This section applies with respect to the liability of a seafarer employed or engaged in a fishing vessel registered in the Falkland Islands to damages for being absent from the fishing vessel at a time when the seafarer is required under the seafarer's contract of employment or contract for services to be on board.

(2) If the seafarer proves that the seafarer's absence was due to an accident or reasonable mistake or some other cause beyond the seafarer's control and that the seafarer took all reasonable precautions to avoid being absent, the seafarer's absence must not be treated as a breach of contract.

(3) Where subsection (2) does not apply, then —

(a) if no special damages are claimed, the seafarer's liability is one day's wages of the seafarer's income;

(b) if special damages are claimed, the seafarer's liability will not be more than one week's wages of the seafarer's income.

[Merchant Shipping Act 1995 (UK), s. 70]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124KK. Civil liability for smuggling

If, in civil proceedings before a court in the Falkland Islands, a seafarer employed or engaged in a fishing vessel registered in the Falkland Islands is found to have committed an act of smuggling, whether within or outside the Falkland Islands, the seafarer is liable to make good any loss or expense that the act has caused to any other person.

[Merchant Shipping Act 1995 (UK), s. 71]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124LL. Civil liability for fines imposed under immigration laws

(1) The following provisions of this section apply where, at a time when a fishing vessel registered in the Falkland Islands is in the national or territorial waters of another country, a seafarer employed or engaged in the fishing vessel is absent without leave and present in that country in contravention of that country's laws.

(2) If, by reason of the contravention, a penalty is incurred under those laws by the persons employing the seafarer the penalty must be treated as being attributable to the seafarer's absence without leave and may, subject to the provisions of section 124JJ, be recovered from the seafarer as special damages for breach of contract.

(3) If by reason of the contravention a penalty is incurred under those laws by any other person, the amount, or, if that amount exceeds one week's wages of the seafarer's income, one week's wages of the seafarer's income may be recovered by that person from the seafarer.

[Merchant Shipping Act 1995 (UK), s. 72]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

Relief and repatriation and relief costs

124MM. Relief and return of seafarer etc. left behind and shipwrecked

(1) Where —

(a) a person employed or engaged as a seafarer in a fishing vessel registered in the Falkland Islands is left behind in any country outside the Falkland Islands or is taken to such a country on being shipwrecked; or

(b) a person who became so employed or engaged under an agreement entered into outside the Falkland Islands is left behind in the Falkland Islands or is taken to the Falkland Islands on being shipwrecked,

the persons who last employed or engaged him or her as a seafarer must make such provision for the seafarer's return and for his or her relief and maintenance until the seafarer's return and such other provisions as may be required by regulations made by the Governor.

(2) The provisions to be so made may include the repayment of expenses incurred in bringing a shipwrecked seafarer ashore and maintaining the shipwrecked seafarer until the shipwrecked seafarer is brought ashore and the payment of the expenses of the burial or cremation of a shipwrecked seafarer who dies before he or she can be returned.

(3) The Governor may also make regulations providing for the manner in which any wages due to any person left behind or taken to any country as mentioned in subsection (1), and any property of that person left on board the fishing vessel, are to be dealt with.

(4) The Governor may make regulations requiring a superintendent or proper officer to make such provision as may be prescribed by the regulations with respect to any matter for which provision may be required to be made by regulations made under subsection (3).

(5) Without prejudice to the generality of the preceding provisions, regulations made under this section may make provision —

(a) for determining the place to which a person is to be returned;

(b) for requiring the skipper of any fishing vessel registered in the Falkland Islands to convey a person to a place determined in accordance with the regulations and for enabling a superintendent or proper officer to give the skipper directions for that purpose;

(c) for the making of payments in respect of the conveyance of a person in accordance with the regulations; and

(d) for the keeping of records and the rendering of accounts.

(6) Regulations under this section may make a contravention of any provision an offence punishable on conviction with a fine not exceeding level 3 on the scale set out in Schedule 7 or such lesser amount as may be specified in the regulations.

(7) This section applies to a person left behind on being discharged in pursuance of section 116, whether or not at the time the person is left behind the fishing vessel is still registered in the Falkland Islands.

(8) This section applies to the skipper as it applies to a seafarer and sections 124NN and 124OO have effect accordingly.

[Merchant Shipping Act 1995 (UK), s. 73]
[s11/Ord.14/2019/w.e.f. 26.09.2019]

124NN. Limit of liability under section 75

Where a person left behind in or taken to any country as mentioned in section 124MM(1) remains there after the end of a period of three months the persons who last employed or engaged him or her as a seafarer are not liable under that section to make provision for the person's return or for any matter arising after the end of that period, unless they have before the end of that period been under an obligation imposed on them by regulations under that section to make provision with respect to the person.

[Merchant Shipping Act 1995 (UK), s. 74]
[s11/Ord.14/2019/w.e.f. 26.09.2019]

124OO. Recovery of expenses incurred for relief and return, etc.

(1) Where any expenses are incurred in respect of any matter for which the employers of a seafarer are required to make provision under section 124MM, then —

(a) if the expenses are incurred by the Governor, or are incurred by the government of any country outside the Falkland Islands and repaid to them on behalf of the Crown, the Governor may recover them from the employers or the person who engaged the seafarer; or

(b) if the expenses are incurred by the seafarer, the seafarer may recover them from the employers or the person who engaged the seafarer, unless they prove either that under the terms of the seafarer's employment or engagement they were to be borne by the seafarer or that the seafarer would not have been left behind but for the seafarer's own wrongful act or neglect.

(2) Where, in the case of any seafarer, expenses are incurred by the Governor or are incurred by the government of any country outside the Falkland Islands and repaid to them on behalf of the Crown —

(a) in respect of any matter for which, but for section 124NN, the seafarer's last employers or the person who engaged the seafarer would have been required to make provision under section 124MM; or

(b) in respect of any matter for which provision is required to be made under section 124MM(5)(c),

the Governor may recover them from the seafarer (or, if the seafarer has died, from the seafarer's personal representatives).

[Merchant Shipping Act 1995 (UK), s. 75]
[s11/Ord.14/2019/w.e.f. 26.09.2019]

124PP. Financial assistance in respect of crew relief costs

(1) Subject to funds being provided in accordance with section 299, the Governor may give financial assistance to —

(a) the owner of a fishing vessel registered in the Falkland Islands; or

(b) any manager of a fishing vessel so registered, being either an individual ordinarily resident in the Falkland Islands or a body corporate which is incorporated in the Falkland Islands and has its principal place of business there,

in respect of travel and other costs incurred by the owner or manager in connection with members of the fishing vessel's crew joining or leaving the fishing vessel outside the Falkland Islands.

(2) If the Governor so determines, eligibility for assistance under this section must be conditional on the fulfilment of such conditions with respect to all or any of the following matters as are specified in the Governor's determination —

(a) the nationality of any person in relation to whom any such costs as are mentioned in subsection (1) are incurred;

(b) the ordinary residence of any such person;

(c) the place outside the Falkland Islands where any such person joins or leaves the fishing vessel.

(3) Assistance under this section may be given by way of a grant, loan or otherwise; and in giving any such assistance the Governor may impose such conditions as the Governor thinks fit.

(4) For the purposes of this section, the crew of a fishing vessel is taken to include the skipper and other officers of the fishing vessel.

[Merchant Shipping Act 1995 (UK), s. 76]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

Documentation

124QQ. Official log books

(1) Except as provided by regulations under this section, an official log book in a form approved by the Governor must be kept in every fishing vessel registered in the Falkland Islands.

(2) The Governor may make regulations prescribing the particulars to be entered in official log books, the persons by whom such entries are to be made, signed or witnessed, and the procedure to be followed in the making of such entries and in their amendment or cancellation.

(3) The regulations may require the production or delivery of official log books to such persons, in such circumstances and within such times as may be specified in the logbooks.

(4) Regulations under this section may exempt fishing vessels of any description from any requirements of the regulations either generally or in such circumstances as may be specified in the regulations.

(5) Contravention of any provision of regulations made under this section is an offence punishable on conviction with a fine not exceeding level 2 on the scale set out in Schedule 7.

(6) If a person intentionally destroys, mutilates or renders illegible any entry in an official log book, the person is liable on conviction to a fine not exceeding level 4 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK) s. 77]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124RR. Lists of crew

(1) Except as provided by regulations made under this section, the skipper of every fishing vessel registered in the Falkland Islands must make and maintain a list of the crew containing such particulars as may be required by the regulations.

(2) The Governor may make regulations —

(a) specifying the particulars to be entered in a list of the crew;

(b) limiting the time for which a list of the crew may remain in force;

(c) providing for the maintenance by such persons and either in such place as may be specified in the regulations or, if it is so specified, in the fishing vessel, of a copy or copies of the list of the crew, and for the notification to such persons of any changes to the list;

(d) for the production of a list of the crew to such persons, in such circumstances and within such time as may be specified in the regulations; and

(e) for the delivery to a superintendent or proper officer or the Registrar General of Shipping, in such circumstances as may be specified in the regulations, of the list of the crew or a copy of such a list maintained under the regulations and for the notification to any named person of any changes in such a list.

(3) Regulations under this section may enable a list of the crew to be contained in the same document as a crew agreement and may treat any particulars entered in the crew agreement as forming part of the particulars entered in the list.

(4) Regulations under this section may exempt such descriptions of fishing vessels as may be specified in the regulations from the requirements of this regulation and may make different provisions for different circumstances.

(5) Contravention of any provision of regulations made under this section is an offence punishable on conviction with a fine not exceeding level 2 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 78]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124SS. Falkland Islands seafarers' cards

(1) The Governor may make regulations providing —

(a) for the issue of cards to Falkland Islands seafarers (in this section referred to as ‘Falkland Islands seafarers’ cards’) in such form and containing such particulars with respect to the

holders and any other particulars (if any) as may be prescribed by the regulations, and for requiring Falkland Islands seafarers to apply for such cards;

(b) for requiring Falkland Islands seafarers to produce their Falkland Islands seafarers' cards to such persons and in such circumstances as may be prescribed by the regulations;

(c) for the surrender of Falkland Islands seafarers' cards in such circumstances as may be prescribed by the regulations; and

(d) for any incidental or supplementary matters for which the Governor thinks it expedient for the purposes of the regulations to provide.

(2) Any provision of the regulations having effect by virtue of paragraph (a) of subsection (1) may be so framed as to apply to all Falkland Islands seafarers or any description of them and as to have effect subject to any exemptions for which provision may be made by the regulations.

(3) Contravention of any provision of regulations made under this section is an offence punishable on conviction with a fine not exceeding level 2 on the scale set out in Schedule 7.

(4) If a person makes a statement which he or she knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining personally or for another person a Falkland Islands seafarers' card, the person is liable on conviction to a fine not exceeding level 4 on the scale set out in Schedule 7.

(5) In this section, "**Falkland Islands Seafarer**" means a person who is employed or engaged as a seafarer in —

(a) a fishing vessel registered in the Falkland Islands; or

(b) other fishing vessels but who holds Falkland Islands status pursuant to section 22 of the Constitution or a Permanent Residence Permit issued under the Immigration Ordinance 1999.

[Merchant Shipping Act 1995 (UK) s. 79]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124TT. Discharge books

(1) The Governor may make regulations providing for —

(a) the issue of discharge books to persons who are or have been employed or engaged in—

(i) fishing vessels registered in the Falkland Islands; or

(ii) other fishing vessels but who hold Falkland Islands status pursuant to section 22 of the Constitution or Permanent Residence Permits issued under the Immigration Ordinance 1999;

(b) requiring the persons mentioned in paragraph (a) to apply for discharge books;

(c) the form of discharge books and the particulars (if any) that they are to contain with respect to their holders;

(d) requiring the holders of discharge books to produce them to such persons and in such circumstances as may be prescribed by the regulations;

(e) the surrender of discharge books in such circumstances as may be prescribed by the regulations; or

(f) any incidental or supplementary matters for which the Falkland Islands thinks it expedient for the purposes of the regulations to provide,

and any provision of the regulations having effect by virtue of paragraph (a), (b) or (c) may be so framed as to apply to all such persons as are mentioned in paragraph (a) or any description of such persons and as to have effect subject to any exemptions for which provision may be made by the regulations.

(2) Regulations under this section may provide for —

(a) a person to cease to be entitled to a discharge book in consequence of a recommendation made by a disciplinary body by virtue of regulations made under section 124AA(3) or (4); and

(b) the re-issue of discharge books which have been surrendered in consequence of such a recommendation.

(3) Contravention of any provision of regulations made under this section is an offence punishable on conviction with a fine not exceeding level 2 on the scale set out in Schedule 7.

(4) A person who, in the Falkland Islands or elsewhere —

(a) obtains employment or engagement as a seafarer on board a fishing vessel registered in the Falkland Islands and does so when he or she is disentitled to a discharge book by virtue of regulations made under subsection (2)(a); or

(b) employs or engages as a seafarer a person who he or she knows or has reason to suspect is disentitled as aforesaid,

is liable on conviction to a fine not exceeding level 7 on the scale set out in Schedule 7 or to imprisonment for a term not exceeding two years or a fine or both.

[Merchant Shipping Act 1995 (UK), s. 80]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

124UU. Handing over of documents by skipper

(1) If a person ceases to be the skipper of a fishing vessel registered in the Falkland Islands during a voyage of the fishing vessel, the person must deliver to his or her successor the documents relating to the fishing vessel or its crew which are in the person's custody.

(2) If, without reasonable excuse, the skipper of a fishing vessel fails to comply with subsection (1), he or she is liable on conviction to a fine not exceeding level 3 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 81]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

Exemptions

124VV. Power to grant exemptions from this Chapter

The Governor may grant exemptions from any requirements of this Chapter or of any regulations—

(a) with respect to any fishing vessel or to a fishing vessel of any description; or

(b) with respect to any person or a person of any description serving in a fishing vessel or in a fishing vessel of any description,

and nothing in any other provision of this Chapter conferring a power to provide for or grant exemptions must be taken to restrict the power conferred by this section.

[Merchant Shipping Act 1995 (UK), s. 120]

[s11/Ord.14/2019/w.e.f. 26.09.2019]

Chapter II – Safety

125. Fishing vessel construction rules

(1) The Governor may make rules (in this Chapter referred to as “fishing vessel construction rules”) prescribing requirements for the hull, equipment and machinery of fishing vessels registered in the Falkland Islands of any description (including any description framed by reference to the areas in which the vessels operate or the dates on which they were first registered in the Falkland Islands or on which their construction was begun).

(2) The Governor may exempt any fishing vessel or description of fishing vessel from any requirement of the fishing vessel construction rules.

(3) The Governor may make an exemption under subsection (2) generally or for a specified time or with respect to a specified voyage or to voyages in a specified area, and may impose any specified conditions.

(4) A surveyor of ships may inspect any fishing vessel for the purpose of making sure that it complies with the fishing vessel construction rules.

(5) If —

(a) the fishing vessel construction rules are contravened with respect to any vessel; or

(b) a vessel is, under subsection (2), exempted from any requirement subject to a condition and the condition is not complied with;

the owner or master of the vessel is liable on conviction, to a fine not exceeding level 7 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 121]

126. Fishing vessel survey rules

(1) The Governor may make rules (in this Chapter referred to as “fishing vessel survey rules”) for the surveying and periodical inspection of fishing vessels registered in the Falkland Islands or any description of such fishing vessels, for the purpose of ensuring their compliance with the requirements of the fishing vessel construction and equipment provisions.

(2) In this Chapter “the fishing vessel construction and equipment provisions” means fishing vessel construction rules and rules or safety regulations relating to life-saving, radio and navigational equipment for fishing vessels.

[Merchant Shipping Act 1995 (UK), s. 122]

127. Fishing vessel certificates

(1) If the Governor or any person authorised by him or her for the purpose is satisfied, on receipt of a declaration of survey in respect of a fishing vessel surveyed under the fishing vessel survey rules, that the vessel complies with the requirements of the fishing vessel construction and equipment provisions as are or will be applicable to the vessel, then, subject to subsection (2), the Governor or person must, on the application of the owner, issue a certificate (in this and the following sections referred to as a “fishing vessel certificate”) showing that the vessel complies with those requirements; and for this purpose any requirement from which the vessel has been exempted under section 125(2) or any other provision of this Ordinance must be deemed not to be applicable to it.

(2) Fishing vessel survey rules may require that the Governor or person authorised by the Governor to issue a fishing vessel certificate must not issue the certificate unless the Governor or the person is satisfied that the vessel in respect of which it is to be issued is provided with the lights, shapes and means of making fog signals required by safety regulations for the prevention of collisions.

(3) The fishing vessel rules may —

(a) prescribe the form of the fishing vessel certificate; and

(b) make provision for —

(i) the duration, extension or cancellation of any certificate;

(ii) the endorsement on the certificate of information relating to the inspection of the vessel to which it relates and of any extension of the period for which the certificate was issued.

[Merchant Shipping Act 1995 (UK), s. 123]

128. Provisions supplementary to section 127

(1) The Governor may require a fishing vessel certificate which has expired or been cancelled, to be delivered up as the Governor directs.

(2) If the owner or skipper of the fishing vessel fails without reasonable excuse to comply with a requirement made under subsection (1), he or she is liable on conviction to a fine not exceeding level 2 on the scale set out in Schedule 7.

(3) The owner or skipper of a fishing vessel to whom a fishing vessel certificate is issued must immediately, on receipt of the certificate by him or her (or his or her agent), cause a copy of it to be put up in some conspicuous place on board the vessel, so as to be legible to all persons on board, and to be kept so put up and legible while the certificate remains in force and the vessel is in use.

(4) If the owner or skipper of a fishing vessel fails without reasonable excuse to comply with subsection (3), he or she is liable, on conviction, to a fine not exceeding level 2 on the scale set out in Schedule 7.

(5) If any person intentionally makes, or assists in making, or procures to be made, a false or fraudulent fishing vessel certificate, he or she is liable on conviction, to a fine not exceeding level 3 on the scale set out in Schedule 7 or to imprisonment for a term not exceeding six months or both;

(6) A fishing vessel certificate is admissible in evidence.
[Merchant Shipping Act 1995 (UK), s. 124]

129. Prohibition on going to sea without appropriate certificate

(1) No fishing vessel required to be surveyed under the fishing vessel survey rules is permitted to go to sea unless there are in force fishing vessel certificates showing that the vessel complies with the requirements of the fishing vessel construction and equipment provisions that are applicable to the vessel.

(2) If a fishing vessel goes to sea in contravention of subsection (1), the owner or skipper of the vessel is liable on conviction, to a fine not exceeding level 3 on the scale set out in Schedule 7.

(3) The skipper of any fishing vessel registered in the Falkland Islands must on demand produce to any customs officer any certificate required under this Chapter; and the fishing vessel, if in Falkland Islands waters, may be detained until the certificate is produced.

[Merchant Shipping Act 1995 (UK), s. 125]

130. Notice of alterations

(1) Where a fishing vessel certificate is in force in respect of a fishing vessel and —

(a) the certificate complies with requirements of the fishing vessel construction rules and an alteration is made in the vessel's hull, equipment or machinery which affects the efficiency or the seaworthiness of the vessel; or

(b) the certificate complies with requirements of the fishing vessel equipment provisions and an alteration is made affecting the efficiency or completeness of the appliances or equipment which the vessel is required to carry by the fishing vessel equipment provisions,

the owner or skipper must, as soon as possible after the alteration is made, give written notice containing full particulars of it to the Governor or, if the certificate was issued by another person, to that person.

(2) If the notice required by subsection (1) is not given as required by that subsection the owner or skipper is liable on conviction to a fine not exceeding level 3 on the scale set out in Schedule 7.

(3) In this section —

“**alteration**” includes the renewal of any part of the thing to which it refers;

“**the fishing vessel equipment provisions**” means the provisions of the fishing vessel construction and equipment provisions other than the fishing vessel construction rules, which other provisions may be made by the Governor by order on the advice of the Authority.

[Merchant Shipping Act 1995 (UK), s. 126]

PART 7 – PREVENTION OF POLLUTION

Chapter I – Pollution Generally

131. Prevention of pollution from ships etc.

(1) The provisions of an Order in Council made under section 128 of the Act (to give effect to any of the provisions of the international treaties and conventions mentioned in that section) that has been extended to the Falkland Islands under section 128(3)(e) of the Act must be read together with this Part.

[Merchant Shipping Act 1995 (UK), s. 128]

[s12/Ord.14/2019/w.e.f. 26.09.2019]

(2) The Governor may make regulations in relation to any international conventions or treaty providing for the prevention of pollution and the regulations may make such provisions as the Governor considers appropriate for preventing pollution, danger to health or to navigation, or hazards to the environment or to natural resources.

[s12/Ord.14/2019/w.e.f. 26.09.2019]

(3) Regulations under this section may, in particular give effect to the following international conventions or treaties —

(a) the International Convention for the Prevention of Pollution from Ships (including its protocols, annexes and appendices) which constitutes attachment 1 to the final act of the International Conference on Marine Pollution signed in London on 2nd November 1973;

(b) the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil which constitutes attachment 2 to the final act referred to in paragraph (a);

(c) the Protocol relating to the International Convention for the Prevention of Pollution from Ships which constitutes attachment 2 to the final act of the International Conference on Tanker Safety and Pollution Prevention signed in London on 17th February 1978;

(d) the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (including the Final Act of the Conference and the attached resolutions) signed in London on 30th November 1990;

(e) the Protocol to amend the Convention for the Prevention of Pollution from Ships signed in London on 26 September 1997 (which added to it Annex VI containing regulations for the prevention of air pollution from ships);

(f) any international agreement not mentioned in paragraphs (a) to (e) of this subsection which relates to the prevention, reduction or control of pollution of the sea or other waters by matter from ships (provided that such an international agreement has been extended to the Falkland Islands);

and in paragraph (f) the reference to an agreement includes an agreement which provides for the modification of another agreement, including the modification of an agreement mentioned in paragraphs (a) to (c) of this subsection.

[s12/Ord.14/2019/w.e.f. 26.09.2019]

(4) The powers conferred by subsection (2) to make provision for the purpose of giving effect to an agreement include power to provide for the provision to come into force before the agreement has come into force.

[s12/Ord.14/2019/w.e.f. 26.09.2019]

(5) Regulations made under subsection (2) may —

(a) make different provision for different circumstances and, in particular, make provision for an individual case;

(b) be made so as to apply only in such circumstances as are prescribed by the regulations;

(c) include provisions imposing on the Authority responsibilities in relation to the preparation, review and implementation of any plans required by any agreement specified in subsection (3); and

(d) specify that a contravention of the regulations is an offence punishable on conviction by a fine not exceeding level 7 on the scale set out in Schedule 7 or to imprisonment for a term not exceeding two years, or both.

[s12/Ord.14/2019/w.e.f. 26.09.2019]

132. Further provision for prevention of pollution from ships

(1) The provisions of an Order in Council made under section 129 of the Act (to give effect to any of the provisions of the United Nations Convention on the Law of the Sea) that specifies an area relating to the Falkland Islands under section 129(2)(b) of the Act as a marine environment that requires protection and preservation applies and must be read together with this Part.

[Merchant Shipping Act 1995 (UK), s. 129]

(2) The Governor may make such regulations as are appropriate for giving effect to any provision of the United Nations Convention on the Law of the Sea 1982 for the protection and preservation of the marine environment from pollution by matter from ships.

(3) Without prejudice to the generality of subsection (2), regulations under that subsection may in particular include provision —

(a) corresponding to any provision that is authorised for the purposes of section 131; and

(b) specifying the application of the regulations to —

(i) areas in all appropriate waters, including those outside the Falkland Islands' territorial waters; and

(ii) any vessel (whether Falkland Islands registered or not) in respect of which the jurisdiction and rights of the Falkland Islands are exercisable in accordance with Part XII of that Convention,

for the protection and preservation of the marine environment.

133. Regulation of transfers between ships in territorial waters

(1) The Governor may make regulations in relation to the transfer of cargo, stores, bunker fuel or ballast between ships while within Falkland Islands waters and the regulations may make provisions as the Governor considers appropriate for preventing pollution, danger to health or to navigation, or hazards to the environment or to natural resources.

(2) Regulations under this section may, in particular, do any of the following things —

(a) prohibit transfers of any specified description or prohibit transfers if, or unless, carried out in specified areas, circumstances or ways;

(b) make provision about —

(i) the design of, and standards to be met by, ships and equipment,

(ii) the manning of ships, including the qualifications and experience to be possessed by persons of any specified description employed on board; and

(iii) the qualifications and experience to be possessed by persons (whether masters or not) controlling the carrying out of transfers or operations ancillary to them;

(c) provide for proposed transfers to be notified to and approved by persons appointed by the Governor or another person, and for the supervision of transfers, and the inspection of ships and equipment, by persons so appointed;

(d) provide for —

(i) the procedure to be followed in relation to the approval of transfers to be such as may be prescribed by any document specified in the regulations, and

(ii) references in the regulations to any document so specified to operate as references to that document as revised or re-issued from time to time;

(e) provide for the making and keeping of records about ships and equipment, the issuing of certificates, and the furnishing of information;

(f) provide for the granting by the Governor or another person of exemptions from specified provisions of the regulations, on such terms (if any) as the Governor or that other person may specify, and for altering or cancelling exemptions; and

(g) limit any provision of the regulations to specified cases or kinds of case.

(3) Regulations under this section may provide that a contravention of the regulations is an offence punishable on conviction by a fine not exceeding level 11 on the scale set out in Schedule 7 or to imprisonment for a term not exceeding two years, or both;

(4) Regulations under this section may —

(a) make different provision for different classes or descriptions of ships and for different circumstances; and

(b) make such transitional, incidental or supplementary provision as appears to the Governor to be necessary or expedient.

[Merchant Shipping Act 1995 (UK), s. 130]

Chapter II – Waste reception facilities at harbours

134. Interpretation of Chapter II

In this Chapter —

“**ship, passenger and goods dues**” means, in relation to a harbour, charges of any of the following kinds —

(a) charges in respect of any ship for entering, using or leaving the harbour, including charges made on the ship in respect of marking or lighting the harbour;

(b) charges for any passengers embarking or disembarking at the harbour (but not including charges in respect of any services rendered or facilities provided for them); and

(c) charges in respect of goods brought into, taken out of, or carried through the harbour by ship (but not including charges in respect of work performed, services rendered or facilities provided in respect of goods so brought, taken or carried);

“**waste reception facilities**” has the meaning given by section 135(1).
[*Merchant Shipping Act 1995 (UK), s. 130E*]

135. General

(1) The Governor may by regulations make such provision as he or she considers appropriate in relation to —

(a) the provision at harbours in the Falkland Islands of facilities for the reception of waste from ships (in this Chapter referred to as “waste reception facilities”); and

(b) the use of waste reception facilities provided at such harbours.

(2) In making the regulations, the Governor must take into account the need to give effect to provisions which —

(a) are contained in any international agreement mentioned in section 128(1) of the Act which has been extended to the Falkland Islands; and

(b) relate to waste reception facilities.

(3) Sections 136 to 138 make further provision with respect to the regulations that may be made under this section.

[*Merchant Shipping Act 1995 (UK), s. 130A*]

136. Waste management plans

(1) The regulations referred to under section 135 may require the Authority —

(a) in such circumstances as may be prescribed, to prepare a plan with respect to the provision and use of waste reception facilities at the harbour; and

(b) to submit the plan to the Governor for approval.

(2) The regulations may make provision requiring a person —

(a) if directed to do so by the Governor, to prepare a plan with respect to the provision and use of waste reception facilities at any terminals operated by the person within a harbour which is in the Falkland Islands and is specified in the direction; and

(b) to submit the plan to the Governor for approval.

(3) For the purposes of this Chapter —

(a) “terminal” means any terminal, jetty, pier, floating structure or other works within a harbour at which ships can obtain shelter or ship and unship goods or passengers; and

(b) a person operates a terminal if activities at the terminal are under his or her control.

(4) In this section, “waste management plan” means a plan of a description mentioned in subsection (1) or (2).

(5) The regulations may make provision with respect to the form and content of waste management plans and may in particular require such plans to include —

(a) proposals as to the information to be provided about waste reception facilities to those who are expected to use them;

(b) proposals designed to ensure that adequate provision will be made for the disposal of waste deposited in waste reception facilities; and

(c) proposals about how costs incurred in establishing and running waste reception facilities will be recovered.

(6) The regulations may require a person preparing a waste management plan to have regard to such matters as the Governor may prescribe or in a particular case direct.

(7) The regulations may make provision as to the procedures to be followed in connection with waste management plans and may in particular —

(a) require a person preparing a waste management plan to consult such persons as the Governor may prescribe or in a particular case direct;

(b) enable the Governor to approve waste management plans with or without modification or to reject such plans;

(c) enable the Governor, if he or she is satisfied that a person who is required to prepare a waste management plan is not taking any steps necessary in connection with the preparation of the plan, to prepare such a plan;

(d) require the Authority and persons operating terminals to implement waste management plans once approved, or to take such steps as the Governor may in a particular case direct for the purpose of securing that approved plans are implemented; or

(e) enable waste management plans, in such circumstances as may be prescribed, to be withdrawn, altered or replaced.

[Merchant Shipping Act 1995 (UK), s. 130B]

137. Charges for and use of waste reception facilities

(1) The regulations referred to under section 135 may make provision to enable the Authority, on levying ship, passenger and goods dues, to impose charges for the purpose of recovering the whole or a part of the costs of the provision by or on behalf of the Authority of waste reception facilities at the harbour.

(2) The regulations may make provision requiring the master of a ship —

(a) if reasonably required to do so by an officer from the Authority; or

(b) in such other circumstances as may be prescribed,

to deposit any waste carried by the ship, or any prescribed description of such waste, in waste reception facilities provided at a harbour in the Falkland Islands.

(3) The regulations may make provision for —

(a) the reference to arbitration of questions as to whether requirements made under regulations made in pursuance of subsection (2)(a) were reasonable; and

(b) compensation to be payable where a requirement is found to have been unreasonable.

(4) The regulations may make —

(a) provision prohibiting the imposition by persons providing waste reception facilities at harbours in the Falkland Islands of charges for the depositing of waste, or any prescribed description of waste, in the facilities; or

(b) provision authorising the imposition by such persons of such charges subject to such restrictions as may be prescribed.

(5) The regulations may provide for charges to be imposed by virtue of subsection (4)(b) —

(a) even though the charges are for the depositing of waste in compliance with a requirement imposed by virtue of subsection (2); and

(b) even though charges are also imposed by virtue of subsection (1).

(6) Subsections (7) to (9) apply if the regulations make provision enabling the Authority to impose charges of a description mentioned in subsection (1).

(7) The regulations may require information about the charges to be published in a way that is designed to bring the charges to the notice of persons likely to be affected.

(8) The regulations may provide for the charges to be reduced at the instance of the Governor following the making of an objection by a person of a prescribed description.

(9) The regulations may make provision as to the recovery of any charges imposed by virtue of this section.

[Merchant Shipping Act 1995 (UK), s. 130C]

138. Supplementary

(1) Contravention of any provision of the regulations made under this Chapter is an offence and a person who contravenes the regulations is liable on conviction to a fine not exceeding level 11 on the scale set out in Schedule 7, or to imprisonment for a term not exceeding two years, or to both.

(2) The regulations may —

- (a) provide for exemptions from any provision of the regulations;
- (b) provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time;
- (c) make different provision for different cases;
- (d) include such incidental, supplemental and transitional provision as appears to the Governor to be expedient.

(3) Regulations under section 135 which contain any provision of a description mentioned in section 137 (whether or not they also contain other provision) must not be made unless a draft of the regulations has been laid before and approved by a resolution of the Legislative Assembly.

(4) Regulations made under section 135 to which subsection (3) does not apply (including regulations which revoke provision of a description mentioned in section 137 but do not contain any other provision made by virtue of section 137) are subject to annulment in pursuance of a resolution of the Legislative Assembly.

[Merchant Shipping Act 1995 (UK), s. 130D]

Chapter III – Oil Pollution

General provisions for preventing pollution

139. Interpretation

(1) In this Chapter —

“**harbour**” has the same meaning assigned to it under the Harbours and Ports Bill 2017;

“**oil**” means oil of any description and includes spirit produced from oil of any description, and also includes coal tar;

“**oil residues**” means any waste consisting of, or arising from, oil or a mixture containing oil;

“**place on land**” has the meaning given in section 140;

“**transfer**”, in relation to oil, means transfer in bulk.

(2) For the purposes of the definition of “**harbour in the Falkland Islands**”, “**charges in respect of navigational aids**” means general light dues, local light dues and any other charges payable in respect of lighthouses, buoys or beacons.

(3) Any reference in any provision of this Chapter to a mixture containing oil must be construed as a reference to any mixture of oil (or, as the case may be, of oil of a description referred to in that provision) with water or with any other substance.

(4) Any reference in this Chapter, other than in section 145, to the discharge of oil or a mixture containing oil, or to its being discharged, from a ship, place or thing, except where the reference is to its being discharged for a specific purpose, includes a reference to the escape of oil or mixture, or (as the case may be) to its escaping, from that ship, place or thing.

(5) For the purposes of any provision of this Chapter relating to the discharge of oil or a mixture containing oil from a ship, any floating craft (other than a ship) which is attached to a ship will be treated as part of the ship.

(6) Any power conferred by section 241 in its application to this Chapter to test any equipment on board a ship must be construed as including a power to require persons on board the ship to carry out such work as may be requisite for the purpose of testing the equipment; and any provision of that section as to submitting equipment for testing must be construed accordingly.

(7) Subject to sections 8 and 9 of the Crimes Ordinance nothing in this Chapter —

(a) affects any restriction imposed by or under any other written law of the Falkland Islands; or

(b) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Chapter.

[Merchant Shipping Act 1995 (UK), s. 151]

140. Discharge of oil from ships into certain Falkland Islands waters

(1) If any oil or mixture containing oil is discharged as mentioned in the following paragraphs into Falkland Islands national waters which are navigable by sea-going ships, then, subject to the following provisions of this Chapter, the following commits an offence, that is to say —

(a) where the discharge is from a ship, the owner or master of the ship, unless he or she proves that the discharge took place and was caused as mentioned in paragraph (b);

(b) where the discharge is from a ship but takes place in the course of a transfer of oil to or from another ship or a place on land and is caused by the act or omission of any person in charge of any apparatus in that other ship or that place, the owner or master of that other ship or, as the case may be, the occupier of that place.

(2) Subsection (1) does not apply to any discharge which is —

(a) made into the sea; and

(b) of a kind or is made in circumstances for the time being prescribed by regulations made by the Governor.

(3) A person convicted of an offence under this section is liable on conviction, to a fine not exceeding level 10 on the scale set out in Schedule 7.

(4) In this section “sea” includes any estuary or arm of the sea.

(5) In this section “**place on land**” includes anything resting on the bed or shore of the sea, or of any other waters included in Falkland Islands national waters, and also includes anything afloat (other than a ship) if it is anchored or attached to the bed or shore of the sea or any such waters.

(6) In this section “**occupier**”, in relation to any such thing as is mentioned in subsection (5), if it has no occupier, means the owner of that thing .

[Merchant Shipping Act 1995 (UK). s. 131; Oil in Territorial Waters Ordinance 1960]

141. Defences of owner or master charged with offence under section 140

(1) Where a person is charged with an offence under section 140 as the owner or master of a ship, it is a defence to prove that the oil or mixture was discharged for the purpose of —

- (a) securing the safety of any ship;
- (b) preventing damage to any ship or cargo; or
- (c) saving life,

unless the court is satisfied that the discharge of the oil or mixture was not necessary for that purpose or was not a reasonable step to take in the circumstances.

(2) Where a person is charged with an offence under section 140 as the owner or master of a ship, it is also a defence to prove —

- (a) that the oil or mixture escaped in consequence of damage to the ship, and that as soon as practicable after the damage occurred all reasonable steps were taken for preventing, or (if it could not be prevented) for stopping or reducing, the escape of the oil or mixture; or
- (b) that the oil or mixture escaped by reason of leakage, that neither the leakage nor any delay in discovering it was due to any want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.

[Merchant Shipping Act 1995 (UK), s. 132]

142. Defences of occupier charged with offence under section 140

Where a person is charged, in respect of the escape of any oil or mixture containing oil, with an offence under section 140 as the occupier of a place on land, it is a defence to prove that neither the escape nor any delay in discovering it was due to any want of reasonable care and that as soon as practicable after it was discovered all reasonable steps were taken for stopping or reducing it.

[Merchant Shipping Act 1995 (UK), s. 133]

143. Protection for acts done in exercise of certain powers of the Authority

(1) Where any oil, or mixture containing oil, is discharged in consequence of the exercise —

- (a) of any power conferred by section 237; or

(b) for the purpose of preventing obstruction or danger to navigation, of any power to dispose of sunk, stranded or abandoned ships which is exercisable by the Authority under the Protection of Wrecks Ordinance 1977,

and apart from this subsection the Authority, would have committed an offence under section 140 in respect of that discharge, the Authority or person must not be convicted unless it is shown that the authority or the person failed to take such steps (if any) as were reasonable in the circumstances for preventing, stopping or reducing the discharge.

(2) Subsection (1) applies to the exercise of any power conferred by the Harbours and Ports Ordinance 2017 (section 24 removal of vessels within harbour, dock or pier) as it applies to the exercise of the powers under sections 237.

[Merchant Shipping Act 1995 (UK), s. 134]

144. Restrictions on transfer of oil at night

(1) No oil is permitted to be transferred between sunset and sunrise to or from a ship in any harbour in the Falkland Islands unless the requisite notice has been given in accordance with this section or the transfer is for the purposes of a fire brigade.

(2) A general notice may be given to the harbour master that transfers of oil between sunset and sunrise will be frequently carried out at a place in the harbour within such period, not ending later than twelve months after the date on which the notice is given, as is specified in the notice; and if such a notice is given it must be the requisite notice for the purposes of this section as regards transfers of oil at that place within the period specified in the notice.

(3) Subject to subsection (2), the requisite notice for the purposes of this section must be a notice given to the harbour master not less than three hours or more than 96 hours before the transfer of oil begins.

(4) If any oil is transferred to or from a ship in contravention of this section, the master of the ship, and, if the oil is transferred from or to a place on land, the occupier of that place, is liable on conviction to a fine not exceeding level 3 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 135]

145. Duty to report discharge of oil into waters of harbours

(1) If any oil or mixture containing oil is —

(a) discharged from a ship into the waters of a harbour in the Falkland Islands; or

(b) found to be escaping or to have escaped from a ship into any such waters,

the owner or master of the ship must immediately report the occurrence to the Authority.

(2) A report made under subsection (1) must state whether the occurrence falls within subsection (1)(a) or (b).

(3) If a person fails to make a report as required by this section, he or she is liable on conviction to a fine not exceeding level 5 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 136]

146. Discharges etc. authorised under other enactments

The provisions of sections 140(1) and 145(1) do not apply to any discharge which is made under, and the provisions of section 145(1) do not apply to any escape which is authorised by, or under any other enactment that provides for this.

[Merchant Shipping Act 1995 (UK), s. 136A]

Shipping casualties

147. Shipping casualties

(1) The powers conferred by this section are exercisable where —

- (a) an accident has occurred to or in a ship;
- (b) in the opinion of the Governor oil from the ship will or may cause significant pollution in the Falkland Islands, Falkland Islands waters or a part of the sea specified by virtue of section 129(2)(b) of the Act; and
- (c) in the opinion of the Governor the use of the powers conferred by this section is urgently needed,

but those powers are subject to the limitations contained in subsections (6) and (7).

(2) For the purpose of preventing or reducing oil pollution, or the risk of oil pollution, the Governor may give directions as respects the ship or its cargo —

- (a) to the owner of the ship, or to any person in possession of the ship;
- (b) to the master of the ship;
- (c) to any pilot of the ship;
- (d) to any salvor in possession of the ship, or to any person who is the servant or agent of any salvor in possession of the ship, and who is in charge of the salvage operation; or
- (e) where the ship is in waters which are regulated or managed by the Authority —
 - (i) to the harbour master; or
 - (ii) to the Authority.

(3) Directions under subsection (2) may require the person to whom they are given to take, or refrain from taking, any action of any kind whatsoever, and without prejudice to the generality of subsection (2) the directions may require —

- (a) that the ship is to be, or is not to be, moved, or is to be moved to a specified place, or is to be removed from a specified area or locality;

(b) that the ship is not to be moved to a specified place or area, or over a specified route;

(c) that any oil or other cargo is to be, or is not to be, unloaded or discharged; or

(d) that specified salvage measures are to be, or are not to be, taken.

(4) If in the opinion of the Governor the powers conferred by subsection (2) are, or have proved to be, inadequate for the purpose, the Governor may, for the purpose of preventing or reducing oil pollution, or the risk of oil pollution, take, as respects the ship or its cargo, any action of any kind whatsoever, and without prejudice to the generality of subsection (2) the Governor may —

(a) take any such action as he or she has power to require to be taken by a direction under this section;

(b) undertake operations for the sinking or destruction of the ship, or any part of it, of a kind which is not within the means of any person to whom he or she can give directions; or

(c) undertake operations which involve the taking over of control of the ship.

(5) The powers of the Governor under subsection (4) are also exercisable by such persons as may be authorised for the purpose by the Governor.

(6) Every person concerned with compliance with directions given, or with action taken, under this section must use his or her best endeavours to avoid any risk to human life.

(7) For the avoidance of doubt any action taken as respects a ship which is under arrest or as respects the cargo of that ship, being action duly taken in pursuance of a direction given under this section, or being any action taken under subsection (4) or (5) —

(a) does not constitute contempt of court; and

(b) does not in any circumstances make the Admiralty Marshal liable in any civil proceedings.

(8) In this section, unless the context otherwise requires —

“**accident**” means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo;

“**owner**”, in relation to the ship to or in which an accident has occurred, includes its owner at the time of the accident; and

“**pilot**” means any person (not belonging to a ship) who has the conduct of the ship;

“**specified**”, in relation to a direction under this section, means specified by the direction.

[Merchant Shipping Act 1995 (UK), s. 137]

148. Right to recover in respect of unreasonable loss or damage

(1) If any action duly taken by a person in pursuance of a direction given to the person under section 147, or any action taken under section 147(4) or (5) —

(a) was not reasonably necessary to prevent or reduce oil pollution, or risk of oil pollution; or

(b) was such that the good it did or was likely to do was disproportionately less than the expense incurred, or damage suffered, as a result of the action,

a person incurring expense or suffering damage as a result of, or personally taking, the action is entitled to recover compensation from the Governor.

(2) In considering whether subsection (1) applies, account must be taken of —

(a) the extent and risk of oil pollution if the action had not been taken;

(b) the likelihood of the action being effective; and

(c) the extent of the damage which has been caused by the action.

(3) Any reference in this section to the taking of any action includes a reference to a compliance with a direction not to take some specified action.

[Merchant Shipping Act 1995 (UK), s. 138]

149. Application of sections 147 and 148 to pollution by substances other than oil

(1) In sections 147 and 148, any reference to oil pollution includes a reference to pollution by any other substance which —

(a) is prescribed by the Governor by order for the purposes of this section; or

(b) although not prescribed, is liable or likely to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

(2) Any reference in sections 147 and 148 to oil includes a reference to any substance falling within subsection (1)(a) or (b).

[Merchant Shipping Act 1995 (UK), s. 138A]

150. Offences in relation to section 147

(1) If the person to whom a direction is duly given under section 147 contravenes, or fails to comply with, any requirement of the direction, he or she commits an offence.

(2) If a person intentionally obstructs any person who is —

(a) acting on behalf of the Governor in connection with the giving or service of a direction under section 147;

(b) acting in compliance with a direction under that section; or

(c) acting under section 147(4) or (5),

he or she commits an offence.

(3) In proceedings for an offence under subsection (1), it is a defence for the accused to prove that he or she has used all due diligence to ensure compliance with the direction, or that the person had reasonable cause for believing that compliance with the direction would have involved a serious risk to human life.

(4) A person convicted of an offence under this section is liable on conviction, to a fine not exceeding level 7 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 139]

151. Service of directions under section 147

(1) If the Governor is satisfied that a company or other body is not one to whom section 437 of the Companies Act 1948 (in its application to the Falkland Islands) and section 5 of the Companies and Private Partnerships Ordinance applies so as to authorise the service of a direction on that body under either of those sections, the Governor may give a direction under section 147 of this Ordinance to that body —

(a) as the owner of, or the person in possession of, a ship, by serving the direction on the master of the ship; or

(b) as a salvor, by serving the direction on the person in charge of the salvage operations.

(2) For the purpose of giving or serving a direction under section 147 to or on any person on a ship, a person acting on behalf of the Governor has the right to go on board the ship.

[Merchant Shipping Act 1995 (UK), s. 140]

152. Application of sections 147 to 151 to certain foreign and other ships

Subject to an Order in Council made under section 141 of the Act relating to a foreign or other ship (as may be specified in that Order in Council) which is in the Falkland Islands or in any part of a zone (relating to the Falkland Islands) that is in a part of the sea specified by virtue of section 129(2)(b) of the Act sections 147 to 151 applies.

[Merchant Shipping Act 1995 (UK), s. 141]

Enforcement

153. Oil records

(1) The Governor may make regulations requiring oil record books to be carried in ships registered in the Falkland Islands and requiring the master of any such ship to record in the oil record book carried by it —

(a) the carrying out, on board or in connection with the ship, of any of the following operations as may be prescribed relating to —

- (i) the loading of oil cargo;
- (ii) the transfer of oil cargo during a voyage;
- (iii) the discharge of oil cargo;
- (iv) the ballasting of oil tanks (whether cargo or bunker fuel tanks) and the discharge of ballast from, and cleaning of, such tanks;
- (v) the separation of oil from water, or from other substances, in any mixture containing oil;
- (vi) the disposal of any oil or water, or any other substance, arising from operations relating to any of the matters specified in (i) to (v); or
- (vii) the disposal of any other oil residues;

(b) any occasion on which oil or a mixture containing oil is discharged from the ship for the purpose of securing the safety of any ship, or of preventing damage to any ship or cargo, or of saving life; and

(c) any occasion on which oil or a mixture containing oil is found to be escaping, or to have escaped, from the ship in consequence of damage to the ship, or by reason of leakage.

(2) The Governor may make regulations requiring the keeping of records relating to the transfer of oil to and from ships while they are within Falkland Islands waters; and the requirements of any regulations made under this subsection are in addition to the requirements of any regulations made under subsection (1).

(3) Any records required to be kept by regulations made under subsection (2) must, unless the ship is a barge, be kept by the master of the ship, and must, if the ship is a barge, be kept, in so far as they relate to the transfer of oil to the barge, by the person supplying the oil and, in so far as they relate to the transfer of oil from the barge, by the person to whom the oil is delivered.

(4) Regulations under this section requiring the carrying of oil record books or the keeping of records may —

(a) prescribe the form of the oil record books or records and the nature of the entries to be made in them;

(b) require the person providing or keeping the books or records to retain them for a prescribed period;

(c) require that person, at the end of the prescribed period, to transmit the books or records to a place or person determined by or under the regulations;

(d) provide for the custody or disposal of the books or records after their transmission to such a place or person.

(5) Regulations under this section may —

(a) be made with respect to all or with respect to any one or more of the classes of ship or other matters to which this section relates;

(b) make different provision for different classes of ship or otherwise for different classes of case or different circumstances.

(6) If any ship fails to carry such an oil record book as it is required to carry under this section the owner or master is liable on conviction to a fine not exceeding level 5 on the scale set out in Schedule 7.

(7) If any person fails to comply with any requirements imposed on him or her by or under this section, the person is liable on conviction to a fine not exceeding level 5 on the scale set out in Schedule 7.

(8) If any person makes an entry in any oil record book carried or record kept under this section which is to his knowledge false or misleading in any material particular, the person is liable on conviction, to a fine not exceeding level 7 on the scale set out in Schedule 7, or imprisonment for a term not exceeding six months, or to both.

(9) In any proceedings under this Chapter —

(a) any oil record book carried or record kept in pursuance of regulations made under this section is admissible as evidence of the facts stated in it;

(b) any copy of an entry in such an oil record book or record which is certified by the master of the ship in which the book is carried or by the person by whom the record is required to be kept to be a true copy of the entry is admissible as evidence of the facts stated in the entry;

(c) any document purporting to be an oil record book carried or record kept in pursuance of regulations made under this section, or purporting to be such a certified copy as is mentioned in paragraph (b), is, unless the contrary is proved, presumed to be such a book, record or copy, as the case may be.

(10) In this section “**barge**” includes a lighter and any similar vessel.
[Merchant Shipping Act 1995 (UK), s. 142]

154. Prosecutions and enforcement of fines

(1) This subsection applies to the following offences —

(a) any offence under section 140 which is alleged to have been committed by the discharge of oil, or a mixture containing oil, into the waters of a harbour in the Falkland Islands;

(b) any offence in relation to a harbour in the Falkland Islands under section 144 or 145; and

(c) any offence under section 153 relating to the keeping of records of the transfer of oil within such a harbour.

(2) Any document required or authorised, by virtue of any statutory provision, to be served on a foreign company for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under section 140 alleged to have been committed by the company as the owner of the ship must be treated as duly served on that company if the document is served on the master of the ship.

(3) In this subsection “**foreign company**” means a company or body which is not one to which section 437 of the Companies Act 1948 (in its application to the Falkland Islands) applies so as to authorise the service of the document in question under that provision.

(4) Any person authorised to serve any document for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under this Chapter has, for that purpose, the right to go on board the ship in question.

[Merchant Shipping Act 1995 (UK), s. 143]

155. Power to detain ships for section 140 offences

(1) Where a harbour master has reason to believe that the master or owner of a ship has committed an offence under section 140 by the discharge from the ship of oil, or a mixture containing oil, into the waters of the harbour, the harbour master may detain the ship.

(2) Section 270, in its application to the detention of a ship under this section, has effect with the omission of subsections (1), (6) and (7) and as if —

(a) in subsection (2), the reference to competent authority were a reference to the Authority;
and

(b) in subsection (4), the persons in relation to whom that subsection applies were the harbour master or any person acting on his or her behalf.

(3) Where a harbour master detains a ship other than a ship registered in the Falkland Islands under this section he or she must immediately notify the Governor, who must then inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.

(4) In this subsection “**ship registered in the Falkland Islands**” has the same meaning as in section 84.

(5) A harbour master who detains a ship under this section must immediately release the ship —

(a) if no proceedings for the offence are instituted within the period of seven days beginning with the day on which the ship is detained;

(b) if proceedings for the offence, having been instituted within that period, are concluded without the master or owner being convicted;

(c) if either —

- (i) the sum of £255,000 is paid to the Authority by way of security; or
 - (ii) security which, in the opinion of the Authority, is satisfactory and is for an amount not less than £255,000 is given to the Authority,
by or on behalf of the master or owner; or
- (d) where the master or owner is convicted of the offence, if any costs or expenses ordered to be paid by him or her, and any fine imposed on him or her, have been paid.
- (6) The Authority must repay any sum paid in pursuance of subsection (5)(c) or release any security so given —
- (a) if no proceedings for the offence are instituted within the period of seven days beginning with the day on which the sum is paid; or
 - (b) if proceedings for the offence, having been instituted within that period, are concluded without the master or owner being convicted.
- (7) Where a sum has been paid, or security has been given, by any person in pursuance of subsection (5)(c) and the master or owner is convicted of the offence, the sum so paid or the amount made available under the security must be applied as follows —
- (a) first in payment of any costs or expenses ordered by the court to be paid by the master or owner; and
 - (b) next in payment of any fine imposed by the court,
- and any balance must be repaid to the first-mentioned person.

(8) This section does not apply in relation to a ship of Her Majesty's navy or any Government ship within the Falkland Islands or in any part of a zone (relating to the Falkland Islands) that is in a part of the sea specified by virtue of section 129(2)(b) of the Act.
[Merchant Shipping Act 1995 (UK), s. 144]

156. Interpretation of section 155

- (1) This section has effect for the interpretation of the references in section 155 to the institution of proceedings or their conclusion without the master or owner of a ship being convicted of an offence under section 140.
- (2) For the purposes of section 155 —
- (a) proceedings for an offence under section 140 are instituted —
 - (i) when a justice of the peace issues a summons or warrant under the Administration of Justice Ordinance 1949 in respect of the offence;

(ii) when a person is charged with the offence after being taken into custody without a warrant;

(b) proceedings for the offence are concluded without the master or owner being convicted on the occurrence of one of the following events —

(i) the discontinuance of the proceedings;

(ii) the acquittal of the master or owner;

(iii) the quashing of the master's or owner's conviction of the offence;

(iv) the grant of Her Majesty's pardon in respect of the master's or owner's conviction of the offence.

(3) Where the application of subsection (2)(a) or (3)(a) would result in there being more than one time for the institution of proceedings, they must be taken to have been instituted at the earliest of those times.

[Merchant Shipping Act 1995 (UK), s. 145]

157. Enforcement and application of fines

(1) Where a fine imposed by a court in proceedings against the owner or master of a ship for an offence under this Chapter is not paid, or any costs or expenses ordered to be paid by the owner or master are not paid, at the time ordered by the court, the court, in addition to any other powers of enforcing payment, has power to direct the amount remaining unpaid to be levied by distress of the ship and its equipment.

(2) Where a person is convicted of an offence under section 140, and the court imposes a fine in respect of the offence, then, if it appears to the court that any person has incurred, or will incur, expenses in removing any pollution, or making good any damage, which is attributable to the offence, the court may order the whole or part of the fine to be paid to that person for or towards defraying those expenses.

[Merchant Shipping Act 1995 (UK), s. 146]

158. Enforcement of Conventions relating to oil pollution

(1) Any person or authority in the Falkland Islands designated under the provisions of an Order in Council made under section 147 of the Act to go on board any Convention ship while the ship is within a harbour in the Falkland Islands may go on board that ship to require the production of any oil record book required to be carried in accordance with the Convention.

(2) In this section —

“**the Convention**” means any Convention accepted by Her Majesty's Government in the United Kingdom in so far as it relates to the prevention of pollution of the sea by oil which has also been extended to the Falkland Islands; and

“**Convention ship**” means a ship registered in —

(a) a country the government of which has been declared by an Order in Council made under section 147(3) of the Act to have accepted the Convention, and has not been declared to have denounced it; or

(b) a territory to which it has been declared that the Convention extends by an Order in Council made under section 147(3) of the Act, not being a territory to which it has been declared that the Convention has ceased to extend.

[Merchant Shipping Act 1995 (UK), s. 147]

Miscellaneous and supplementary

159. Power of Governor to grant exemptions

(1) The Governor may exempt any ship or classes of ships from being subject to any of the provisions of this Chapter or of any regulations made under it, either absolutely or subject to such conditions as the Governor thinks fit.

(2) The Governor may exempt any discharge of, or of a mixture containing, oil from being subject to any of the provisions of this Chapter or of any regulations made under it, either absolutely or subject to such conditions as the Governor thinks fit.

[Merchant Shipping Act 1995 (UK), s. 148]

160. Application to United Kingdom Government ships

The provisions of this Chapter do not apply to ships of Her Majesty's navy, nor to United Kingdom Government ships in the service of the Secretary of State while employed for the purposes of Her Majesty's navy within the Falkland Islands or in any part of a zone (relating to the Falkland Islands) that is in a part of the sea specified by virtue of section 129(2)(b) of the Act.

[Merchant Shipping Act 1995 (UK), s. 149]

[s46/Ord.14/2019/w.e.f. 26.09.2019]

161. Annual Report

(1) The Director of Natural Resources must, as soon as possible after the end of each calendar year, make a report to the Governor on the exercise and performance of —

(a) the Authority;

(b) the harbour master; and

(c) any officer of the Authority,

under this Chapter during that year.

(2) Every report made under subsection (1) must include such observations as the Director may think fit to make on the operation of the Authority during that year and of any Convention accepted by Her Majesty's Government in the United Kingdom and extended to the Falkland Islands in so far as it relates to the prevention of pollution of the sea by oil.

(3) The Governor must lay a copy of the report before the Legislative Assembly.
[Merchant Shipping Act 1995 (UK), s. 150]

Chapter IV – Liability for Oil Pollution

Preliminary

162. Interpretation

(1) In this Chapter —

“**bunker oil**” means any hydrocarbon mineral oil (including lubricating oil) which is carried by a ship and used or intended to be used for the operation or propulsion of that ship and any residues of such oil;

[s14/Ord.14/2019/w.e.f. 02.08.2023]

“**the Bunkers Convention**” means the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001;

[s14/Ord.14/2019/w.e.f. 02.08.2023]

“**Bunkers Convention country**” means a country in respect of which the Bunkers Convention is in force;

[s14/Ord.14/2019/w.e.f. 02.08.2023]

“**Bunkers Convention State**” means a State which is a party to the Bunkers Convention;

[s14/Ord.14/2019/w.e.f. 02.08.2023]

“**court**” means the Supreme Court of the Falkland Islands;

“**damage**” includes loss;

“**Liability Convention**” means the International Convention on Civil Liability for Oil Pollution Damage 1992;

“**Liability Convention country**” means a country in respect of which the Liability Convention is in force, and includes the United Kingdom, the Falkland Islands and any relevant British possession to which the Liability Convention has been extended; and

“**Liability Convention State**” means a State which is a party to the Liability Convention and any other State which has been declared by an Order in Council made under section 152(2) of the Act as such.

[s14/Ord.14/2019/w.e.f. 02.08.2023]

“**oil**” means persistent hydrocarbon mineral oil but does not include bunker oil;

[s14/Ord.14/2019/w.e.f. 02.08.2023]

“**owner**” has the meaning given by section 163A(7);

[s14/Ord.14/2019/w.e.f. 02.08.2023]

“**relevant threat of contamination**” includes (unless a contrary intention appears) —

(a) a relevant threat of contamination falling within section 163(2) (as defined in section 163(2A));

(b) a relevant threat of contamination falling within section 163A(2) (as defined in section 163A(4)); and

(c) a relevant threat of contamination falling within 164(2) (as defined in section 164(2B));

[s14/Ord.14/2019/w.e.f. 02.08.2023]

“**ship**” (subject to section 164(5)) means any sea-going vessel or sea-borne craft of any type whatsoever.

(2) In relation to any damage or cost resulting from the discharge or escape of any oil or bunker oil from a ship, or from a relevant threat of contamination, references in this Chapter to the owner or the registered owner of the ship are references to the owner at the time of the occurrence or first of the occurrences resulting in the discharge or escape or (as the case may be) in the threat of contamination.

[s14/Ord.14/2019/w.e.f. 02.08.2023]

(3) References in this Chapter to the territory of any country include the territorial sea of that country and —

(a) in the case of the Falkland Islands, any area within the Falkland Islands Pollution Control Zone; and

(b) in the case of any other Liability Convention country, the exclusive economic zone of that country established in accordance with international law, or, if such a zone has not been established, such area adjacent to the territorial sea of that country and extending not more than 200 nautical miles from the baselines from which the breadth of that sea is measured as may have been determined by that State in question in accordance with international law.

(4) In subsection (3), “**Falkland Islands Pollution Control Zone**” means an area co-extensive with the fishing waters of the Falkland Islands as defined in section 3 of the Fishing (Conservation and Management) Ordinance 1986 so far as those fishing waters lie beyond the territorial sea.

[Merchant Shipping Act 1995 (UK), s. 170; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule]

Liability

163. Liability for oil pollution in case of tankers

(1) Where, as a result of any occurrence, any oil is discharged or escapes from a ship to which this section applies, then (except as otherwise provided by this Chapter) the registered owner of the ship is liable —

(a) for any damage caused outside the ship in the territory of the Falkland Islands by contamination resulting from the discharge or escape;

(b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of the Falkland Islands by contamination resulting from the discharge or escape; and

(c) for any damage caused in the territory of the Falkland Islands by any measures so taken.

[s15/Ord.14/2019/w.e.f. 02.08.2023]

(2) Where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship to which this section applies by the contamination that might result if there were a discharge or escape of oil from the ship, then (except as otherwise provided by this Chapter) the registered owner of the ship is liable —

(a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of the Falkland Islands; and

(b) for any damage caused outside the ship in the territory of the Falkland Islands by any measures so taken,

[s15/Ord.14/2019/w.e.f. 02.08.2023]

(2A) In this Chapter, a threat referred to in subsection (2) is a relevant threat of contamination falling within that subsection.

[s15/Ord.14/2019/w.e.f. 02.08.2023]

(3) Subject to subsection (4), this section applies to any ship constructed or adapted for carrying oil in bulk as cargo.

(4) Where any ship so constructed or adapted is capable of carrying other cargoes besides oil, this section applies to any such ship —

(a) while it is carrying oil in bulk as cargo; and

(b) unless it is proved that no residues from the carriage of any such oil remain in the ship, while it is on any voyage following the carriage of any such oil,

but not otherwise.

(5) Where a person incurs a liability under subsection (1) or (2) the person is also liable for any damage or cost for which he or she would be liable under that subsection if the references in it to the territory of the Falkland Islands included the territory of any other Liability Convention country.

(6) Where —

(a) as a result of any occurrence, a liability is incurred under this section by the registered owner of each of two or more ships, but

(b) the damage or cost for which each of the registered owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the registered owners is liable, jointly with the other or others, for the whole of the damage or cost for which the registered owners together would be liable under this section.

[s15/Ord.14/2019/w.e.f. 02.08.2023]

(7) ...

[s15/Ord.14/2019/w.e.f. 02.08.2023]

(8) ...

[*Merchant Shipping Act 1995 (UK), s. 153; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule*]

[s15/Ord.14/2019/w.e.f. 02.08.2023]

163A. Liability for pollution by bunker oil

(1) Subject to subsection (3), where, as a result of any occurrence, any bunker oil is discharged or escapes from a ship then (except as otherwise provided by this Chapter) the registered owner of the ship is liable —

(a) for any damage caused outside the ship in the territory of the Falkland Islands by contamination resulting from the discharge or escape; and

(b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of the Falkland Islands by contamination resulting from the discharge or escape; and

(c) for any damage caused in the territory of the Falkland Islands by any measures so taken.

(2) Subject to subsection (3), where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship by the contamination that might result if there were a discharge or escape of bunker oil from the ship then (except as otherwise provided by this Chapter) the owner of the ship is liable —

(a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of the Falkland Islands; and

(b) for any damage caused outside the ship in the territory of the Falkland Islands by any measures so taken.

(3) There is no liability under this section in relation to —

(a) a discharge or escape of bunker oil from a ship to which section 163 applies, or

(b) a threat mentioned in subsection (2) arising in relation to a potential discharge or escape of bunker oil from such a ship,

where that bunker oil is also persistent hydrocarbon mineral oil.

(4) In the subsequent provisions of this Chapter —

(a) a discharge or escape of bunker oil from a ship, other than a discharge or escape of oil excluded by subsection (3), is referred to as a discharge or escape of bunker oil falling within subsection (1) of this section; and

(b) a threat mentioned in subsection (2), other than one excluded by subsection (3), is referred to as a relevant threat of contamination falling within subsection (2) of this section.

(5) Where a person incurs a liability under subsection (1) or (2) the person is also liable for any damage or cost for which he or she would be liable under that subsection if the references in it to the territory of the Falkland Islands included the territory of any other Bunkers Convention country.

(6) Where —

(a) as a result of any occurrence, a liability is incurred under this section by the respective owners of each of two or more ships, but

(b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners is liable, jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(7) In this Chapter (except in section 180(1)) “**owner**”, except when used in the term “**registered owner**”, means the registered owner, bareboat charterer, manager and operator of the ship.

[Merchant Shipping Act 1995 (UK), s. 153A]

[s16/Ord.14/2019/w.e.f. 02.08.2023]

164. Liability for oil pollution in other cases

[s17/Ord.14/2019/w.e.f. 02.08.2023]

(1) Subject to subsection (2A), where, as a result of any occurrence, any oil is discharged or escapes from a ship, then (except as otherwise provided by this Chapter) the registered owner of the ship is liable —

(a) for any damage caused outside the ship in the territory of the Falkland Islands by contamination resulting from the discharge or escape; and

(b) for the cost of any measures reasonably taken after the discharge or escape for the purpose of preventing or minimising any damage so caused in the territory of the Falklands Islands by contamination resulting from the discharge or escape; and

(c) for any damage so caused in the territory of the Falkland Islands by any measures so taken.

[s17/Ord.14/2019/w.e.f. 02.08.2023]

(2) Subject to subsection (2A), where, as a result of any occurrence, there arises a grave and imminent threat of damage being caused outside a ship by the contamination which might result

if there were a discharge or escape of oil from the ship, then (except as otherwise provided by this Chapter) the registered owner of the ship is liable —

(a) for the cost of any measures reasonably taken for the purpose of preventing or minimising any such damage in the territory of the Falkland Islands; and

(b) for any damage caused outside the ship in the territory of the Falkland Islands by any measures so taken,

[s17/Ord.14/2019/w.e.f. 02.08.2023]

(2A) No liability is incurred under this section by reason of —

(a) a discharge or escape of oil from a ship to which section 163 applies or a relevant threat of contamination falling within subsection (2) of that section;

(b) a discharge or escape of bunker oil falling within section 163A(1) or a relevant threat of contamination falling within section 163A(2).

[s17/Ord.14/2019/w.e.f. 02.08.2023]

(2B) In the subsequent provisions of this Chapter —

(a) a discharge or escape of oil from a ship, other than one excluded by subsection (2A), is referred to as a discharge or escape of oil falling within subsection (1) of this section; and

(b) a threat mentioned in subsection (2), other than one excluded by subsection (2A), is referred to as a relevant threat of contamination falling within subsection (2) of this section.

[s17/Ord.14/2019/w.e.f. 02.08.2023]

(3) Where —

(a) as a result of any occurrence, a liability is incurred under this section by the registered owner of each of two or more ships; but

(b) the damage or cost for which each of the registered owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the registered owners is liable, jointly with the other or others, for the whole of the damage or cost for which the registered owners together would be liable under this section.

[s17/Ord.14/2019/w.e.f. 02.08.2023]

(4) The Law Reform (Contributory Negligence) Act 1945 (in its application to the Falkland Islands) applies in relation to any damage or cost for which a person is liable under this section, but which is not due to his or her fault, as if it were due to his or her fault.

(5) In this section (apart from subsection (2A)) “**ship**” includes a vessel which is not seagoing.

[Merchant Shipping Act 1995 (UK), s. 154; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule]

[s17/Ord.14/2019/w.e.f. 02.08.2023]

165. Exceptions from liability under sections 163, 163A and 164

[s18/Ord.14/2019/w.e.f. 02.08.2023]

(1) No liability will be incurred by a person (“the defendant”) under section 163, 163A or 164 by reason of a discharge or escape of oil or bunker oil from a ship, or of a relevant threat of contamination, if the defendant proves that subsection (2) applies.

[s18/Ord.14/2019/w.e.f. 02.08.2023]

(2) This subsection applies if the discharge or escape, or the relevant threat of contamination (as the case may be) —

(a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon; or

(b) was due wholly to anything done or omitted to be done by another person, not being a servant or agent of the defendant, with intent to do damage; or

(c) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance or which it was responsible.

[Merchant Shipping Act 1995 (UK), s. 155]

[s18/Ord.14/2019/w.e.f. 02.08.2023]

166. Restriction of liability for pollution from oil or bunker oil

[s19/Ord.14/2019/w.e.f. 02.08.2023]

(1) Where, as a result of any occurrence —

(a) there is a discharge or escape of oil from a ship to which section 163 applies or there arises a relevant threat of contamination falling within subsection (2) of that section, or

(b) there is a discharge or escape of oil falling within section 164(1) or there arises a relevant threat of contamination falling within section 164(2),

then, whether or not the registered owner of the ship in question incurs a liability under section 163 or 164 —

(i) the registered owner is not liable otherwise than under that section for any such damage or cost as is mentioned in it; and

(ii) no person to whom this paragraph applies is liable for any such damage or cost unless it resulted from anything done or omitted to be done by the person either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

[s19/Ord.14/2019/w.e.f. 02.08.2023]

(2) Subsection (1)(ii) applies to —

(a) any servant or agent of the registered owner of the ship;

(b) any person not falling within paragraph (a) but employed or engaged in any capacity on board the ship or to perform any service for the ship;

(c) any charterer of the ship (however described and including a bareboat charterer), and any manager or operator of the ship;

(d) any person performing salvage operations with the consent of the registered owner of the ship or on the instructions of a competent public authority;

(e) any person taking any such measures as are mentioned in subsection (1)(b) or (2)(a) of section 163 or 164;

(f) any servant or agent of a person falling within paragraph (c), (d) or (e).

[s19/Ord.14/2019/w.e.f. 02.08.2023]

(2A) Where, as a result of any occurrence —

(a) there is a discharge or escape of bunker oil falling within section 163A(1), or

(b) there arises a relevant threat of contamination falling within section 163A(2),

then, whether or not the registered owner of the ship in question incurs any liability under section 163A —

(i) the registered owner is not liable otherwise than under that section for any such damage or cost as is mentioned in it; and

(ii) no person to whom this paragraph applies is liable for any such damage or cost unless it resulted from anything done or omitted to be done by the person either with intent to cause any such damage or cost or recklessly and in the knowledge that any such damage or cost would probably result.

[s19/Ord.14/2019/w.e.f. 02.08.2023]

(2B) Subsection (2A)(ii) applies to —

(a) any servant or agent of the registered owner;

(b) any person not falling within paragraph (a) above but engaged in any capacity on board the ship or to perform any service for the ship;

(c) any person performing salvage operations with the consent of the registered owner of the ship or on the instructions of the Authority;

(d) any person taking any such measures as are mentioned in subsection (1)(b) or (2)(a) of section 163A;

(e) any servant or agent of a person falling within paragraph (c) or (d).

[s19/Ord.14/2019/w.e.f. 02.08.2023]

(3) The liability of a person under section 163, 163A or 164 for any impairment of the environment must be taken to be a liability only in respect of —

(a) any resulting loss of profits; and

(b) the cost of any reasonable measures of reinstatement actually taken or to be taken.

[Merchant Shipping Act 1995 (UK), s. 156; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule]

[s.19/Ord.14/2019/w.e.f. 02.08.2023]

166A. Liability under section 163, 163A or 164: supplementary provisions

(1) For the purposes of this Chapter —

(a) references to a discharge or escape of oil or bunker oil from a ship are references to such a discharge or escape wherever it may occur;

(b) references to a discharge or escape of oil from a ship include a discharge or escape of oil carried in the bunkers of the ship;

(c) where more than one discharge or escape of oil or bunker oil results from the same occurrence or from a series of occurrences having the same origin, they will be treated as one, but any measures taken after the first of them is deemed to have been taken after the discharge or escape; and

(d) where a relevant threat of contamination results from a series of occurrences having the same origin, they will be treated as a single occurrence.

(2) The Law Reform (Contributory Negligence) Act 1945 (in its application to the Falkland Islands) applies in relation to any damage or cost for which a person is liable under section 163, 163A or 164, but which is not due to the person's fault, as if it were due to the person's fault.

[Merchant Shipping Act 1995 (UK), s. 156A]

[s.20/Ord.14/2019/w.e.f. 02.08.2023]

Limitation of liability

167. Limitation of liability under section 163

(1) Where, as a result of any occurrence, the registered owner of a ship incurs liability under section 163 by reason of a discharge or escape or by reason of any relevant threat of contamination falling within subsection (2) of that section, then (subject to subsection (3)) —

(a) the registered owner may limit that liability in accordance with the provisions of this Chapter; and

(b) if the master does so, his or her liability (being the aggregate of his liabilities under section 163 resulting from the occurrence) will not exceed the relevant amount.

[s.21/Ord.14/2019/w.e.f. 02.08.2023]

(2) In subsection (1), “the relevant amount” means —

(a) in relation to a ship not exceeding 5,000 tons, 4.51 million special drawing rights;

(b) in relation to a ship exceeding 5,000 tons, 4.51 million special drawing rights together with an additional 631 special drawing rights for each ton of its tonnage in excess of 5,000 tons up to a maximum amount of 89.77 million special drawing rights,

but the Governor may by order make such amendments of paragraphs (a) and (b) as appear to the Governor to be appropriate for the purpose of giving effect to the entry into force of any amendment of the limits of liability laid down in paragraph 1 of Article V of the Liability Convention.

(3) Subsection (1) does not apply in a case where it is proved that the discharge or escape, or (as the case may be) the relevant threat of contamination, resulted from anything done or omitted to be done by the registered owner either with intent to cause any such damage or cost as is mentioned in section 163 or recklessly and in the knowledge that any such damage or cost would probably result.

[s.21/Ord.14/2019/w.e.f. 02.08.2023]

(4) For the purposes of this section a ship's tonnage is its gross tonnage calculated in such manner as may be prescribed by an order made by the Governor.

[Merchant Shipping Act 1995 (UK), s. 157; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule, Merchant Shipping (Oil Pollution Compensation Limits) Order 2003]

168. Limitation actions

(1) Where the registered owner of a ship has or is alleged to have incurred a liability under section 163 he or she may apply to the court for the limitation of that liability to an amount determined in accordance with section 167.

[s.22/Ord.14/2019/w.e.f. 02.08.2023]

(2) If on such an application the court finds that the applicant has incurred that liability but has not found that he or she is not entitled to limit it, the court must, after determining the limit which would apply to the applicant's liability if he or she were entitled to limit it and directing payment into court of the amount of that limit —

(a) determine the amounts that would, apart from the limit, be due in respect of the liability to the several persons making claims in the proceedings; and

(b) direct the distribution of the amount paid into court (or, as the case may be, so much of it as does not exceed the liability) among those persons in proportion to their claims,

subject to the following provisions of this section.

(3) Where —

(a) a distribution is made under subsection (2)(b) without the court having found that the applicant is entitled to limit his or her liability; and

(b) the court subsequently finds that the applicant is not so entitled,

the making of the distribution is not to be regarded as affecting the applicant's liability in excess of the amount distributed.

(4) A payment into court of the amount of a limit determined in pursuance of this section must be made in sterling; and —

(a) for the purpose of converting such an amount from special drawing rights into sterling one special drawing right must be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for —

(i) the day on which the determination is made; or

(ii) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed;

(b) a certificate given by or on behalf of the Financial Secretary stating —

(i) that a particular sum in sterling has been so fixed for the day on which the determination was made, or

(ii) that no sum has been so fixed for that day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the day on which the determination was made,

is conclusive evidence of those matters for the purposes of this Chapter;

(c) a document purporting to be such a certificate will, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

(5) No claim can be admitted in proceedings under this section unless it is made within such time as the court may direct or such further time as the court may allow.

(6) Where any sum has been paid in or towards satisfaction of any claim in respect of the damage or cost to which the liability extends —

(a) by the registered owner or the persons referred to in section 175 as “the insurer” (in relation to any insurance or other security provided as mentioned in subsection (1) of that section); or

(b) by a person who has or is alleged to have incurred a liability, otherwise than under section 164, for the damage or cost and who is entitled to limit his or her liability in connection with the ship by virtue of section 198 or 199 (185 or 186 of the Act,

the person who paid the sum is, to the extent of that sum, in the same position with respect to any distribution made in proceedings under this section as the person to whom it was paid would have been.

(7) Where the person who incurred the liability has voluntarily made any reasonable sacrifice or taken any other reasonable measures to prevent or reduce damage to which the liability extends or might have extended, the person is in the same position with respect to any distribution made in proceedings under this section as if he or she had a claim in respect of the liability equal to the cost of the sacrifice or other measures.

(8) The court may, if it thinks fit, postpone the distribution of a part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court of any country outside the Falkland Islands.

(9) No lien or other right in respect of any ship or other property affects the proportions in which any amount is distributed in accordance with subsection (2)(b).

[Merchant Shipping Act 1995 (UK), s. 158; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule;]

169. Restriction on enforcement after establishment of limitation fund

(1) Where the court has found that a person who has incurred a liability under section 163 is entitled to limit that liability to any amount and he or she has paid into court a sum not less than that amount —

(a) the court must order the release of any ship or other property arrested in connection with a claim in respect of that liability or any security given to prevent or obtain release from such an arrest; and

(b) no judgment or decree for any such claim can be enforced, except so far as it is for costs,

if the sum paid into court, or such part thereof as corresponds to the claim, would be actually available to the claimant or would have been available to the claimant if the proper steps in the proceedings under section 168 had been taken.

[Merchant Shipping Act 1995 (UK), s. 159; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule]

170. Concurrent liabilities of owners and others

Where, as a result of any discharge or escape of oil from a ship or as a result of any relevant threat of contamination, the registered owner of the ship incurs a liability under section 163 and any other person incurs a liability, otherwise than under that section, for any such damage or cost as is mentioned in subsection (1) or (2) of that section then, if —

(a) the registered owner has been found, in proceedings under section 168 to be entitled to limit his or her liability to any amount and has paid into court a sum not less than that amount; and

(b) the other person is entitled to limit liability in connection with the ship by virtue of section 184 or 185,

no proceedings can be taken against the other person in respect of his or her liability, and if any such proceedings were commenced before the registered owner paid the sum into court, no further steps can be taken in the proceedings except in relation to costs.

[Merchant Shipping Act 1995 (UK), s. 160; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule]

[s.23/Ord.14/2019/w.e.f. 02.08.2023]

171. Establishment of limitation fund outside Falkland Islands

Where the events resulting in the liability of any person under section 163 also resulted in a corresponding liability under the law of another Liability Convention country sections 169 and 170 apply as if the references to sections 163 and 168 included references to the corresponding provisions of that law and the references to sums paid into court included references to any sums secured under those provisions in respect of the liability.

[Merchant Shipping Act 1995 (UK), s. 161; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule]

172. Extinguishment of claims

No action to enforce a claim in respect of a liability incurred under section 163, 163A or 164 will be entertained by any court in the Falkland Islands unless the action is commenced not later than three years after the claim arose nor later than six years after the occurrence or first of the occurrences resulting in the discharge or escape, or (as the case may be) in the relevant threat of contamination, by reason of which the liability was incurred.

[Merchant Shipping Act 1995 (UK), s. 162; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule]

[s.24/Ord.14/2019/w.e.f. 02.08.2023]

Compulsory insurance

173. Compulsory insurance against liability for pollution

(1) Subject to the provisions of this Chapter relating to United Kingdom Government ships, subsection (2) applies to any ship carrying in bulk a cargo of more than 2,000 tons of oil of a description specified in regulations made by the Governor.

[s46/Ord.14/2019/w.e.f. 26.09.2019]

(2) The ship must not enter or leave a port in the Falkland Islands or arrive at or leave a terminal in the territorial sea of the Falkland Islands or, if the ship is registered in the Falkland Islands, enter, arrive at or leave a port in any other country or a terminal in the territorial sea of any other country, unless there is in force a certificate complying with the provisions of subsection (3) and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention (cover for owner's liability).

(3) The certificate must be —

(a) if the ship is registered in the Falkland Islands, a certificate issued by the Governor;

(b) if the ship is registered in a Liability Convention country other than the Falkland Islands, a certificate issued by or under the authority of the government of the other Liability Convention country; and

(c) if the ship is registered in a country which is not a Liability Convention country, a certificate issued by the Governor or by or under the authority of the government of any Liability Convention country other than the Falkland Islands.

(4) Any certificate required by this section to be in force in respect of a ship must be carried in the ship and must, on demand, be produced by the master to any customs officer and, if the ship is registered in the Falkland Islands, to any proper officer.

(5) If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of subsection (2), the master or registered owner is liable on conviction to a fine not exceeding level 7 on the scale set out in Schedule 7.

[s.25/Ord.14/2019/w.e.f. 02.08.2023]

(6) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (4), the master is liable on conviction to a fine not exceeding level 4 on the scale set out in Schedule 7.

(7) If a ship attempts to leave a port in the Falkland Islands in contravention of this section the ship may be detained.

[Merchant Shipping Act 1995 (UK), s. 163; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule]

173A. Compulsory insurance against liability for pollution from bunker oil

(1) Subject to the provisions of this Chapter relating to Government ships, subsection (2) applies to any ship having a gross tonnage greater than 1,000 tons calculated in the manner prescribed by an order made by the Governor under paragraph 5(2) of Part II of Schedule 5.

(2) The ship must not enter or leave a port in the Falkland Islands or arrive at or leave a terminal in the territorial sea of the Falkland Islands nor, if the ship is a Falkland Islands ship, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force —

(a) a contract of insurance or other security in respect of the ship satisfying the requirements of Article 7 of the Bunkers Convention; and

(b) a certificate complying with the provisions of subsection (3) showing that there is in force in respect of the ship a contract of insurance or other security satisfying those requirements.

(3) The certificate must be —

(a) if the ship is a Falkland Islands ship, a certificate issued by the Authority;

(b) if the ship is registered in a Bunkers Convention country other than the Falkland Islands, a certificate issued by or under the authority of the government of the other Bunkers Convention country; and

(c) if the ship is registered in a country which is not a Bunkers Convention country, a certificate issued by the Governor or by or under the authority of the government of any Bunkers Convention country other than the Falkland Islands.

(4) Any certificate required by this section to be in force in respect of a ship must be carried in the ship and must, on demand, be produced by the master to any customs officer and, if the ship is a Falkland Islands ship, to any proper officer.

(5) If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of subsection (2), the master or owner is liable on conviction to a fine not exceeding level 7 on the scale set out in Schedule 7.

(6) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (4), the master is liable on conviction to a fine not exceeding level 4 on the scale set out in Schedule 7.

(7) If a ship attempts to leave a port in the Falkland Islands in contravention of subsection (2), the ship may be detained.

(8) Any document required or authorised, by virtue of any statutory provision, to be served on a foreign company for the purposes of the institution of (or otherwise in connection with) proceedings for an offence under subsection (5) against the company as registered owner of the ship will be treated as duly served on the company if the document is served on the master of the ship.

(9) Any person authorised to serve any document for the purposes of the institution of (or otherwise in connection with) the institution of proceedings for an offence under this section will, for that purpose, have the right to go on board the ship in question.

(10) In the case of a ship of which, at any relevant time, the tonnage has not been and cannot be ascertained in the manner set out in subsection (1), the best available evidence must be used in calculating the tonnage of the ship in accordance with any order under paragraph 5(2) of Part II of Schedule 5.

[s.26/Ord.14/2019/w.e.f. 02.08.2023]

174. Issue of certificate by Governor

(1) Subject to subsection (2), if the Governor is satisfied, on the application for such a certificate as is mentioned in section 173(2) in respect of a ship registered in the Falkland Islands or in any country which is not a Liability Convention country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article VII of the Liability Convention, the Governor must issue such a certificate to the registered owner.

[s.27/Ord.14/2019/w.e.f. 02.08.2023]

(1A) Subject to subsection (2), if the Governor is satisfied, on the application for such a certificate as is mentioned in section 163A(2) in respect of a Falkland Islands ship that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article 7 of the Bunkers Convention, the Governor must issue such a certificate to the registered owner.

[s.27/Ord.14/2019/w.e.f. 02.08.2023]

(2) The Governor may refuse the certificate if he or she is of the opinion that there is a doubt whether —

(a) the person providing the insurance or other security will be able to meet his or her obligations under that insurance or security; or

(b) the insurance or other security will cover the registered owner's liability under section 163, or the owner's liability under section 163A, as the case may be.

[s.27/Ord.14/2019/w.e.f. 02.08.2023]

(2A) If the Governor is satisfied, on the application for such a certificate as is mentioned in section 163A(2) in respect of a ship registered in any country which is not a Bunkers Convention country, that there will be in force in respect of the ship, throughout the period for which the certificate is to be issued, a contract of insurance or other security satisfying the requirements of Article 7 of the Bunkers Convention, the Governor may issue such a certificate to the registered owner.

[s.27/Ord.14/2019/w.e.f. 02.08.2023]

(3) The Governor may make regulations providing for the cancellation and delivery up of a certificate under this section in such circumstances as may be prescribed by the regulations.

(4) If a person required by regulations under subsection (3) to deliver up a certificate fails to do so the person is liable on conviction to a fine not exceeding level 4 on the scale set out in Schedule 7.

(5) The Governor must send a copy of any certificate issued by him or her under this section in respect of a ship registered in the Falkland Islands to the Registrar and the Registrar must make the copy available for public inspection.

[Merchant Shipping Act 1995 (UK), s. 164; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule]

175. Rights of third parties against insurers

(1) Where it is alleged that the registered owner of a ship has incurred a liability under section 163 as a result of any discharge or escape of oil occurring, or as a result of any relevant threat of contamination arising, while there was in force a contract of insurance or other security to which a certificate mentioned in section 173(2) relates, proceedings to enforce a claim in respect of the liability may be brought against the person who provided the insurance or other security .

[s.28/Ord.14/2019/w.e.f. 02.08.2023]

(1A) Where it is alleged that the owner of a ship has incurred a liability under section 163A as a result of any discharge or escape of bunker oil occurring, or as a result of any relevant threat of contamination arising, while there was in force a contract of insurance or other security to which such a certificate as is mentioned in section 163A(2) related, proceedings to enforce a claim in

respect of the liability may be brought against the person who provided the insurance or other security.

[s.28/Ord.14/2019/w.e.f. 02.08.2023]

(1B) In the following provisions of this section, “**the insurer**” means the person who provided the insurance or other security referred to in subsection (1) or subsection (1A), as the case may be.

[s.28/Ord.14/2019/w.e.f. 02.08.2023]

(2) In any proceedings brought against the insurer by virtue of this section in respect of liability under section 163 it is a defence (in addition to any defence affecting the registered owner’s liability), to prove that the discharge or escape, or (as the case may be) the threat of contamination, was due to the wilful misconduct of the registered owner.

[s.28/Ord.14/2019/w.e.f. 02.08.2023]

(3) The insurer may limit his or her liability under section 167 in respect of claims in respect of liability under section 163 which are made against him or her by virtue of this section in like manner and to the same extent as the registered owner may limit his or her liability under section 167 but the insurer may do so whether or not the discharge or escape, or (as the case may be) the threat of contamination, resulted from anything done or omitted to be done by the registered owner as mentioned in section 167(3).

[s.28/Ord.14/2019/w.e.f. 02.08.2023]

(4) Where the registered owner and the insurer each apply to the court for the limitation of liability (in relation to liability under section 163) any sum paid into court in pursuance of either application must be treated as paid also in pursuance of the other.

[s.28/Ord.14/2019/w.e.f. 02.08.2023]

(4A) In any proceedings brought against the insurer by virtue of this section in respect of liability under section 163A it is a defence (in addition to any defence affecting the owner’s liability) to prove that the discharge or escape, or (as the case may be) the threat of contamination, was due to the wilful misconduct of the owner.

[s.28/Ord.14/2019/w.e.f. 02.08.2023]

(4B) The insurer may limit his or her liability in respect of claims in respect of liability under section 163A which are made against the insurer by virtue of this section in like manner and to the same extent as the owner may limit his or her liability by virtue of section 185; but the insurer may do so whether or not the discharge or escape, or (as the case may be) the threat of contamination, resulted from any act or omission mentioned in Article 4 of the Convention set out in Part I of Schedule 5.

[s.28/Ord.14/2019/w.e.f. 02.08.2023]

(4C) Where the owner and the insurer each apply to the court for the limitation of liability (in relation to liability under section 163A) any sum paid into court in pursuance of either application must be treated as paid also in pursuance of the other.

[Merchant Shipping Act 1995 (UK), s. 165; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule]

[s.28/Ord.14/2019/w.e.f. 02.08.2023]

Supplementary

176. Jurisdiction of Falkland Islands courts and registration of foreign judgments

(1) Where —

(a) there is a discharge or escape of oil from a ship to which section 163 applies, or a discharge or escape of oil falling within section 164(1), which does not result in any damage caused by contamination in the territory of the Falkland Islands and no measures are reasonably taken to prevent or minimise such damage in that territory, or

(b) any relevant threat of contamination falling within section 163(2) or 164(2) arises but no measures are reasonably taken to prevent or minimise such damage in the territory of the Falkland Islands,

no court in the Falkland Islands can entertain any action (whether in rem or in personam) to enforce a claim arising from any relevant damage or cost —

(i) against the registered owner of the ship, or

(ii) against any person to whom section 166(1)(ii) applies, unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.

[s.29/Ord.14/2019/w.e.f. 02.08.2023]

(2) In subsection (1), “**relevant damage or cost**” means—

(a) in relation to any such discharge or escape as is mentioned in paragraph (a) of that subsection, any damage caused in the territory of another Liability Convention country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country;

(b) in relation to any such threat of contamination as is mentioned in paragraph (b) of that subsection, any cost incurred in taking measures to prevent or minimise such damage in the territory of another Liability Convention country; or

(c) any damage caused by any measures taken as mentioned in paragraph (a) or (b),

and section 166(2)(e) has effect for the purposes of subsection (1)(ii) as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b).

(3A) Where —

(a) there is a discharge or escape of bunker oil falling within section 163A(1) which does not result in any damage caused by contamination in the territory of the Falkland Islands and no measures are reasonably taken to prevent or minimise such damage in that territory, or

(b) any relevant threat of contamination falling within section 163A(2) arises but no measures are reasonably taken to prevent or minimise such damage in the territory of the Falkland Islands,

no court in the Falkland Islands will entertain any action (whether in rem or in personam) to enforce a claim arising from any relevant damage or cost —

(i) against the owner of the ship, or

(ii) against any person to whom section 166(2A)(ii) applies, unless any such damage or cost resulted from anything done or omitted to be done as mentioned in that provision.

[s.29/Ord.14/2019/w.e.f. 02.08.2023]

(3B) In subsection (3A) above, “**relevant damage or cost**” means —

(a) in relation to any such discharge or escape as is mentioned in paragraph (a) of that subsection, any damage caused in the territory of another Bunkers Convention country by contamination resulting from the discharge or escape, or any cost incurred in taking measures to prevent or minimise such damage in the territory of another Bunkers Convention country;

(b) in relation to any such threat of contamination as is mentioned in paragraph (b) of that subsection, any cost incurred in taking measures to prevent or minimise such damage in the territory of another Bunkers Convention country; or

(c) any damage caused by any measures taken as mentioned in paragraph (a) or (b); and section 166(2B)(d) has effect for the purpose of subsection (3A)(ii) as if it referred to any person taking any such measures as are mentioned in paragraph (a) or (b).

[s.29/Ord.14/2019/w.e.f. 02.08.2023]

(4) The Foreign Judgments (Reciprocal Enforcement) Ordinance 1959 applies, whether or not it would so apply apart from this section, to —

(a) any judgment given by a court in a Liability Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to section 163; and

(b) any judgment given by a court in a Bunkers Convention country to enforce a claim in respect of a liability incurred under any provision corresponding to section 163A,

and in its application to such a judgment that Ordinance has effect with the omission of section 9(2) and (3).

[*Merchant Shipping Act 1995 (UK), s. 166; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule*]

[s.29/Ord.14/2019/w.e.f. 02.08.2023]

177. United Kingdom Government ships, Falkland Islands Government ships and other government ships

(1) Nothing in this Chapter applies in relation to any warship or any ship for the time being used by the government of any State for anything other than commercial purposes.

(2) In relation to a ship owned by a State and for the time being used for commercial purposes —

(a) it will be sufficient compliance with section 173(2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article I of the Liability Convention will be met up to the limit prescribed by Article V of the Convention; and

(b) it will be sufficient compliance with section 163A(2) if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for pollution damage as defined in Article 1 of the Bunkers Convention will be met up to the limits set out in Chapter II of the Convention in Part I of Schedule 5.

[s.30/Ord.14/2019/w.e.f. 02.08.2023]

(3) Every Liability Convention State will, for the purposes of any proceedings brought in a court in the Falkland Islands to enforce a claim in respect of a liability incurred under section 153, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection authorises the issue of execution against the property of any State.

(4) Every Bunkers Convention State will, for the purposes of any proceedings brought in a court in the Falkland Islands to enforce a claim in respect of a liability incurred under section 163A, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this subsection authorises the issue of execution, against the property of any State.

[*Merchant Shipping Act 1995 (UK)*, s. 167; *Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule*]

[s46/Ord.14/2019/w.e.f. 26.09.2019] [s.30/Ord.14/2019/w.e.f. 02.08.2023]

178. Limitation of liability under section 163A or 164

For the purposes of section 179 any liability incurred under section 163A or 164 will be deemed to be a liability to damages in respect of such damage to property as is mentioned in paragraph 1(a) of Article 2 of the Convention on Limitation of Liability for Maritime Claims 1976, set out in Schedule 5.

[*Merchant Shipping Act 1995 (UK)*, s. 168; *Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule*]

[s.31/Ord.14/2019/w.e.f. 02.08.2023]

179. Saving for recourse actions

Nothing in this Chapter prejudices any claim, or the enforcement of any claim a person incurring any liability under this Chapter may have against another person in respect of that liability.

[*Merchant Shipping Act 1995 (UK)*, s. 169; *Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule*]

Chapter V – International Oil Pollution Compensation Fund

Preliminary

180. Interpretation

(1) In this Chapter, unless the context otherwise requires —

“**damage**” includes loss;

“**discharge or escape**”, in relation to pollution damage, means the discharge or escape of oil from the ship;

“**guarantor**” means any person providing insurance or other financial security to cover the owner’s liability of the kind described in section 173;

“**incident**” means any occurrence, or series of occurrences having the same origin, resulting in a discharge or escape of oil from a ship or in a relevant threat of contamination;

“**oil**”, except in sections 182 and 183, means persistent hydrocarbon mineral oil;

“**owner**” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship, except that, in relation to a ship owned by a State which is operated by a person registered as the ship’s operator, it means the person registered as its operator;

“**pollution damage**” means —

- (a) damage caused outside a ship by contamination resulting from a discharge or escape of oil from the ship;
- (b) the cost of preventive measures; and
- (c) further damage caused by preventive measures,

but does not include any damage attributable to any impairment of the environment except to the extent that any such damage consists of —

- (i) any loss of profits; or
- (ii) the cost of any reasonable measures of reinstatement actually taken or to be taken;

“**preventive measures**” means any reasonable measures taken by any person to prevent or minimise pollution damage, being measures taken —

- (a) after an incident has occurred; or
- (b) in the case of an incident consisting of a series of occurrences, after the first of those occurrences;

“**relevant threat of contamination**” means a grave and imminent threat of damage being caused outside a ship by contamination resulting from a discharge or escape of oil from the ship; and

“**ship**” means any ship (within the meaning of Chapter III of this Part) to which section 163 applies.

(2) For the purposes of this Chapter —

(a) references to a discharge or escape of oil from a ship are references to such a discharge or escape wherever it may occur, and whether it is of oil carried in a cargo tank or of oil carried in a bunker fuel tank; and

(b) where more than one discharge or escape results from the same occurrence or from a series of occurrences having the same origin, they must be treated as one.

(3) References in this Chapter to the territory of any country must be construed in accordance with section 169(4) reading the reference to a Liability Convention country as a reference to a Fund Convention country or a Supplementary Fund Protocol country (as the case may be).

[Merchant Shipping Act 1995 (UK), s. 181; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule]

[s.32/Ord.14/2019/w.e.f. 02.11.2023]

181. Meaning of the “Liability Convention”, “the Fund Convention” and related expressions

(1) In this Chapter—

“**the Liability Convention**” has the same meaning as in Chapter IV of this Part;

“**the Fund Convention**” means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992;

“**the Fund**” means the International Fund established by the Fund Convention;

“**Fund Convention country**” means a country in respect of which the Fund Convention is in force, and includes the United Kingdom and any relevant British possession to which the Fund Convention has been extended.

“**the Supplementary Fund**” means the International Supplementary Fund established by the Supplementary Fund Protocol;

[s.33/Ord.14/2019/w.e.f. 02.11.2023]

“**Supplementary Fund Protocol country**” means a country in respect of which the Supplementary Fund Protocol is in force; and

[s.33/Ord.14/2019/w.e.f. 02.11.2023]

“**the Supplementary Fund Protocol**” means the Protocol of 2003 to the Fund Convention;

[s.33/Ord.14/2019/w.e.f. 02.11.2023]

(2) If Her Majesty by Order in Council made under section 172 of the Act declares that any State specified in the Order is a party to the Fund Convention in respect of any country so specified, the Order, while in force, is conclusive evidence that that State is a party to that Convention in respect of that country.

(3) Subsection (2) applies in relation to the Supplementary Fund Protocol in the same way it applies to the Fund Convention.

[Merchant Shipping Act 1995 (UK), s. 172; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule]

[s.33/Ord.14/2019/w.e.f. 02.11.2023]

Contributions to Fund

182. Contributions by importers of oil and others

(1) Contributions are payable to the Fund and to the Supplementary Fund in respect of oil carried by sea to ports or terminal installations in the Falkland Islands otherwise than on a voyage only within waters landward of the baselines for measuring the breadth of the territorial sea of the Falkland Islands.

[s.34/Ord.14/2019/w.e.f. 02.11.2023]

(2) Subsection (1) applies whether or not the oil is being imported, and applies even if contributions are payable in respect of carriage of the same oil on a previous voyage.

(3) Contributions are also payable —

(a) to the Fund in respect of oil when first received in any installation in the Falkland Islands after having been carried by sea and discharged in a port or terminal installation in a country which is not a Fund Convention country; and

(b) to the Supplementary Fund in respect of oil when first received in any installation in the Falkland Islands after having been carried by sea and discharged in a port or terminal installation in a country which is not a Supplementary Fund Protocol country.

[s.34/Ord.14/2019/w.e.f. 02.11.2023]

(4) The person liable to pay contributions is —

(a) in the case of oil which is being imported into the Falkland Islands, the importer, and

(b) otherwise, the person by whom the oil is received.

(5) A person is not liable to make contributions in respect of the oil imported or received by the person in any year if the oil so imported or received in the year does not exceed 150,000 tonnes.

(6) For the purpose of subsection (5) —

(a) all the members of a group of companies be treated as a single person; and

(b) any two or more companies which have been amalgamated into a single company will be treated as the same person as that single company.

(7) The contributions payable by a person for any year will —

(a) be of such amount as may be determined —

(i) in the case of contributions to the Fund, by the Director of the Fund under Article 12 of the Fund Convention and notified to that person by the Fund;

(ii) in the case of contributions to the Supplementary Fund, by the Director of the Supplementary Fund under Article 11 of the Supplementary Fund Protocol and notified to that person by the Supplementary Fund;

(b) be payable in such instalments, becoming due at such times, as may be so notified to the person,

and if any amount due from the person remains unpaid after the date on which it became due, it will from then on bear interest, at a rate determined from time to time by the Assembly of the Fund or the Assembly of the Supplementary Fund (as the case may be), until it is paid.

[s.34/Ord.14/2019/w.e.f. 02.11.2023]

(8) The Governor may by regulations impose on persons who are or may be likely to pay contributions under this section obligations to give security for payment to the Governor, or the Fund.

(9) Regulations under sub-subsection (8) —

(a) may contain such supplemental or incidental provisions as appear to the Governor expedient; or

(b) may impose penalties for contravention of the regulations punishable on conviction by a fine not exceeding level 5 on the scale set out in Schedule 7, or such lower limit as may be specified in the regulations.

(10) In this section and in section 183, unless the context otherwise requires —

“**company**” means a body incorporated under the law of the Falkland Islands, or of any other country;

“**group**” in relation to companies, means a holding company and its subsidiaries as defined by section 165 of the Companies Act 1948 (as it applies in the Falkland Islands) subject, in the case of a company incorporated outside the Falkland Islands, to any necessary modifications of those definitions;

“**importer**” means the person by whom or on whose behalf the oil in question is entered for customs or excise purposes on importation, and “import” will be construed accordingly;

“**oil**” means crude oil and fuel oil, and —

(a) “crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes —

(i) crude oils from which distillate fractions have been removed; and

(ii) crude oils to which distillate fractions have been added;

(b) “**fuel oil**” means heavy distillates or residues from crude oil or blends of such materials intended for use as a fuel for the production of heat or power of a quality equivalent to the “American Society for Testing and Materials’ Specification for Number Four Fuel Oil (Designation D396-69)”, or heavier,

“**terminal installation**” means any site for the storage of oil in bulk which is capable of receiving oil from waterborne transportation, including any facility situated offshore and linked to any such site.

[Merchant Shipping Act 1995 (UK), s. 173; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule]

183. Power to obtain information

(1) For the purpose of transmitting to the Fund or the Supplementary Fund the names and addresses of the persons who under section 182 are liable to make contributions to the Fund or the Supplementary Fund for any year, and the quantity of oil in respect of which they are so liable, the Governor may by notice require any person engaged in producing, treating, distributing or transporting oil to furnish such information as may be specified in the notice.

[s.35/Ord.14/2019/w.e.f. 02.11.2023]

(2) A notice under this section may require a company to give such information as may be required to ascertain whether its liability is affected by section 182(6).

(3) A notice under this section may specify the way in which, and the time within which, it is to be complied with.

(4) In proceedings by the Fund or the Supplementary Fund against any person to recover any amount due under section 182, particulars contained in any list transmitted by the Governor to either of those Funds are, so far as those particulars are based on information obtained under this section, admissible as evidence of the facts stated in the list; and so far as particulars which are so admissible are based on information given by the person against whom the proceedings are brought, those particulars must be presumed to be accurate until the contrary is proved.

[s.35/Ord.14/2019/w.e.f. 02.11.2023]

(5) If a person discloses any information which has been furnished to or obtained by him or her under this section, or in connection with the execution of this section, then, unless the disclosure is made —

(a) with the consent of the person from whom the information was obtained;

(b) in connection with the execution of this section; or

(c) for the purposes of any legal proceedings arising out of this section or of any report of such proceedings,

the person is liable on conviction to a fine not exceeding level 5 on the scale set out in Schedule 7.

(6) A person who —

(a) refuses or wilfully neglects to comply with a notice under this section; or

(b) in furnishing any information in compliance with a notice under this section makes any statement which the person knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

is liable on conviction, to a fine not exceeding level 4 on the scale set out in Schedule 7 in the case of an offence under paragraph (a) and not exceeding level 7 on the scale set out in Schedule 7 in the case of an offence under paragraph (b);

[Merchant Shipping Act 1995 (UK), s. 174; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule]

Compensation for persons suffering pollution damage

184. Liability of the Fund

(1) The Fund is liable for pollution damage in the territory of the Falkland Islands if the person suffering the damage has been unable to obtain full compensation under section 163 —

(a) because the discharge or escape, or the relevant threat of contamination, by reason of which the damage was caused —

(i) resulted from an exceptional, inevitable and irresistible phenomenon; or

(ii) was due wholly to anything done or omitted to be done by another person (not being a servant or agent of the owner) with intent to do damage; or

(iii) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible, (and because liability is accordingly wholly displaced by section 165); or

(b) because the owner or guarantor liable for the damage cannot meet his or her obligations in full; or

(c) because the damage exceeds the liability under section 163 as limited by section 167.

(2) Subsection (1) applies with the substitution for the words “Falkland Islands” of the words “a Fund Convention country” where the incident has caused pollution damage in the territory of the Falkland Islands and of another Fund Convention country, and proceedings under the Liability Convention for compensation for the pollution damage have been brought in a country which is not a Fund Convention country or in the Falkland Islands.

(3) Where the incident has caused pollution damage in the territory of the Falkland Islands and of another country in respect of which the Liability Convention is in force, references in this section to the provisions of Chapter IV of this Part includes references to the corresponding provisions of the law of any country giving effect to the Liability Convention.

(4) For the purposes of this section an owner or guarantor is to be treated as incapable of meeting his obligations if the obligations have not been met after all reasonable steps to pursue the legal remedies available have been taken.

(5) Expenses reasonably incurred, and sacrifices reasonably made, by the owner voluntarily to prevent or minimise pollution damage must be treated as pollution damage for the purposes of this section, and accordingly the owner will be in the same position with respect to claims against the Fund under this section as if he had a claim in respect of liability under section 164.

(6) The Fund incurs no obligation under this section if —

(a) it proves that the pollution damage —

(i) resulted from an act of war, hostilities, civil war or insurrection, or

(ii) was caused by oil which has escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the occurrence, only on Government non-commercial service, or

(b) the claimant cannot prove that the damage resulted from an occurrence involving a ship identified by the claimant, or involving two or more ships one of which is identified by the claimant.

(7) If the Fund proves that the pollution damage resulted wholly or partly —

(a) from anything done or omitted to be done with intent to cause damage by the person who suffered the damage; or

(b) from the negligence of that person,

the Fund may (subject to subsection (9)) be exonerated wholly or partly from its obligations to pay compensation to that person.

(8) Where the liability under section 163 in respect of the pollution damage is limited to any extent by subsection (7) of that section, the Fund will (subject to subsection (9)) be exonerated to the same extent.

(9) Subsections (7) and (8) do not apply where the pollution damage consists of the costs of preventive measures or any damage caused by such measures.

[Merchant Shipping Act 1995 (UK), s. 175; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule]

184A. Liability of the Supplementary Fund

(1) The Supplementary Fund is liable for pollution damage in the territory of the Falkland Islands in accordance with the Supplementary Fund Protocol in the circumstances mentioned in paragraph 1 of Article 4 of that Protocol (cases where full compensation cannot be obtained because of the limit imposed by paragraph 4 of Article 4 of the Fund Convention).

(2) Subsection (1) applies with the substitution for the words “the Falkland Islands” by the words “a Supplementary Fund Protocol country” where the incident has caused pollution damage in the territory of the Falkland Islands and of another Supplementary Fund Protocol country, and proceedings under the Liability Convention or the Fund Convention for compensation for the pollution damage have been brought in a country which is not a Supplementary Fund Protocol country or in the Falkland Islands.

(3) Nothing in this section applies to pollution damage resulting from an incident if —

(a) in the case of a single occurrence, it took place before the day on which the Supplementary Fund Protocol enters into force as respects the Falkland Islands; or

(b) in the case of a series of occurrences having the same origin, the first of those occurrences took place before that day.

(4) The text of paragraph 1 of Article 4 of the Supplementary Fund Protocol is set out in Schedule 2A.

[Merchant Shipping Act 1995 (UK), s. 176A]

[s.36/Ord.14/2019/w.e.f. 02.11.2023]

184B. Limitation of the Supplementary Fund’s liability under section 184A

(1) The Supplementary Fund’s liability under section 184A is subject to —

(a) paragraphs 2 and 3 of Article 4 of the Supplementary Fund Protocol (which impose an overall limit on the liabilities of the Supplementary Fund); and

(b) paragraphs 2 and 3 of Article 15 of the Supplementary Fund Protocol (which prevent the Supplementary Fund from paying compensation temporarily and permanently where obligations to communicate information to the Director under paragraph 1 of Article 13 and paragraph 1 of Article 15 have not been met).

(2) For the purpose of giving effect to paragraphs 2 and 3 of Article 4 of the Supplementary Fund Protocol, a court giving judgment against the Supplementary Fund in proceedings under section 184A must notify the Supplementary Fund, and —

(a) no steps are to be taken to enforce the judgment unless and until the court gives leave to enforce it,

(b) that leave cannot be given unless and until the Supplementary Fund notifies the court either that the amount of the claim is not to be reduced under those paragraphs, or that it is to be reduced to a specified amount, and

(c) in the latter case the judgment is enforceable only for the reduced amount.

(3) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned in subsection (2) must be steps to obtain payment in sterling; and —

(a) for the purpose of converting such an amount from special drawing rights into sterling, one special drawing right will be treated as equal to such a sum in sterling as the

International Monetary Fund have fixed as being the equivalent of one special drawing right for —

(i) the relevant date, namely the date referred to in paragraph 2(b) of Article 4 of the Supplementary Fund Protocol, or

(ii) if no sum has been so fixed for the relevant date, the last day before that date for which a sum has been so fixed; and

(b) a certificate given by or on behalf of the Financial Secretary stating —

(i) that a particular sum in sterling has been so fixed for the relevant date, or

(ii) that no sum has been so fixed for the relevant date and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the relevant date,

is conclusive evidence of those matters for the purposes of this Chapter.

(4) Any document purporting to be such a certificate as is mentioned in subsection (3)(b) must, in any legal proceedings, be received in evidence and, unless the contrary is proved, is deemed to be such a certificate.

(5) The text of paragraphs 1, 2 and 3 of Article 4, paragraph 1 of Article 13 and paragraphs 1, 2 and 3 of Article 15 of the Supplementary Fund Protocol is set out in Schedule 2A.

[Merchant Shipping Act 1995 (UK), s. 176B]

[s.36/Ord.14/2019/w.e.f. 02.11.2023]

185. Limitation of Fund's liability under section 184

(1) The Fund's liability under section 184 is subject to the limits imposed by paragraphs 4 and 5 of Article 4 of the Fund Convention (which impose an overall limit on the liabilities of the Fund and the text of which is set out in Schedule 2, and in those provisions references to the Liability Convention are references to the Liability Convention within the meaning of this Chapter.

(2) A certificate given by the Director of the Fund stating that subparagraph (c) of paragraph 4 of Article 4 of the Fund Convention is applicable to any claim under section 185 is conclusive evidence for the purposes of this Chapter that it is so applicable.

(3) For the purpose of giving effect to paragraphs 4 and 5 of Article 4 of the Fund Convention, a court giving judgment against the Fund in proceedings under section 185 must notify the Fund, and —

(a) no steps can be taken to enforce the judgment unless and until the court gives leave to enforce it;

(b) that leave cannot be given unless and until the Fund notifies the court either that the amount of the claim is not to be reduced under those paragraphs, or that it is to be reduced to a specified amount; and

(c) in the latter case the judgment is enforceable only for the reduced amount.

(4) Any steps taken to obtain payment of an amount or a reduced amount in pursuance of such a judgment as is mentioned in subsection (3) must be steps to obtain payment in sterling; and —

(a) for the purpose of converting such an amount from special drawing rights into sterling one special drawing right must be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for —

(i) the relevant day, namely the day on which the Assembly of the Fund decide the date for the first payment of compensation in respect of the incident; or

(ii) if no sum has been so fixed for the relevant day, the last day before that day for which a sum has been so fixed; and

(b) a certificate given by or on behalf of the Financial Secretary stating —

(i) that a particular sum in sterling has been so fixed for the relevant day; or

(ii) that no sum has been so fixed for the relevant day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the relevant day,

is conclusive evidence of those matters for the purposes of this Chapter.

(5) Where the Secretary of State makes an order under section 176(5) of the Act, the Governor must by order make such amendments of this section and Part I of Schedule 2 for the purpose of giving effect to the order made by the Secretary of State.

(6) Any document purporting to be such a certificate as is mentioned in subsection (2) or (4)(b) will, in any legal proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

[Merchant Shipping Act 1995 (UK), s. 176; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule]

Supplemental

186. Jurisdiction and effect of judgments

(1) Where in accordance with rules of court made for the purposes of this subsection, the Fund or the Supplementary Fund has been given notice of proceedings brought against an owner or guarantor in respect of liability under section 163 —

(a) the notice is deemed to have been given to the Supplementary Fund as well; and

(b) any judgment given in the proceedings must, after it has become final and enforceable, become binding on the Fund and the Supplementary Fund in the sense that the facts and evidence in the judgment may not be disputed by the Fund or the Supplementary Fund even if it has not intervened in the proceedings.

[s.37/Ord.14/2019/w.e.f. 02.11.2023]

(2) Where a person incurs a liability under the law of a Fund Convention country corresponding to Chapter III of this Part for damage which is partly in the territory of the Falkland Islands, subsection (1), for the purpose of proceedings under this Chapter, applies with any necessary modifications to a judgment in proceedings under that law of the said country.

(3) Subject to subsections (4) and (5), the Foreign Judgments (Reciprocal Enforcement) Ordinance 1959 applies, whether or not it would so apply apart from this subsection, to —

(a) any judgment given by a court in a Fund Convention country to enforce a claim in respect of liability incurred under any provision corresponding to section 184; and

(b) any judgment given by a court in a Supplementary Fund Protocol country to enforce a claim in respect of liability incurred under any provision corresponding to section 184A,

and in its application to such a judgment the said Ordinance has effect with the omission of subsections (2) and (3) of section 6.

[s.37/Ord.14/2019/w.e.f. 02.11.2023]

(4) No steps must be taken to enforce such a judgment unless and until the court in which it is registered under the 1959 Ordinance gives leave to enforce it; and that leave cannot be given unless and until —

(a) in the case of a judgment within subsection (3)(a), the Fund notifies the court either that the amount of the claim is not to be reduced under paragraphs 4 and 5 of Article 4 of the Fund Convention (as set out in Part 1 of Schedule 2) or that it is to be reduced to a specified amount; or

(b) in the case of a judgment within subsection (3)(b), the Supplementary Fund notifies the court either that the amount of the claim is not to be reduced under paragraphs 2 and 3 of Article 4 of the Supplementary Fund Protocol (as set out in Schedule 2A) or that it is to be reduced to a specified amount.

[s.37/Ord.14/2019/w.e.f. 02.11.2023]

(5) Where the court is notified that a claim is to be reduced to a specified amount, the judgment is enforceable only for the reduced amount.

[*Merchant Shipping Act 1995 (UK), s. 177; Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997, Schedule*]

[s.37/Ord.14/2019/w.e.f. 02.11.2023]

187. Extinguishment of claims

(1) No action to enforce a claim against the Fund under this Chapter can be entertained by a court in the Falkland Islands unless —

(a) the action is commenced; or

(b) a third party notice of an action to enforce a claim against the owner or his guarantor in respect of the same damage is given to the Fund,

not later than three years after the claim against the Fund arose.

(2) In subsection (1), “**third party notice**” means a notice of the kind described in section 202(2) and (3).

(3) No action to enforce a claim against the Fund under this Chapter can be entertained by a court in the Falkland Islands unless the action is commenced not later than six years after the occurrence, or first of the occurrences, resulting in the discharge or escape or (as the case may be) in the relevant threat of contamination, by reason of which the claim against the Fund arose.

(4) Subsections (1) and (2) apply to claims against the Supplementary Fund as they apply in relation to claims against the Fund (with the substitution for the reference to the Fund in subsection (1)(b) by a reference to the Supplementary Fund).

[s.38/Ord.14/2019/w.e.f. 02.11.2023]

(5) For the purposes of this section —

(a) a person who commences an action to enforce a claim against the Fund in relation to any damage is deemed to have also commenced an action to enforce any claim he or she may have against the Supplementary Fund in relation to that damage; and

(b) a person who gives a third party notice to the Fund in relation to any damage as mentioned in subsection (1)(b) is deemed to have also given a notice to the Supplementary Fund in respect of that damage.

[Merchant Shipping Act 1995 (UK), s. 178]

[s.38/Ord.14/2019/w.e.f. 02.11.2023]

188. Subrogation

(1) In respect of any sum paid by the Fund as compensation for pollution damage the Fund will acquire by subrogation any rights in respect of the damage which the recipient has (or but for the payment would have) against any other person.

(1A) In respect of any sum paid by the Supplementary Fund as compensation for pollution damage the Supplementary Fund will acquire by subrogation any rights in respect of the damage which the recipient has (or but for the payment would have) against any other person.

[s.39/Ord.14/2019/w.e.f. 02.11.2023]

(2) In respect of any sum paid by a public authority in the Falkland Islands as compensation for pollution damage, the authority will acquire by subrogation any rights which the recipient has against the Fund or the Supplementary Fund under this Chapter.

[Merchant Shipping Act 1995 (UK), s. 179]

[s.39/Ord.14/2019/w.e.f. 02.11.2023]

189. Supplementary provisions as to proceedings involving the Fund

(1) Any proceedings by or against the Fund may either be instituted by or against the Fund in its own name or be instituted by or against the Director of the Fund as the Fund’s representative.

(2) Evidence of any instrument issued by any organ of the Fund or of any document in the custody of the Fund, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of the Fund; and any document purporting to be such a copy must, in any such proceedings, be received in evidence without proof of the official position or handwriting of the person signing the certificate.

(3) Subsections (1) and (2) apply in relation to the Supplementary Fund in the same way they apply to the Fund (with the substitution for references to the Director, any organ or an official of the Fund by references to the Director, any organ or an official of the Supplementary Fund).

[Merchant Shipping Act 1995 (UK), s. 180]

[s.40/Ord.14/2019/w.e.f. 02.11.2023]

Chapter VI – Carriage of hazardous and noxious substances

190. Introductory

(1) In this Chapter, unless the context otherwise requires, “the Convention” means the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996.

(2) The provisions and the text of the Convention, excluding the annexes, is set out in Schedule 3.

(3) In interpreting the definition of “hazardous and noxious substances” in Article 1, paragraph 5 of the Convention, any reference in that paragraph to a particular convention or code as amended must be taken to be a reference to that convention or code as amended from time to time (whether before or after the commencement of this Chapter).

[Merchant Shipping Act 1995 (UK), s. 182A]

191. Power to give effect to Convention

(1) Where an Order in Council made under section 182B of the Act extends the Convention to the Falkland Islands, the Governor must make an order giving effect to the Convention.

(2) The order under subsection (1) may —

(a) make different provision for different circumstances;

(b) make provision for references in the Order in Council to any specified document to operate as references to that document as revised or re-issued from time to time;

(c) provide for the delegation of functions exercisable by virtue of the Order in Council;

(d) include such incidental, supplemental and transitional provisions as may be expedient for the purposes of the Order in Council; and

(e) make amendments to this Chapter for the purposes of giving effect to the Order in Council.

[Merchant Shipping Act 1995 (UK), s. 182B]

192. Power of Governor to make order amending Convention in relation to article 48

(1) Where an Order in Council made under section 182B(1) of the Act extends the Convention to the Falkland Islands, the Governor may by order make such amendments to Schedule 3 as appear to the Governor to be appropriate for the purpose of giving effect to any amendment of a relevant limit which is adopted in accordance with article 48 of the Convention.

(2) In subsection (1), “**a relevant limit**” means any of the limits for the time being specified in article 9, paragraph 1 and article 14, paragraph 5 of the Convention.

[Merchant Shipping Act 1995 (UK), s. 182C]

PART 8 – LIABILITY OF SHIPOWNERS AND OTHERS

Carriage of passengers and luggage by sea

193. Scheduled convention to have force of law

(1) The provisions of the Convention relating to the Carriage of Passengers and their Luggage by Sea as set out in Part I of Schedule 4 (in this section and in Part II of that Schedule referred to as “the Convention”) have the force of law in the Falkland Islands.

(2) The provisions of Part II of Schedule 4 have effect in connection with the Convention and subsection (1) has effect subject to the provisions of that Part.

(3) Where an Order in Council has been made under section 183 of the Act to address a conflict between the provisions of this section or of Part I or II of Schedule 4 and any provisions relating to the carriage of passengers or luggage for reward by land, sea or air in any enactment in the Falkland Islands giving effect to the Convention, the Governor may make such modifications of this section or of the Schedule or any such enactment as he or she considers appropriate for resolving the conflict.

[Merchant Shipping Act 1995 (UK), s. 183, Carriage of Passengers and their Luggage by Sea (Parties to Convention) Order 1987]

Limitation of liability of shipowners, etc. and salvors for maritime claims

194. Limitation of liability for maritime claims

(1) The provisions of the Convention on Limitation of Liability for Maritime Claims 1976 (as amended by the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims of 19 November 1976) as set out in Part I of Schedule 5 (in this section and Part II of that Schedule referred to as “the Convention”) continues to have the force of law in the Falkland Islands.

[The Limitation of Liability for Maritime Claims (Parties to Convention) Order 1986]

(2) The provisions of Part II of that Schedule has effect in connection with the Convention, and subsection (1) has effect subject to the provisions of that Part.

(3) Where an Order in Council is made under —

(a) section 185(2A) of the Act modifying Parts I and II of the Convention in consequence of the revision of the Convention by the Protocol of 1996 amending the Convention, or

(b) section 185(2B) of the Act as a result of any further revisions to the Convention or to article 8 of the 1996 Protocol,

the Governor may make such revisions as he or she considers appropriate to the relevant parts of Schedule 5 to give effect to those modifications.

(4) The Governor may by order make such amendments of Parts I and II of Schedule 5 as appear to the Governor to be appropriate for the purpose of giving effect to any amendment of a relevant limit which is adopted in accordance with article 8 of the 1996 Protocol.

(5) The provisions having the force of law under this section do not apply to any liability in respect of loss of life or personal injury caused to, or loss of or damage to any property of, a person who is on board the ship in question or employed in connection with that ship or with the salvage operations in question if —

(a) he or she is so on board or employed under a contract of service governed by the law of the Falkland Islands; and

(b) the liability arises from an occurrence which took place after the commencement of this Ordinance.

(6) In this section —

“**relevant limit**” means any of the limits for the time being specified in either of the following provisions of the Convention —

(a) article 6, paragraph 1, and

(b) article 7, paragraph 1.

“**ship**” and “**salvage operations**” have the same meaning as in the Convention.

[Merchant Shipping Act 1995 (UK), s. 185; Merchant Shipping Act 1995 (Adoption) (Limitation of Liability for Maritime Claims) Order 1996, Limitation of Liability for Maritime Claims (Parties to Convention) Order 1986]

195. Exclusion of liability

(1) Subject to subsection (3), the owner of a ship registered in the Falkland Islands is not liable for any loss or damage in the following cases, namely —

(a) where any property on board the ship is lost or damaged by reason of fire on board the ship; or

(b) where any gold, silver, watches, jewels or precious stones on board the ship are lost or damaged by reason of theft, robbery or other dishonest conduct and their nature and value

were not at the time of shipment declared by their owner or shipper to the owner or master of the ship in the bill of lading or otherwise in writing.

(2) Subject to subsection (3), where the loss or damage arises from anything done or omitted by any person in his or her capacity as master or member of the crew or (otherwise than in that capacity) in the course of his employment as a servant of the owner of the ship, subsection (1) also excludes the liability of —

(a) the master, member of the crew or servant; and

(b) in a case where the master or member of the crew is the servant of a person whose liability would not be excluded by that subsection apart from this paragraph, the person whose servant he or she is.

(3) This section does not exclude the liability of any person for any loss or damage resulting from any such personal act or omission of the person as is mentioned in Article 4 of the Convention set out in Schedule 5.

(4) This section applies in relation to Her Majesty's ships while they are in Falkland Islands waters as it applies in relation to other ships.

(5) In this section “**owner**”, in relation to a ship, includes any part owner and any charterer, manager or operator of the ship.

[Merchant Shipping Act 1995 (UK), s. 186; Merchant Shipping Act 1995 (Adoption) (Limitation of Liability for Maritime Claims) Order 1996]

Multiple fault: apportionment, liability and contribution

196. Damage or loss: apportionment of liability

(1) Where, by the fault of two or more ships, damage or loss is caused to one or more of those ships, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss is in proportion to the degree in which each ship was at fault.

(2) If, in any such case, having regard to all the circumstances, it is not possible to establish different degrees of fault, the liability is apportioned equally.

(3) This section applies to persons other than the owners of a ship who are responsible for the fault of the ships, as well as to the owners of a ship and where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship, this section applies to the charterers or other persons for the time being so responsible instead of the owners.

(4) Nothing in this section operates so as to render any ship liable for any loss or damage to which the fault of the ship has not contributed.

(5) Nothing in this section affects the liability of any person under a contract of carriage or any contract, or will be construed as imposing any liability upon any person from which he or she is

exempted by any contract or by any provision of law, or as affecting the right of any person to limit his or her liability in the manner provided by law.

(6) In this section “**freight**” includes passage money and hire.

(7) In this section references to damage or loss caused by the fault of a ship include references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

[Merchant Shipping Act 1995 (UK), s. 187]

197. Loss of life or personal injuries: joint and several liability

(1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships is joint and several.

(2) Subsection (3) of section 196 applies also to this section.

(3) Nothing in this section will be construed as depriving any person of any right of defence on which, apart from this section, he or she might have relied in an action brought against him or her by the person injured, or any person or persons entitled to sue in respect of such loss of life, or affects the right of any person to limit his liability in the manner provided by law.

(4) Subsection (7) of section 196 applies also for the interpretation of this section.

[Merchant Shipping Act 1995 (UK), s. 188]

198. Loss of life or personal injuries: right of contribution

(1) Where loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, and a proportion of the damages is recovered against the owners of one of the ships which exceeds the proportion in which the ship was in fault, they may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault.

(2) Subsection (3) of section 197 applies also to this section.

(3) Nothing in this section authorises the recovery of any amount which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue.

(4) In addition to any other remedy provided by law, the persons entitled to any contribution recoverable under this section have, for the purposes of recovering it, the same rights and powers as the persons entitled to sue for damages in the first instance.

[Merchant Shipping Act 1995 (UK), s. 189]

Time limit for proceedings against owners or ship

199. Time limit for proceedings against owners or ship

(1) This section applies to any proceedings to enforce any claim or lien against a ship or her owners —

(a) in respect of damage or loss caused by the fault of that ship to another ship, its cargo or freight or any property on board it; or

(b) for damages for loss of life or personal injury caused by the fault of that ship to any person on board another ship.

(2) The extent of the fault is immaterial for the purposes of this section.

(3) Subject to subsections (5) and (6), no proceedings to which this section applies can be brought after the period of two years from the date when —

(a) the damage or loss was caused; or

(b) the loss of life or injury was suffered.

(4) Subject to subsections (5) and (6), no proceedings under any of sections 196 to 198 to enforce any contribution in respect of any overpaid proportion of any damages for loss of life or personal injury can be brought after the period of one year from the date of payment.

(5) Any court having jurisdiction in such proceedings may, in accordance with rules of court, extend the period allowed for bringing proceedings to such extent and on such conditions as it thinks fit.

(6) Any such court, if satisfied that there has not been during any period allowed for bringing proceedings any reasonable opportunity of arresting the defendant ship within —

(a) the jurisdiction of the court; or

(b) the territorial sea of the country to which the plaintiff's ship belongs or in which the plaintiff resides or has his or her principal place of business,

must extend the period allowed for bringing proceedings to an extent sufficient to give a reasonable opportunity of so arresting the ship.

[Merchant Shipping Act 1995 (UK), s. 190]

Limitation of liability of the Authority

200. Limitation of liability: Authority

(1) The Authority's liability for any loss or damage caused to any ship, or to any goods, merchandise or other things whatsoever on board any ship is limited in accordance with subsection (4) by reference to the tonnage of the largest ship registered in the Falkland Islands

which, at the time of the loss or damage is, or within the preceding five years has been, within the area over which the Authority or person discharges any functions.

(2) The limitation of liability under this section relates to the whole of any losses and damages which may arise on any one distinct occasion, although such losses and damages may be sustained by more than one person, and applies whether the liability arises at common law or under any general or local or private enactment, and notwithstanding anything contained in such an enactment.

(3) This section does not exclude the liability of the Authority for any loss or damage resulting from any such act or omission of the Authority as is mentioned in Article 4 of the Convention set out in Schedule 5.

(4) The limit of liability must be ascertained by applying to the ship by reference to which the liability is to be determined the method of calculation specified in paragraph 1(b) of Article 6 of the Convention set out in Schedule 5.

(5) For the purposes of subsection (1) a ship must not be treated as having been within the area over which the Authority discharges any functions by reason only that it has been built or fitted out within the area, or that it has taken shelter within or passed through the area on a voyage between two places both situated outside that area, or that it has loaded or unloaded mails or passengers within the area.

(6) Nothing in this section imposes any liability for any loss or damage where no liability exists apart from this section.

(7) In this section —

“**dock**” includes wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharves, piers, stages, landing places and jetties; and

“**owners of any dock or canal**” includes any authority or person having the control and management of any dock or canal, as the case may be.

[Merchant Shipping Act 1995 (UK), s. 191]

Application to Crown and its ships

201. Application to Crown and its ships

(1) Sections 194, 195, 196, 197 and 198 (except subsection (6)) apply in the case of Her Majesty’s ships as they apply in relation to other ships and section 200 applies to the Crown in its capacity as an authority or person specified in this subsection.

(2) In this section “**Her Majesty’s ships**” means —

(a) ships of which beneficial interest is vested in Her Majesty while they are within Falkland Islands waters;

(b) ships which are registered Government ships in the United Kingdom while they are within Falkland Islands waters;

(c) ships which are for the time being demised or sub-demised to or in the exclusive possession of the Crown,

where Her Majesty is interested in any such ship in right of Her Government in the Falkland Islands.

[*Merchant Shipping Act 1995, s. 192*]

Regulations requiring insurance or security

202. Compulsory insurance or security

(1) Subject to subsections (2) and (3), the Governor may make regulations requiring that, in such cases as may be prescribed by the regulations, while a ship is in Falkland Islands waters, there must be in force in respect of the ship —

(a) a contract of insurance insuring such person or persons as may be specified by the regulations against such liabilities as may be so specified and satisfying such other requirements as may be so specified; or

(b) such other security relating to those liabilities as satisfies requirements specified by or under the regulations.

(2) Regulations under this section do not apply in relation to —

(a) a qualifying foreign ship while it is exercising —

(i) the right of innocent passage; or

(ii) the right of transit passage through straits used for international navigation;

(b) any warship; or

(c) any ship for the time being used by the government of any State for other than commercial purposes.

(3) Regulations under this section may not require insurance or security to be maintained in respect of a ship in relation to any liability in any case where an obligation to maintain insurance or security in respect of that ship in relation to that liability is imposed by section 173 or by or under an Order in Council made under section 182B of the Act.

(4) Regulations under this section may require that, where a person is obliged to have in force in respect of a ship a contract of insurance or other security, such documentary evidence as may be specified by or under the regulations of the existence of the contract of insurance or other security must be carried in the ship and produced on demand, by such persons as may be specified in the regulations, to such persons as may be so specified.

(5) Regulations under this section may provide —

(a) that in such cases as are prescribed a ship which contravenes the regulations is liable to be detained and that section 270 has effect, with such modifications (if any) as are prescribed by the regulations, in relation to the ship;

(b) that a contravention of the regulations is an offence punishable on conviction by a fine of an amount not exceeding level 5 on the scale set out in Schedule 7, or such less amount as is prescribed by the regulations, and on conviction on indictment by a fine; and

(c) that any such contravention is an offence punishable only on conviction by a fine of an amount not exceeding level 5 on the scale set out in Schedule 7, or such less amount as is prescribed by the regulations.

(6) Regulations under this section may —

(a) make different provision for different cases;

(b) make provision in terms of any document which the Governor or any person considers relevant from time to time; and

(c) include such incidental, supplemental and transitional provision as appears to the Governor to be expedient for the purposes of the regulations.

[Merchant Shipping Act 1995 (UK), s. 192A]

Aids to navigation: charts and publications

203. Establishment and management of aids

(1) The Governor or any department as the Governor may appoint must establish within the coastal areas of the Falkland Islands such aids to navigation as may be necessary to facilitate safe navigation.

(2) If it is proposed to establish or discontinue an aid, or alter the lighting characteristics or any other distinguishing features of an aid, the Authority must be consulted before any such proposal is carried into effect.

(3) For the purposes of this section and sections 204 to 207 —

“**aids to navigation**” and “**aids**” means all lighthouses, buoys beacons, radio aids, or any other light, signal or mark established to aid marine navigation and includes all buildings, moorings and other works associated therewith; and

“**coastal area**” includes the coast of the Falkland Islands and all Falkland Islands waters.

(4) This section and sections 204 to 207 apply to the coastal areas of the Falkland Islands.

[Merchant Shipping Act 2001 (British Virgin Islands), s. 165]

204. Nautical publications, charts and other information

(1) The harbour master may cause the publication and updating of information on aids to navigation and declare such publications and any other publications, to be approved nautical publications.

(2) In any legal proceedings, the production of an approved nautical publication authenticated by the harbour master is *prima facie* evidence of the matters appearing therein.

(3) The Governor may make regulations specifying such charts, directions or information as appear to the Governor to be necessary or expedient for the safe operation of ships.

(4) Regulations made pursuant to this section may require ships registered in the Falkland Islands or such descriptions of ships as may be specified in the regulations to carry and use, either at all times or on such voyages as may be specified in the regulations, the charts, copies of directions or information so specified.

(5) If a ship goes to sea or attempts to go to sea without carrying the charts, copies of direction or information which it is required to carry according to the regulations made under this section, the master and owner each commits an offence and is liable on conviction to a fine not exceeding level 5 on the scale set out in Schedule 7.

[Merchant Shipping Act 2001 (British Virgin Islands), s. 166]

205. Prosecution of offences relating to aids

Any person who —

(a) contravenes subsections (1) and (2) of section 203;

(b) wilfully or negligently damages, destroys or allows a ship to foul an aid;

(c) wilfully or negligently does anything which causes the view of an aid to be obstructed in such a manner as to lessen its efficiency;

(d) wilfully, negligently or without lawful authority does anything which interferes with an aid so as to hinder the effective use of the aid;

(e) trespasses on or without lawful excuse, is found in or on an aid, or on any land upon which an aid is situated,

commits an offence and, in addition to the expenses of making good any damage so occasioned, is liable on conviction to a fine not exceeding level 5 on the scale set out in Schedule 7.

[Merchant Shipping Act 2001 (British Virgin Islands), s. 167]

206. Detention of ships

Where a ship damages, destroys or fouls an aid, the Authority may detain the ship until the cost of repairing or replacing the aid or rendering the aid effective again is paid.

[Merchant Shipping Act 2001 (British Virgin Islands), s. 168]

207. Fire or lights detrimental to navigation

(1) A person must not show a light, including light from a fire, in such a place or manner as to mislead ships navigating in the coastal areas of the Falkland Islands.

(2) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding level 6 on the scale set out in Schedule 7.

(3) The harbour master may cause to be extinguished any fire or light in respect of which notice is given under this section where the person to whom the notice has been given fails to comply within the time specified in the notice.

(4) For the purpose of extinguishing false or unauthorised lights, an officer authorised by the harbour master may enter the place where the light is situated and forthwith extinguish the same without causing unnecessary damage.

[Merchant Shipping Act 2001 (British Virgin Islands), s. 169]

PART 9 – WRECK AND SALVAGE

Interpretation

208. Interpretation

(1) In this Part —

“**salvage**” includes, subject to the Salvage Convention, all expenses properly incurred by the salvor in the performance of the salvage services;

“**salvor**” means, in the case of salvage services rendered by the officers or crew or part of the crew of any ship belonging to Her Majesty, the person in command of the ship;

“**vessel**” includes any ship or boat, or any other description of vessel used in navigation; and

“**wreck**” includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water.

(2) Fishing boats or fishing gear lost or abandoned at sea and either —

(a) found or taken possession of within Falkland Islands waters; or

(b) found or taken possession of beyond those waters and brought within those waters,

must be treated as wreck for the purposes of this Part.

[Merchant Shipping Act 1995 (UK), s. 255, Merchant Shipping (Salvage Convention) (Overseas Territories) Order 1997, Schedule 2 S.I. 1997/2586]

Chapter I – Salvage

209. Salvage Convention 1989 to have force of law

(1) The provisions of the International Convention on Salvage, 1989 as set out in Part I of Schedule 6 (in this Chapter referred to as “the Salvage Convention”) continue to have the force of law in the Falkland Islands.

(2) The provisions of Part II of the Salvage Convention, and subsection (1) has effect subject to the provisions of the Merchant Shipping (Salvage Convention) (Overseas Territories) Order 1997.

(3) Nothing in subsection (1) or (2) affects any rights or liabilities arising out of any salvage operations started or other acts done before 30th November 1997.

[Merchant Shipping Act 1995 (UK), s. 224; Merchant Shipping(Salvage Convention) (Overseas Territories) Order 1997, Schedule 2]

210. Valuation of property by receiver

(1) Where any dispute as to salvage arises, the receiver may, on the application of either party, appoint a valuer to value the property.

(2) When the valuation has been made the receiver must give copies of it to both parties.

(3) A copy of the valuation purporting to be signed by the valuer, and to be certified as a true copy by the receiver, is admissible as evidence in any subsequent proceedings.

(4) There must be paid in respect of the valuation by the person applying for it such fee as the Governor may direct.

[Merchant Shipping Act 1995 (UK), s. 225]

211. Detention of property liable for salvage by receiver

(1) Where salvage is due to any person under this Chapter, the receiver must —

(a) if the salvage is due in respect of services rendered —

(i) in assisting a vessel;

(ii) in saving life from a vessel; or

(iii) in saving the cargo and equipment of a vessel, detain the vessel and cargo or equipment; and

(b) if the salvage is due in respect of the saving of any wreck, and the wreck is not sold as unclaimed under this Chapter, detain the wreck.

(2) Subject to subsection (3), the receiver must detain the vessel and the cargo and equipment, or the wreck, as the case may be, until payment is made for salvage, or process is issued for the arrest or detention of the property by the court.

- (3) The receiver may release any property detained under subsection (2) if security is given —
- (a) to his or her satisfaction; or
 - (b) where —
 - (i) the claim for salvage exceeds £5,000; and
 - (ii) any question is raised as to the sufficiency of the security,

to the satisfaction of the court.

(4) Any security given for salvage under this section to an amount exceeding £5,000 may be enforced by the court in the same manner as if bail had been given in that court.
[Merchant Shipping Act 1995 (UK), s. 226]

212. Sale of detained property by receiver

(1) The receiver may sell any detained property if the persons liable to pay the salvage in respect of which the property is detained are aware of the detention, in the following cases.

(2) Those cases are where the amount —

(a) is not disputed, and payment of the amount due is not made within twenty days after the amount is due;

(b) is disputed, but no appeal lies from the first court to which the dispute is referred, and payment is not made within twenty days after the decision of the first court; or

(c) is disputed and an appeal lies from the decision of the first court to some other court, and within twenty days of the decision of the first court neither payment of the sum due is made nor proceedings are commenced for an appeal.

(3) The proceeds of sale of detained property must, after payment of the expenses of the sale, be applied by the receiver in payment of the expenses, fees and salvage and any excess must be paid to the owners of the property or any other persons entitled to it.

(4) In this section “**detained property**” means property detained by the receiver under section 211(2).

[Merchant Shipping Act 1995 (UK), s. 227]

213. Apportionment of salvage under £5,000 by the receiver

(1) Where —

(a) the aggregate amount of salvage payable in respect of salvage services rendered in Falkland Islands waters has been finally determined and does not exceed £5,000; but

(b) a dispute arises as to the apportionment of the amount among several claimants,

the person liable to pay the amount may apply to the receiver for leave to pay it to the receiver.

(2) The receiver must, if he thinks fit, receive the amount and, if the receiver does, he or she must give the person paying it a certificate stating the amount paid and the services in respect of which it is paid.

(3) A certificate under subsection (2) is a full discharge and indemnity to the person by whom it was paid, and to his vessel, cargo, equipment and effects against the claims of all persons in respect of the services mentioned in the certificate.

(4) The receiver must with all convenient speed distribute any amount received by him or her under this section among the persons entitled to it, on such evidence, and in such shares and proportions, as he or she thinks fit.

(5) Any decision by the receiver under subsection (4) must be made on the basis of the criteria contained in Article 13 of the Salvage Convention.

(6) The receiver may retain any money which appears to the receiver to be payable to any person who is absent.

(7) A distribution made by a receiver under this section is final and conclusive as against all persons claiming to be entitled to any part of the amount distributed.

[Merchant Shipping Act 1995 (UK), s. 228]

214. Apportionment of salvage by the court

(1) Where —

(a) the aggregate amount of salvage payable in respect of salvage services rendered in Falkland Islands waters has been finally determined and exceeds £5,000; or

(b) the aggregate amount of salvage payable in respect of salvage services rendered outside Falkland Islands waters (of whatever amount) has been finally determined; but

(c) in either case, any delay or dispute arises as to the apportionment of the amount,

the court may cause the amount of salvage to be apportioned among the persons entitled to it in such manner as it thinks just.

(2) Any decision of the court under this section must be made on the basis of the criteria contained in Article 13 of the Salvage Convention.

(3) For the purpose of making that apportionment, the court may —

(a) appoint any person to carry that apportionment into effect;

(b) compel any person in whose hands or under whose control the amount may be to distribute it or to pay it into court to be dealt with as the court directs; and

(c) issue such process as it thinks fit.
[*Merchant Shipping Act 1995 (UK), s. 229*]

215. Salvage claims against the Crown and Crown rights of salvage and regulation of salvage claims

(1) Subject to section 29 of the Crown Proceedings Act 1947 in its application to the Falkland Islands (exclusion of proceedings in rem against the Crown) (so far as consistent with the Salvage Convention), the law relating to civil salvage, whether of life or property, except sections 210, 211 and 212, applies in relation to salvage services in assisting any of Her Majesty's ships in Falkland Islands waters, or in saving life from Her Majesty's ships, or in saving any cargo or equipment belonging to Her Majesty in right of Her Government in the Falkland Islands, in the same manner as if the ship, cargo or equipment belonged to a private person.

(2) Where salvage services are rendered by or on behalf of Her Majesty in right of Her Government in the Falkland Islands, Her Majesty is entitled to claim salvage in respect of those services to the same extent as any other salvor, and has the same rights and remedies of those services as any other salvor.

(3) No claim for salvage services by the commander or crew, or part of the crew, of any of Her Majesty's ships can be finally adjudicated upon in the Falkland Islands without the consent of the Attorney General to the prosecution of the claim.

(4) Any document purporting to give the consent of and to be signed by the Attorney General for the purposes of subsection (3) is evidence of that consent.

(5) "Her Majesty's ships" has the same meaning in this section as in section 201(2).
[*Merchant Shipping Act 1995 (UK), s.230*]

Chapter II – Wreck

Vessels in distress

216. Application of, and discharge of functions under, sections 217, 218, 219, and 220

(1) Sections 217, 218, 219 and 220 apply in circumstances where a vessel registered in the Falkland Islands or a foreign vessel is wrecked, stranded, or in distress at any place on or near the coasts of the Falkland Islands or any tidal water within Falkland Islands waters.

(2) Where any function is conferred on the receiver by any of those sections, that function may be discharged by any customs officer or any officer designated by the Governor to discharge that function.

(3) An officer discharging any functions of the receiver under this section must, with respect to any goods or articles belonging to a vessel the delivery of which to the receiver is required by any provision of this Chapter, be treated as the agent of the receiver.

(4) Notwithstanding subsection (3), an officer discharging such functions is not —

(a) entitled to any fees payable to receivers; or

(b) to be deprived of any right to salvage to which he or she would otherwise be entitled.

(5) In any of those sections “shipwrecked persons”, in relation to a vessel, means persons belonging to the vessel.

[Merchant Shipping Act 1995 (UK), s. 231]

217. Duty of receiver where vessel in distress

(1) In circumstances in which this section applies by virtue of section 216 in relation to any vessel the receiver must, on being informed of the circumstances, discharge the following functions.

(2) Subject to subsection (3), the receiver must —

(a) immediately proceed to the place where the vessel is;

(b) take command of all persons present; and

(c) assign such duties and give such directions to each person as he or she thinks fit for the preservation of the vessel and of the lives of the shipwrecked persons.

(3) The receiver must not interfere between the master and crew of the vessel in reference to the management of the vessel unless he or she is requested to do so by the master.

(4) Subject to subsection (3), if any person intentionally disobeys the direction of the receiver that person is liable, on conviction, to a fine not exceeding level 3 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 232]

218. Powers of receiver in case of vessel in distress

(1) In circumstances where this section applies by virtue of section 189 in relation to any vessel the receiver may, for the purpose of the preservation of shipwrecked persons or of the vessel, cargo and equipment —

(a) require such persons as the receiver thinks necessary to assist him or her;

(b) require the master, or other person having the charge, of any vessel near at hand to give such assistance with his or her crew, or vessel, as may be in his or her power; and

(c) require the use of any vehicle that may be near at hand.

(2) If any person refuses, without reasonable excuse, to comply with any requirement made under subsection (1) the person commits an offence and is liable, on conviction, to a fine not exceeding level 3 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 233]

219. Power to pass over adjoining land

(1) In circumstances where this section applies by virtue of section 216 in relation to any vessel, all persons may, subject to subsections (3) and (4), for the purpose of —

- (a) rendering assistance to the vessel;
- (b) saving the lives of shipwrecked persons; or
- (c) saving the cargo or equipment of the vessel,

pass and repass over any adjoining land without being subject to interruption by the owner or occupier and deposit on the land any cargo or other article recovered from the vessel.

(2) The right of passage conferred by subsection (1) is a right of passage with or without vehicles.

(3) No right of passage is conferred by subsection (1) where there is some public road equally convenient.

(4) The rights conferred by subsection (1) must be so exercised as to do as little damage as possible.

(5) Any damage sustained by an owner or occupier of land in consequence of the exercise of the rights conferred by this section is a charge on the vessel, cargo or articles in respect of or by which the damage is caused.

(6) Any amount payable in respect of such damage must, in case of dispute, be determined and is, in default of payment, recoverable in the same manner as the amount of salvage is determined and recoverable under this Part.

(7) If the owner or occupier of any land —

- (a) impedes or hinders any person in the exercise of the rights conferred by this section;
- (b) impedes or hinders the deposit on the land of any cargo or other article recovered from the vessel; or
- (c) prevents or attempts to prevent any cargo or other article recovered from the vessel from remaining deposited on the land for a reasonable time until it can be removed to a safe place of public deposit,

he or she commits an offence and is liable, on conviction, to a fine not exceeding level 3 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 234]

220. Liability for damage in case of plundered vessel

(1) Where, in circumstances in which this section applies by virtue of section 216 in relation to any vessel, the vessel or any part of its cargo and equipment is plundered, damaged or destroyed

by persons in circumstances in which those persons commit the offence of riot, compensation must be made to the owner of the vessel, cargo or equipment in accordance with regulations made under subsection (2).

(2) The Governor may make regulations setting out any provisions to govern the payment of compensation under this section.

[Merchant Shipping Act 1995 (UK), s. 235]

Dealing with wreck

221. Duties of finder etc. of wreck

(1) If any person finds or takes possession of any wreck in Falkland Islands waters or finds or takes possession of any wreck outside Falkland Islands waters and brings it within those waters, the person must —

(a) if the person is the owner of it, give notice to the receiver stating that he or she has found or taken possession of it and describing the marks by which it may be recognised; or

(b) if the person is not the owner of it, give notice to the receiver that he or she has found or taken possession of it and, as directed by the receiver, either hold it to the receiver's order or deliver it to the receiver.

(2) If any person fails, without reasonable excuse, to comply with subsection (1) that person commits an offence and is liable, on conviction, to a fine not exceeding level 4 on the scale set out in Schedule 7 and if the person is not the owner of the wreck he or she also —

(a) forfeits any claim to salvage; and

(b) is liable to pay twice the value of the wreck —

(i) if it is claimed, to the owner of it; or

(ii) if it is unclaimed, to the person entitled to the wreck.

(3) Any sum payable under subsection (2)(b) to the owner of the wreck or to the persons entitled to the wreck may be recovered summarily as a civil debt.

[Merchant Shipping Act 1995 (UK), s. 236]

222. Provisions as respects cargo, etc.

(1) Where a vessel is wrecked, stranded, or in distress at any place on or near the coasts of the Falkland Islands or any tidal water within Falkland Islands waters, any cargo or other articles belonging to or separated from the vessel which are washed on shore or otherwise lost or taken from the vessel must be delivered to the receiver.

(2) If any person (whether the owner or not) —

(a) conceals or keeps possession of any such cargo or article; or

(b) refuses to deliver any such cargo or article to the receiver or to any person authorised by the receiver to require delivery,

he or she commits an offence and is liable, on conviction, to a fine not exceeding level 4 on the scale set out in Schedule 7.

(3) The receiver or any person authorised by the receiver may take any such cargo or article (if necessary by force) from any person who refuses to deliver it.

[Merchant Shipping Act 1995 (UK), s. 237]

223. Receiver to give notice of wreck

(1) Where the receiver takes possession of any wreck he or she must, within 48 hours make a record describing the wreck and any marks by which it is distinguished.

(2) The record made by the receiver under subsection (1) must be kept by the receiver available for inspection by any person during reasonable hours without charge.

[Merchant Shipping Act 1995 (UK), s. 238]

224. Claims of owners to wreck

(1) The owner of any wreck in the possession of the receiver who establishes his or her claim to the wreck to the satisfaction of the receiver within one year from the time when the wreck came into the receiver's possession is, on paying the salvage, fees and expenses due, entitled to have the wreck delivered or the proceeds of sale paid to him or her.

(2) Where —

(a) a foreign ship has been wrecked on or near the coasts of the Falkland Islands; or

(b) any articles belonging to or forming part of, or of the cargo of, a foreign ship which has been wrecked on or near the coasts of the Falkland Islands are found on or near the coast or are brought into any port,

the appropriate consular officer must, in the absence of the owner and of the master or other agent of the owner, be treated as the agent of the owner for the purposes of the custody and disposal of the wreck and such articles.

(3) In subsection (2) “**the appropriate consular officer**”, in relation to a foreign ship, means the consul general of the country to which the ship or, as the case may be, the owners of the cargo may have belonged or any consular officer of that country authorised for the purpose by any treaty or arrangement with that country.

[Merchant Shipping Act 1995 (UK), s. 239]

225. Immediate sale of wreck in certain cases

(1) The receiver may at any time sell any wreck in his possession if, in the receiver's opinion —

(a) it is under the value of £5,000;

(b) it is so much damaged or of so perishable a nature that it cannot with advantage be kept;
or

(c) it is not of sufficient value to pay for storage.

(2) The receiver may also sell any wreck in his or her possession before the end of the year referred to in section 224(1) if —

(a) in the receiver's opinion it is unlikely that any owner will establish a claim to the wreck within that year; and

(b) no statement has been given to the receiver under section 227(1) in relation to the place where the wreck was found.

(3) Subject to subsection (4), the proceeds of sale must, after defraying the expenses of the sale, be held by the receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold.

(4) Where the receiver sells any wreck in a case falling within subsection (2), he or she may make to the salvors an advance payment, of such amount as the receiver thinks fit and subject to such conditions as he or she thinks fit, on account of any salvage that may become payable to them in accordance with section 228(5).

[Merchant Shipping Act 1995 (UK) s. 240]

Unclaimed wreck

226. Right of Crown to unclaimed wreck

Her Majesty's Government in right of the Falkland Islands is entitled to all unclaimed wreck found in the Falkland Islands or in Falkland Islands waters except in places where said Government has granted the right to any other person.

[Merchant Shipping Act 1995 (UK), s. 241]

227. Notice of unclaimed wreck to be given to persons entitled

(1) Any person who is entitled to unclaimed wreck found at any place in the Falkland Islands or in Falkland Islands waters must give the receiver a statement containing the particulars of his or her entitlement and specifying an address to which notices may be sent.

(2) Where a statement has been given to the receiver under subsection (1) and the entitlement is proved to the satisfaction of the receiver, the receiver must, on taking possession of any wreck found at a place to which the statement refers, within 48 hours, send to the specified address a description of the wreck and of any marks distinguishing it.

[Merchant Shipping Act 1995 (UK), s. 242]

228. Disposal of unclaimed wreck

(1) Where, as respects any wreck found in the Falkland Islands or in Falkland Islands waters and in the possession of the receiver, no owner establishes a claim to it within one year after it came

into the receiver's possession, the wreck must be dealt with in accordance with the provisions of this section.

(2) If the wreck is claimed by any person who has delivered the statement required by section 198 and has proved to the satisfaction of the receiver his or her entitlement to receive unclaimed wreck found at the place where the wreck was found, the wreck must, on payment of all expenses, costs, fees and salvage due in respect of it, be delivered to that person.

(3) If the wreck is not claimed by any person in accordance with section 227, the receiver must sell the wreck and pay the proceeds as directed by subsection (6), after making the deductions required by subsection (4) and paying to the salvors the amount of salvage determined under subsection (5).

(4) The amounts to be deducted by the receiver are —

- (a) the expenses of the sale;
- (b) any other expenses incurred by him or her; and
- (c) the receiver's fees.

(5) The amount of salvage to be paid by the receiver to the salvors is such amount as the Governor directs generally or in the particular case.

(6) The proceeds of sale (after making those deductions and salvage payments) must be paid by the receiver into the Consolidated Fund.

[Merchant Shipping Act 1995 (UK), s. 243]

229. Effect of delivery of wreck etc. under this Part

(1) Delivery of wreck or payment of the proceeds of sale of wreck by the receiver under this Chapter discharges the receiver from all liability in respect of the delivery or payment.

(2) Delivery of wreck by the receiver under this Chapter does not, however, prejudice or affect any question which may be raised by third parties concerning the right or title to the wreck or concerning the title to the soil of the place at which the wreck was found.

[Merchant Shipping Act 1995 (UK), s. 244]

Offences in respect of wreck

230. Taking wreck to foreign port

(1) A person commits an offence if he or she takes into any foreign port and sells —

- (a) any vessel stranded, derelict or otherwise in distress found on or near the coasts of the Falkland Islands or any tidal water within Falkland Islands waters;
- (b) any part of the cargo or equipment of, or anything belonging to, such a vessel; or
- (c) any wreck found within those waters.

(2) A person convicted of an offence under this section is liable, on conviction to imprisonment for a term not exceeding five years.

[Merchant Shipping Act 1995 (UK), s. 245]

231. Interfering with wrecked vessel or wreck

(1) Subject to subsection (2), a person commits an offence if, without the permission of the master, the person boards or attempts to board any vessel which is wrecked, stranded or in distress.

(2) No offence is committed under subsection (1) if the person is the receiver or a person lawfully acting as the receiver or if the person acts by command of the receiver or a person so acting.

(3) A person commits an offence if he or she —

(a) impedes or hinders or attempts to impede or hinder the saving of —

(i) any vessel stranded or in danger of being stranded, or otherwise in distress, on or near any coast or tidal water; or

(ii) any part of the cargo or equipment of any such vessel; or

(iii) any wreck;

(b) conceals any wreck;

(c) defaces or obliterates any mark on a vessel; or

(d) wrongfully carries away or removes —

(i) any part of any vessel stranded or in danger of being stranded, or otherwise in distress, on or near any coast or tidal water;

(ii) any part of the cargo or equipment of any such vessel; or

(iii) any wreck.

(4) The master of a vessel may forcibly repel any person committing or attempting to commit an offence under subsection (1).

(5) A person convicted of an offence under this section is liable, on conviction —

(a) in the case of an offence under subsection (1), to a fine not exceeding level 3 on the scale set out in Schedule 7;

(b) in the case of an offence under subsection (3), to a fine not exceeding level 4 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 246]

232. Powers of entry, etc.

(1) Where the receiver has reason to believe that —

- (a) any wreck is being concealed by or is in the possession of some person who is not the owner of it; or
- (b) any wreck is being otherwise improperly dealt with,

the receiver may apply to a justice of the peace for a search warrant.

(2) Where a search warrant is granted under subsection (1) to the receiver, the receiver may, by virtue of the warrant —

- (a) enter any house, or other place (wherever situated) or any vessel; and
- (b) search for, seize and detain any wreck found there.

(3) If any seizure of wreck is made under this section in consequence of information given by any person to the receiver, the person giving the information is entitled, by way of salvage, to such sum, not exceeding £100, as the receiver may allow.

[Merchant Shipping Act 1995 (UK), s. 247]

Chapter III – Supplemental

Administration

233. Functions of the Governor as to wreck

(1) The Governor has the general superintendence throughout the Falkland Islands of all matters relating to wreck.

(2) The Chief Executive may appoint one or more persons to be receiver of wreck for the purposes of this Part and a receiver so appointed must discharge such functions as are assigned to him or her by the Chief Executive.

(3) The appointment of any person to the office of receiver must be published in a notice in the *Gazette*.

[Merchant Shipping Act 1995 (UK), s. 248]

234. Expenses and fees of receivers

(1) There must be paid to the receiver the expenses properly incurred by him or her in the discharge of his or her functions and also, in respect of such matters as may be prescribed by regulations made by the Governor, such fees as may be so prescribed.

(2) The receiver is not entitled to any other remuneration.

(3) The receiver, in addition to all other rights and remedies for the recovery of those expenses and fees, has the same rights and remedies in respect of those expenses and fees as a salvor has in respect of salvage due to him or her.

(4) Whenever any dispute arises as to the amount payable to the receiver in respect of expenses or fees, that dispute must be determined by the Governor, whose decision is final.

[Merchant Shipping Act 1995 (UK), s. 249]

Coastguard services

235. Remuneration for services of coastguard

(1) Subject to subsection (2), where services are rendered by any officers of the coastguard service in watching or protecting shipwrecked property the owner of the property must pay in respect of those services remuneration according to a scale fixed by the Governor.

(2) No liability in respect of those services arises under subsection (1) where —

(a) the services have been declined by the owner of the property or his or her agent at the time they were tendered; or

(b) salvage has been claimed and awarded for the services.

(3) Remuneration under this section is —

(a) recoverable by the same means;

(b) paid to the same persons; and

(c) accounted for and applied in the same manner,

as fees received by the receiver under section 234.

(4) The scale fixed by the Governor must not exceed the scale by which remuneration to officers of the coastguard for extra duties in the ordinary service of the Collector of Customs is for the time being regulated.

[Merchant Shipping Act 1995 (UK), s. 250]

Release from customs and excise control

236. Release of goods from customs and excise control

(1) The Collector of Customs must, subject to taking security for the protection of the revenue in respect of the goods, permit all goods saved from any ship stranded or wrecked on its homeward voyage to be forwarded to the port of its original destination.

(2) The Collector of Customs must, subject to taking such security, permit all goods saved from any ship stranded or wrecked on her outward voyage to be returned to the port at which they were shipped.

(3) In this section “**goods**” includes wares and merchandise.
[Merchant Shipping Act 1995 (UK), s. 251]

Removal of wrecks

237. Powers of Authority in relation to wrecks

(1) Where any vessel is sunk, stranded or abandoned in, or in or near any approach to, any harbour or tidal water under the control of the Authority in such a manner as, in the opinion of the Authority, to be, or be likely to become, an obstruction or danger to navigation or to lifeboats engaged in lifeboat service in that harbour or water or approach to the harbour or water, the Authority may exercise any of the following powers.

(2) Those powers are —

(a) to take possession of, and raise, remove or destroy the whole or any part of the vessel and any other property to which the power extends;

(b) to light or buoy the vessel or part of the vessel and any such other property until it is raised, removed or destroyed; and

(c) subject to subsections (5) and (6), to sell, in such manner as the Authority think fit, the vessel or part of the vessel so raised or removed and any other property recovered in the exercise of the powers conferred by paragraph (a) or (b);

(d) to reimburse themselves, out of the proceeds of the sale, for the expenses incurred by them in relation to the sale.

(3) The other property to which the powers conferred by subsection (2) extend is every article or thing or collection of things being or forming part of the equipment, cargo, stores or ballast of the vessel.

(4) Any surplus of the proceeds of a sale under subsection (2)(c) must be held by the Authority on trust for the persons entitled to it.

(5) Except in the case of property which is of a perishable nature or which would deteriorate in value by delay, no sale can be made under subsection (2)(c) until at least seven days’ notice of the intended sale has been given by advertisement in a local newspaper in wide circulation in the Falkland Islands.

(6) At any time before any property is sold under subsection (2)(c), the owner of the property is entitled to have it delivered to him or her on payment of its fair market value.

(7) The market value of property for the purposes of subsection (6) is that agreed on between the Authority and the owner or, failing agreement, that determined by a person appointed for the purpose by the Governor.

(8) The sum paid to the Authority in respect of any property under subsection (6) must, for the purposes of this section, be treated as the proceeds of sale of the property.

(9) Any proceeds of sale arising under subsection (2)(c) from the sale of a vessel and any other property recovered from the vessel must be treated as a common fund.

(10) This section is without prejudice to any other powers of the Authority.
[Merchant Shipping Act 1995 (UK) s. 252]

PART 10 – ENFORCEMENT OFFICERS AND POWERS

Enforcement Officers

238. Appointment of inspectors and surveyors

(1) The Governor may, if he or she thinks fit, appoint any person as an inspector to report to the Governor —

(a) upon the nature and causes of any accident or damage which any ship has or is alleged to have sustained or caused;

(b) whether any requirements, restrictions or prohibitions imposed by or under this Ordinance or the Maritime Labour Ordinance 2019 have been complied with or (as the case may be) contravened;

(c) whether the hull and machinery of a ship are sufficient and in good condition; or

(d) what measures have been taken to prevent the escape of oil or mixtures containing oil.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(2) The Governor may, at such ports as he or she thinks fit, appoint persons to be surveyors of ships for the purposes of this Ordinance or the Maritime Labour Ordinance 2019 and may remove any person so appointed.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(3) A surveyor of ships may be appointed either as a ship surveyor or as an engineer surveyor or as both.

(4) Surveyor of ships may be appointed either generally or for any particular case or purpose.

(5) The Governor may also appoint a surveyor general of ships for the Falkland Islands and such other officers in connection with the survey of ships and other matters relating to the survey of ships as the Governor thinks fit.

(6) The Governor may appoint persons to be inspectors for the purposes of sections 243 to 248.

(7) An inspector appointed under subsection (1) must be treated as appointed under subsection (6).

(8) Every surveyor of ships must be treated as a person appointed generally under subsection (1) to report to the Governor in every kind of case falling within paragraphs (b) and (d) of that subsection in relation to Chapter II of Part 7.

(9) In this Ordinance —

“**Departmental inspector**” means an inspector appointed under subsection (1);

“**Departmental officer**” means any public officer discharging functions for the purposes of this Ordinance;

“**surveyor of ships**” means a surveyor appointed under subsection (2),

and the reference to requirements, restrictions or prohibitions under this Ordinance includes any such requirements, restrictions or prohibitions constituting the terms of any approval, licence, consent or exemption given in any document issued under this Ordinance.

[*Merchant Shipping Act 1995 (UK), s. 256*]

Inspection etc. powers

239. Powers to require production of ships’ documents

(1) The powers conferred by this section are conferred in relation to ships registered in the Falkland Islands and can be discharged by any of the following officers —

- (a) any Departmental officer;
- (b) any marine officer;
- (c) the Registrar General of Shipping or any person discharging his or her functions;
- (d) the Collector of Customs; or
- (e) any superintendent,

whenever the officer has reason to suspect that this Ordinance or any law for the time being in force relating to merchant seafarers or navigation is not complied with.

(2) Those powers are —

- (a) to require the owner, master, or any of the crew to produce any official log-books or other documents relating to the crew or any member of the crew in their possession or control;
- (b) to require the master to produce a list of all persons on board his ship, and take copies of or extracts from the official log-books or other such documents;
- (c) to muster the crew; and

(d) to require the master to appear and give any explanation concerning the ship or her crew or the official log-books or documents produced or required to be produced.

(3) If any person, on being duly required by an officer under this section to produce a log-book or any document, fails without reasonable excuse to produce the log-book or document, the person commits an offence and is liable on conviction to a fine not exceeding level 3 on the scale set out in Schedule 7.

(4) If any person, on being duly required by any officer under this section —

(a) to produce a log-book or document, refuses to allow the log-book or document to be inspected or copied;

(b) to muster the crew, impedes the muster; or

(c) to give any explanation, refuses or neglects to give the explanation or knowingly misleads or deceives the officer,

he or she commits an offence and is liable on conviction to a fine not exceeding level 5 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 257]

240. Powers to inspect ships and their equipment, etc.

(1) For the purposes of ensuring that the provisions of this Ordinance other than sections 139 to 152 and sections 153 to 161 or the Maritime Labour Ordinance 2019 and the provisions of regulations and rules made under this Ordinance (other than those sections) or that Ordinance are complied with or that the terms of any approval, licence, consent, direction or exemption given by virtue of such regulations are duly complied with, the following persons, namely —

(a) a surveyor of ships;

(b) a superintendent; or

(c) any person appointed by the Governor, either generally or in a particular case, to exercise powers under this section,

may at all reasonable times go on board a ship in the Falkland Islands or in Falkland Islands waters and inspect the ship and its equipment or any part thereof, any articles on board and any document carried in the ship in pursuance of this Ordinance or in pursuance of regulations or rules under this Ordinance.

[s9/Ord. 14/2019/w.e.f. 26.09.2019]

(2) The powers conferred by subsection (1) are not exercisable in relation to a qualifying foreign ship while the ship is exercising —

(a) the right of innocent passage; or

(b) the right of transit passage through straits used for international navigation.

(3) The powers conferred by subsection (1) are, if the ship is a ship registered in the Falkland Islands, also exercisable outside Falkland Islands waters and may be so exercised by a proper officer as well as the persons mentioned in that subsection.

(4) A person exercising powers under this section must not unnecessarily detain or delay a ship but may, if he or she considers it necessary in consequence of an accident or for any other reason, require a ship to be taken into dock for a survey of its hull or machinery.

(5) Where any such person as is mentioned in subsection (1) has reasonable grounds for believing that there are on any premises provisions or water intended for supply to a ship registered in the Falkland Islands which, if provided on the ship, would not be in accordance with safety regulations containing requirements as to provisions and water to be provided on ships the person may enter the premises and inspect the provisions or water for the purpose of ascertaining whether they would be in accordance with the regulations.

(6) If any person obstructs a person in the exercise of his powers under this section, or fails to comply with a requirement made under subsection (4), the person commits an offence and is liable, on conviction, to a fine not exceeding level 5 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 258]

241. Powers of inspectors in relation to premises and ships

(1) The powers conferred by this section are conferred in relation to —

(a) any premises in the Falkland Islands; or

(b) any ship registered in the Falkland Islands wherever it may be and any other ship which is present in the Falkland Islands or in Falkland Islands waters,

and are available to any Departmental inspector, or any inspector appointed under section 238(6), for the purpose of performing his functions.

(2) Such an inspector may —

(a) at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time) —

(i) enter any premises; or

(ii) board any ship,

if he or she has reason to believe that it is necessary for him or her to do so;

(b) on entering any premises by virtue of paragraph (a) or on boarding a ship by virtue of that paragraph, take with him or her any other person authorised for the purpose by the Governor and any equipment or materials he or she requires;

(c) make such examination and investigation as the inspector considers necessary;

(d) give a direction requiring that the premises or ship or any part of the premises or ship or anything in the premises or ship or such a part must be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under paragraph (c);

(e) take such measurements and photographs and make such recordings as the inspector considers necessary for the purpose of any examination or investigation under paragraph (c);

(f) take samples of any articles or substances found in the premises or ship and of the atmosphere in or in the vicinity of the premises or ship;

(g) in the case of any article or substance which the inspector finds in the premises or ship and which appears to the inspector to have caused or to be likely to cause danger to health or safety, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is in the circumstances necessary);

(h) in the case of any such article or substance as is mentioned in paragraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely —

(i) to examine it and do to it anything which the inspector has power to do under that paragraph;

(ii) to ensure that it is not tampered with before the inspector's examination of it is completed;

(iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Ordinance, the Maritime Labour Ordinance 2019, or any instrument made under either Ordinance;

(i) require any person who the inspector has reasonable cause to believe is able to give any information relevant to any examination or investigation under paragraph (c) —

(i) to attend at a place and time specified by the inspector; and

(ii) to answer (in the absence of persons other than any persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the inspector thinks fit to ask; and

(iii) to sign a declaration of the truth of his or her answers;

(j) require the production of, and inspect and take copies of or of any entry in —

(i) any books or documents which by virtue of any provision of this Ordinance or the Maritime Labour Ordinance 2019 are required to be kept; and

(ii) any other books or documents which the inspector considers it necessary for him or her to see for the purposes of any examination or investigation under paragraph (c); or

(k) require any person to afford him or her such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable the person to exercise any of the powers conferred on the inspector by this subsection.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(3) The powers conferred by subsection (2) to require the production of any document and copy it include, in relation to oil record books required to be carried under section 153, power to require the master to certify the copy as a true copy.

(4) The powers conferred by subsection (2) to inspect premises are also exercisable, for the purpose of Chapter II of Part 7, in relation to any apparatus used for transferring oil.

(5) The powers conferred by subsection (2)(a), (c) and (j) are also exercisable, in relation to a ship in a harbour in the Falkland Islands, by the harbour master or other persons appointed by the Governor for the purpose, for the purpose of ascertaining the circumstances relating to an alleged discharge of oil or a mixture containing oil from the ship into the harbour.

(6) Nothing in subsections (1) to (5) authorises a person unnecessarily to prevent a ship from proceeding on a voyage.

(7) The Governor may by regulations make provision as to the procedure to be followed in connection with the taking of samples under subsection (2)(f) and subsection (10) and provision as to the way in which samples that have been so taken are to be dealt with.

(8) Where an inspector proposes to exercise the power conferred by subsection (2)(g) in the case of an article or substance found in any premises or ship, the inspector must, if so requested by a person who at the time is present in and has responsibilities in relation to the premises or ship, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of that person.

(9) Before exercising the power conferred by subsection (2)(g), an inspector must consult such persons as appear to him or her appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which the inspector proposes to do under that power.

(10) Where under the power conferred by subsection (2)(h) an inspector takes possession of any article or substance found in any premises or ship, the inspector must leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that the inspector has taken possession of it under that power; and before taking possession of any such substance under that power an inspector must, if it is practicable for him or her to do so, take a sample of the substance and give to a responsible person at the premises or on board the ship a portion of the sample marked in a manner sufficient to identify it.

(11) No answer given by a person in pursuance of a requirement imposed under subsection (2)(i) is admissible in evidence against that person or the husband or wife of that person in any proceedings except proceedings in pursuance of subsection (1)(c) of section 242 in respect of a

statement in or a declaration relating to the answer; and a person nominated as mentioned in the said subsection (2)(i) is entitled, on the occasion on which the questions there mentioned are asked, to make representations to the inspector on behalf of the person who nominated him or her.

[Merchant Shipping Act 1995 (UK), s. 259]

242. Provisions supplementary to section 241

(1) A person who —

(a) intentionally obstructs an inspector in the exercise of any power available to him or her under section 241;

(b) without reasonable excuse, does not comply with a requirement imposed in pursuance of section 241 or prevents another person from complying with such a requirement; or

(c) without prejudice to the generality of paragraph (b), makes a statement or signs a declaration which the person knows is false, or recklessly makes a statement or signs a declaration which is false, in purported compliance with a requirement made in pursuance of subsection (2)(i) of section 241,

is liable on conviction, to a fine not exceeding level 7 on the scale set out in Schedule 7.

(2) Nothing in section 241 is to be taken to compel the production by any person of a document of which he or she would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the Supreme Court or, as the case may be, on an order for the production of documents in an action in the Supreme Court.

(3) A person who complies with a requirement imposed on him or her in pursuance of paragraph (i) or (k) of subsection (2) of section 241 is entitled to recover from the person who imposed the requirement such sums in respect of the expenses incurred in complying with the requirement as are prescribed by regulations made by the Governor.

(4) Regulations under subsection (3) may make different provision for different circumstances.

[Merchant Shipping Act 1995 (UK), s. 260]

Improvement notices and prohibition notices

243. Improvement notices

(1) If an inspector appointed under section 238(6) is of the opinion that a person —

(a) is contravening one or more of the relevant statutory provisions; or

(b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,

the inspector may serve on that person a notice under this section, (referred to in the following sections of this Part as an improvement notice).

(2) An improvement notice must —

(a) state that the inspector is of the said opinion, specify the provision or provisions as to which the inspector is of that opinion, and give particulars of the reasons why he or she is of that opinion; and

(b) require the person on whom the notice is served to remedy the contravention in question or (as the case may be) the matters occasioning it within such period as may be specified in the notice.

(3) The period specified in pursuance of subsection (2)(b) will not expire before the end of the period within which a notice can be given under section 249 requiring questions relating to the improvement notice to be referred to arbitration.

(4) In this and the following sections of this Part “**the relevant statutory provisions**” means —

(a) sections —

(i) 27, 28 and 34 to 43 of the Maritime Labour Ordinance 2019; and

(ii) 84, 85, and 87 (and Schedule 2), 96, 113, 119, 120, 125 to 135, 139 to 161 and 254 of this Ordinance;

(b) the provisions of any instrument of a legislative character having effect under any of those provisions.

[Merchant Shipping Act 1995 (UK), s. 261]

[s9/Ord.14/2019/w.e.f. 26.09.2019]

244. Prohibition notices

(1) If, as regards any relevant activities which are being or are likely to be carried on board any ship by or under the control of any person, an inspector appointed under section 238(6) is of the opinion that, as so carried on or as likely to be so carried on, the activities involve or (as the case may be) will involve the risk of —

(a) serious personal injury to any person (whether on board the ship or not); or

(b) serious pollution of any navigable waters,

the inspector may serve on the first-mentioned person a notice under this section (referred to in the following sections of this Part as a “prohibition notice”).

(2) In subsection (1) “**relevant activities**” means activities to or in relation to which any of the relevant statutory provisions apply or will, if the activities are carried on as mentioned in that subsection, apply.

(3) A prohibition notice must —

- (a) state that the inspector is of the said opinion;
- (b) specify the matters which in the inspector's opinion give or (as the case may be) will give rise to the said risk;
- (c) where in the inspector's opinion any of those matters involves or (as the case may be) will involve a contravention of any of the relevant statutory provisions, state that the inspector is of that opinion, specify the provision or provisions as to which the inspector is of that opinion, and give particulars of the reasons why the inspector is of that opinion; and
- (d) direct —
 - (i) that the activities to which the notice relates must not be carried on by or under the control of the person on whom the notice is served; or

- (ii) that the ship must not go to sea,

(or both of those things) unless the matters specified in the notice in pursuance of paragraph (b), and any associated contraventions of any provision so specified in pursuance of paragraph (c), have been remedied.

- (4) A direction contained in a prohibition notice in pursuance of subsection (3)(d) takes effect —
 - (a) at the end of a period specified in the notice; or
 - (b) if the direction is given in pursuance of subsection (3)(d)(ii) or the notice so declares, immediately.

[Merchant Shipping Act 1995 (UK), s. 262]

245. Provisions supplementary to sections 243 and 244

(1) An improvement notice or a prohibition notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.

(2) An improvement notice or a prohibition notice must not direct any measures to be taken to remedy the contravention of any of the relevant statutory provisions that are more onerous than those necessary to secure compliance with that provision.

(3) Where an improvement notice or a prohibition notice that is not to take immediate effect has been served —

- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified in it in pursuance of section 243(2)(b) or (as the case may be) section 244(4); and

- (b) the period so specified may be extended or further extended by an inspector at any time when a reference to arbitration in respect of the notice is not pending under section 246.

[Merchant Shipping Act 1995 (UK), s. 263]

246. References of notices to arbitration

(1) Any question —

(a) as to whether any of the reasons or matters specified in an improvement notice or a prohibition notice in pursuance of section 243(2)(a) or 244(3)(b) or (c) in connection with any opinion formed by the inspector constituted a valid basis for that opinion; or

(b) as to whether any directions included in the notice in pursuance of section 245(1) were reasonable,

must, if the person on whom the notice was served so requires by a notice given to the inspector within 21 days from the service of the notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by him or her.

(2) Where a notice is given by a person in accordance with subsection (1), then —

(a) in the case of an improvement notice, the giving of the notice has the effect of suspending the operation of the improvement notice until the decision of the arbitrator is published to the parties or the reference is abandoned by that person;

(b) in the case of a prohibition notice, the giving of the notice has the effect of so suspending the operation of the prohibition notice if, but only if, on the application of that person the arbitrator so directs (and then only from the giving of the direction).

(3) Where on a reference under this section the arbitrator decides as respects any reason, matter or direction to which the reference relates, that in all the circumstances —

(a) the reason or matter did not constitute a valid basis for the inspector's opinion; or

(b) the direction was unreasonable,

the arbitrator must either cancel the notice or affirm it with such modifications as he or she may in the circumstances think fit; and in any other case the arbitrator must affirm the notice in its original form.

(4) Where any reference under this section involves the consideration by the arbitrator of the effects of any particular activities or state of affairs on the health or safety of any persons, the arbitrator must not on that reference make any decision such as is mentioned in subsection (3)(a) or (b) except after —

(a) in the case of an improvement notice, affording an opportunity of making oral representations to the arbitrator with respect to those effects to a member of any such panel of representatives of maritime trade unions as may be appointed by the Governor for the purposes of this subsection; or

(b) in the case of a prohibition notice, affording an opportunity of making such representations to the arbitrator to either —

(i) a representative of a trade union representing persons whose interests it appears to the arbitrator that the notice was designed to safeguard; or

(ii) a member of any such panel as is referred to in paragraph (a),

as the arbitrator thinks appropriate; and

(c) (in either case) considering any representations made to the arbitrator in pursuance of paragraph (a) or (b).

(5) A person is not qualified for appointment as an arbitrator under this section unless the person is —

(a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1 (issued by the appropriate authority in, and in accordance with the relevant laws of, the United Kingdom), or a person holding a certificate equivalent to any such certificate;

(b) a naval architect;

(c) a person falling within section 93(7); or

(d) a person with special experience of shipping matters, of the fishing industry, or of activities carried on in ports.

(6) In connection with his or her functions under this section an arbitrator has the powers conferred on an inspector by section 241 other than subsections (3), (4) and (6).

[Merchant Shipping Act 1995 (UK), s. 264]

247. Compensation in connection with invalid prohibition notices

(1) If on a reference under section 246 relating to a prohibition notice —

(a) the arbitrator decides that any reason or matter did not constitute a valid basis for the inspector's opinion; and

(b) it appears to the arbitrator that there were no reasonable grounds for the inspector to form that opinion,

the arbitrator may, subject to subsection (3), award the person on whom the notice was served such compensation in respect of any loss suffered by the person in consequence of the service of the notice as the arbitrator thinks fit.

(2) If on any such reference the arbitrator decides that any direction included in the notice was unreasonable, the arbitrator may, subject to subsection (3), award the person on whom the notice was served such compensation in respect of any loss suffered by the person in consequence of the direction as the arbitrator thinks fit.

(3) An arbitrator must not award any compensation under subsection (1) or (2) in the case of any prohibition notice unless —

(a) it appears to the arbitrator that the direction given in pursuance of section 244(3)(d) contained any such requirement as is mentioned in subparagraph (ii) of that provision; or

(b) it appears to the arbitrator that —

(i) the inspector was of the opinion that there would be such a risk of injury or pollution as is referred to in the notice if the ship went to sea; and

(ii) the effect of the direction given in pursuance of section 244(3)(d) was to prohibit the departure of the ship unless the matters, or (as the case may be) the matters and contraventions, referred to in the direction were remedied.

(4) Any compensation awarded under this section is payable out of the Consolidated Fund.

[Merchant Shipping Act 1995 (UK), s. 265]

248. Offences

(1) Any person who contravenes any requirement imposed by an improvement notice commits an offence and is liable on conviction, to a fine not exceeding level 7 on the scale set out in Schedule 7.

(2) Any person who contravenes any prohibition imposed by a prohibition notice commits an offence and is liable on conviction, to a fine not exceeding level 7 on the scale set out in Schedule 7.

(3) It is a defence for a person charged with an offence under this section to prove that he or she exercised all due diligence to avoid a contravention of the requirement or prohibition in question.

(4) In this section any reference to an improvement notice or a prohibition notice includes a reference to any such notice as modified under section 246(3).

[Merchant Shipping Act 1995 (UK), s. 266]

PART 11 – ACCIDENT INVESTIGATIONS AND INQUIRIES

Marine accident investigations

249. Investigation of marine accidents

(1) The Governor must, for the purpose of the investigation of any accidents mentioned in subsection (2), appoint such number of persons as the Governor may determine to be inspectors of marine accidents, and the Governor must appoint one of those persons to be Chief Inspector of Marine Accidents.

(2) The accidents referred to in subsection (1) are —

- (a) any accident involving a ship or ship's boat where, at the time of the accident —
- (i) the ship is a Falkland Islands registered; or
 - (ii) the ship, or (in the case of an accident involving a ship's boat) that boat, is within Falkland Islands waters; and
- (b) such other accidents involving ships or ships' boats as the Governor may determine.
- (3) The Governor may by regulations make such provision as the Governor considers appropriate with respect to the investigation of any such accidents as are mentioned in subsection (2).
- (4) The regulations referred to under subsection (3) may, in particular, make provision —
- (a) with respect to the definition of "accident" for the purposes of this section and the regulations;
 - (b) imposing requirements as to the reporting of accidents;
 - (c) prohibiting, pending investigation, access to or interference with any ship or ship's boat involved in an accident;
 - (d) authorising any person, so far as may be necessary for the purpose of determining whether an investigation should be carried out, to have access to, examine, remove, test, take measures for the preservation of, or otherwise deal with, any such ship or boat or any other ship or ship's boat;
 - (e) specifying, with respect to the investigation of accidents, the functions of the Chief Inspector of Marine Accidents (which may include the function of determining whether, and if so by whom, particular accidents should be investigated), the functions of other inspectors of marine accidents, and the manner in which any such functions are to be discharged;
 - (f) for the appointment by the Chief Inspector of Marine Accidents, in such circumstances as may be specified in the regulations, of persons to carry out investigations under this section who are not inspectors of marine accidents;
 - (g) for the appointment of persons to review any findings or conclusions of a person carrying out an investigation under this section;
 - (h) for the procedure to be followed in connection with investigations or reviews under this section;
 - (i) for conferring on persons discharging functions under the regulations who are not inspectors of marine accidents all or any of the powers conferred on an inspector by section 241;
 - (j) for the submission to and the publication by the Governor of reports of investigations or reviews under this section;

(k) for the publication by the Chief Inspector of Marine Accidents of reports and other information relating to accidents.

(5) Regulations under this section may provide for any provisions of the regulations to apply to any specified class or description of incidents or situations which involve, or occur on board, ships or ships' boats but are not accidents for the purposes of the regulations, being a class or description framed by reference to any of the following, namely —

(a) the loss or destruction of or serious damage to any ship or structure;

(b) the death of or serious injury to any person; or

(c) environmental damage,

whether actually occurring or not, and (subject to such modifications as may be specified in the regulations) for those provisions to apply in relation to any such incidents or situations as they apply in relation to accidents.

(6) Regulations under this section may provide that a contravention of the regulations is an offence punishable on conviction by a fine not exceeding level 7 on the scale set out in Schedule 7.

(7) The Chief Inspector of Marine Accidents, or (as the case may be) inspectors of marine accidents generally, must discharge such functions in addition to those conferred by or under this section as the Governor may determine.

(8) Any inspector of marine accidents has, for the purpose of discharging any functions conferred on him or her by or under this section, the powers conferred on an inspector by section 241.

(9) Nothing in this section limits the powers of the Authority under sections 237.

(10) In this section —

(a) references to an accident involving a ship or ship's boat include references to an accident occurring on board a ship or ship's boat (and any reference to a ship or ship's boat involved in an accident must be construed accordingly); and

(b) "ship's boat" includes a life-raft.

[Merchant Shipping Act 1995 (UK), s. 267]

250. Formal investigation into marine accidents

(1) Where any accident has occurred, the Governor may (whether or not an investigation into it has been carried out under section 249) cause a formal investigation into the accident to be held, and in this section "accident" means any accident to which regulations under that section apply or any incident or situation to which any such regulations apply by virtue of subsection (5) of that section.

(2) The person conducting the investigation (*investigator*) must conduct it in accordance with rules under section 252(1); and those rules require the assistance of one or more assessors and, if any question as to the cancellation or suspension of an officer's certificate is likely, the assistance of not less than two assessors.

(3) Subsections (1), (3) and (4) of section 97 of the Magistrates' Courts Act 1980 (which apply to the Falkland Islands by virtue of section 29 of the Administration of Justice Ordinance 1949 and provide for the attendance of witnesses and the production of evidence) apply in relation to a formal investigation held by an investigator as if the investigator were a magistrates' court and the investigation a complaint; and the investigator has power to administer oaths for the purposes of the investigation.

(4) If as a result of the investigation the investigator is satisfied, with respect to any officer, of any of the matters mentioned in paragraphs (a) to (c) of section 64(1) and, if it is a matter mentioned in paragraph (a) or (b) of that section, is further satisfied that it caused or contributed to the accident, he or she may cancel or suspend any certificate issued to the officer under section 50 or censure the officer; and if the inspector cancels or suspends the certificate the officer must deliver it immediately to the inspector or to the Governor.

(5) If a person fails to deliver a certificate as required under subsection (4), the person commits an offence and is liable on conviction to a fine not exceeding level 3 on the scale set out in Schedule 7.

(6) Where a certificate has been cancelled or suspended under this section, the Governor, if of the opinion that the justice of the case requires it, may re-issue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate.

(7) The wreck commissioner may make such awards as he or she thinks just with regard to the costs (or, as the case may be, expenses) of the investigation and of any parties at the investigation, and with regard to the parties by whom those costs or expenses are to be paid; and any such award of the investigator may, on the application of any party named in it, be made an order of the Supreme Court.

(8) Any costs or expenses directed by an award to be paid is taxable in the Supreme Court.

(9) The investigator must make a report on the investigation to the Governor.

(10) In this Part "investigator" means the wreck commissioner or any person appointed to discharge the functions of a wreck commissioner under section 294.

[*Merchant Shipping Act 1995 (UK), s. 268*]

251. Re-hearing of and appeal from investigations

(1) Where a formal investigation has been held under section 250 the Governor may order the whole or part of the case to be re-heard, and must do so if —

(a) new and important evidence which could not be produced at the investigation has been discovered; or

(b) there appear to the Governor to be other grounds for suspecting that a miscarriage of justice may have occurred.

(2) An order under subsection (1) may provide for the re-hearing to be by an investigator or by the Supreme Court.

(3) Any re-hearing under this section which is not held by the Supreme Court must be conducted in accordance with rules made under section 252(1); and section 252 applies in relation to a re-hearing of an investigation by an investigator as it applies in relation to the holding of an investigation.

(4) Where the investigator holding the investigation has decided to cancel or suspend the certificate of any person or has found any person at fault, then, if no application for an order under subsection (1) has been made or such an application has been refused, that person or any other person who, having an interest in the investigation, has appeared at the hearing and is affected by the decision or finding, may appeal to the Supreme Court.

(5) Section 250(7) applies for the purposes of this section as it applies for the purposes of that section.

[Merchant Shipping Act 1995 (UK), s. 269]

252. Rules as to investigations and appeals

(1) The Governor may make rules for the conduct of formal investigations under section 250 and for the conduct of any re-hearing under section 251 which is not held by the Supreme Court.

(2) Without prejudice to the generality of subsection (1), rules under this section may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected.

(3) Rules of court made for the purpose of re-hearings under section 251 which are held by the Supreme Court, or of appeals to the Supreme Court, may require the court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a re-hearing or hear such an appeal with the assistance of one or more assessors.

[Merchant Shipping Act 1995 (UK), s. 270]

Inquiries into and reports on deaths and injuries

253. Inquiries into deaths of crew members and others

(1) Subject to subsection (6), where —

(a) any person dies in a ship registered in the Falkland Islands or in a boat or life-raft from such a ship; or

(b) the master of or a seafarer employed in such a ship dies in a country outside the Falkland Islands,

an inquiry into the cause of the death must be held by a superintendent or proper officer at the next port where the ship calls after the death and where there is a superintendent or proper officer, or at such other place as the Governor may direct.

(2) Subject to subsection (6), where it appears to the Governor that —

(a) in consequence of an injury sustained or a disease contracted by a person when the person was the master of or a seafarer employed in a ship registered in the Falkland Islands, he or she ceased to be employed in the ship and subsequently died; and

(b) the death occurred in a country outside the Falkland Islands during the period of one year beginning with the day on which he or she so ceased,

the Governor may arrange for an inquiry into the cause of the death to be held by a superintendent or proper officer.

(3) Subject to subsection (6), where it appears to the Governor that a person may —

(a) have died in a ship registered in the Falkland Islands or in a boat or life-raft from such a ship; or

(b) have been lost from such a ship, boat or life-raft and have died in consequence of being so lost,

the Governor may arrange for an inquiry to be held by a superintendent or proper officer into whether the person died as mentioned above and, if the superintendent or officer finds that the person did, into the cause of the death.

(4) The superintendent or proper officer holding the inquiry has, for the purpose of the inquiry, the powers conferred on an inspector by section 241.

(5) The person holding the inquiry must make a report of his or her findings to the Governor who must make the report available —

(a) if the person to whom the report relates was employed in the ship and a person was named as his or her next of kin in the crew agreement or list of the crew in which the name of the person to whom the report relates last appeared, to the person so named;

(b) in any case, to any person requesting it who appears to the Governor to be interested.

(6) No inquiry is to be held under this section where a coroner's inquest is to be held.

[Merchant Shipping Act 1995 (UK), s. 271]

254. Reports of and inquiries into injuries

(1) Where the master or a member of the crew of a fishing vessel registered in the Falkland Islands is injured during a voyage, an inquiry into the cause and nature of the injury may be held by a superintendent or proper officer.

(2) The superintendent or proper officer holding an inquiry under this section has, for the purposes of the inquiry, the powers conferred on a Departmental inspector by section 241 and must make a report of his or her findings to the Governor.

[Merchant Shipping Act 1995 (UK), s. 272]

255. Transmission of particulars of certain deaths on ships

Where —

(a) an inquest is held into a death or a post mortem examination is made of a dead body as a result of which the coroner is satisfied that an inquest is unnecessary; and

(b) it appears to the coroner that the death in question is such as is mentioned in section 112(2) or in that subsection as extended (with or without amendments) by virtue of section 305,

it is the duty of the coroner to send to the Registrar General of Shipping particulars in respect of the deceased of a kind prescribed by regulations made by the Governor.

[Merchant Shipping Act 1995 (UK), s. 273]

PART 12 – ADMIRALTY JURISDICTION

256. Admiralty jurisdiction of Supreme Court

(1) The Admiralty jurisdiction of the Supreme Court is as follows —

(a) jurisdiction to hear and determine any of the questions and claims mentioned in subsection (2);

(b) jurisdiction in relation to any of the proceedings mentioned in subsection (3);

(c) any other Admiralty jurisdiction which it had immediately before the commencement of this Ordinance;

(d) any jurisdiction connected with ships or aircraft which is vested in the Supreme Court apart from this section.

(2) The questions and claims referred to in subsection (1)(a) are —

(a) any claim to the possession or ownership of a ship or to the ownership of any share therein;

(b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;

(c) any claim in respect of a mortgage of or charge on a ship or any share therein;

(d) any claim for damage received by a ship;

(e) any claim for damage done by a ship;

(f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of —

(i) the owners, charterers or persons in possession or control of a ship; or

(ii) the master or crew of a ship, or any other person for whose wrongful acts,

neglect or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship;

(g) any claim for loss of or damage to goods carried in a ship;

(h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

(i) any claim in the nature of salvage (including any claim arising by virtue of the application, by or under section 51 of the Civil Aviation Act 1949 (which Act applies to the Falkland Islands by virtue of the Civil Aviation Act 1949 (Overseas Territories) Order 1969, Statutory Instrument No. 592), of the law relating to salvage to aircraft and their apparel and cargo);

(j) any claim in the nature of towage in respect of a ship or an aircraft;

(k) any claim in the nature of pilotage in respect of a ship or an aircraft;

(l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;

(m) any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues;

(o) any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);

(p) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

(q) any claims arising out of an act which is or is claimed to be a general average act;

(r) any claim arising out of bottomry;

(s) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty.

(3) The proceedings referred to in subsection (1)(b) are —

(a) any application to the Supreme Court under this Ordinance;

(b) any action to enforce a claim for damage, loss of life or personal injury arising out of—

(i) a collision between ships; or

(ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two ships; or

(iii) non-compliance, on the part of one or more of two or more ships, with the collision regulations;

(c) any action by shipowners or other persons under this Ordinance for the limitation of the amount of their liability in connection with a ship or other property.

(4) The jurisdiction of the Supreme Court under subsection (2)(b) includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, be sold, and to make such other order as the court thinks fit.

(5) The reference in subsection (2)(j) to claims in the nature of salvage includes a reference to such claims for services rendered in saving life from a ship or an aircraft or in preserving cargo, apparel or wreck as, under this Ordinance or any Order in Council made under section 51 of the Civil Aviation Act 1949, are authorised to be made in connection with a ship or an aircraft.

(6) This section applies —

(a) in relation to all ships or aircraft, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be;

(b) in relation to all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and

(c) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law.

[Supreme Court Act 1981 [UK], s. 20, Admiralty Jurisdiction (Falkland Islands) Order 1966]

257. Mode of exercising Admiralty jurisdiction

(1) Subject to section 258, an action in personam may be brought in the Supreme Court in all cases within the Admiralty jurisdiction of that court.

(2) In the case of any such claim as is mentioned in section 256(2)(a) or (s) or any such question as is mentioned in section 256(2)(b), an action in rem may be brought in the Supreme Court against the ship or property in connection with which the claim or question arises.

(3) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, an action in rem may be brought in the Supreme Court against that ship, aircraft or property.

(4) In the case of any such claim as is mentioned in section 256(2)(e) to (r), where —

(a) in a claim arises in connection with a ship; and

(b) the person who would be liable on the claim in an action in personam (“the relevant person”) was, when the cause arose, the owner or charterer of, or in possession or in control of, the ship,

an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the Supreme Court against —

(i) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or

(ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.

(5) In the case of a claim in the nature of towage or pilotage in respect of an aircraft, an action in rem may be brought in the Supreme Court against that aircraft if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action in personam.

(6) Where, in the exercise of its Admiralty jurisdiction, the Supreme Court orders any ship, aircraft or other property to be sold, the court has jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.

(7) In determining for the purposes of subsections (4) and (5) whether a person would be liable on a claim in an action in personam it will be assumed that the person has his or her habitual residence or place of business in the Falkland Islands.

(8) Where, as regards any such claim as is mentioned in section 256(2) (e) to (r), a ship has been served with a writ or arrested in an action in rem brought to enforce that claim, no other ship may be served with a writ or arrested in that or any other action in rem brought to enforce that claim; but this subsection does not prevent the issue, in respect of any one such claim, of a writ naming more than one ship or of two or more writs each naming a different ship.

[Supreme Court Act 1981 [UK], s. 21]

258. Restriction on entertainment of actions in personam in collision and other similar cases

(1) This section applies to any claims for damages, loss of life or personal injury arising out of—

(a) a collision between ships; or

(b) the carrying out of, or omission to carry out, a manoeuvre in the case of one or more of two or more ships; or

(c) non-compliance, on the part of one or more of two or more ships, with the collision regulations.

(2) The Supreme Court must not entertain any action in personam to enforce a claim to which this section applies unless —

(a) the defendant has his or her habitual residence or a place of business within the Falkland Islands ; or

(b) the cause of action arose within inland waters of the Falkland Islands or within the limits of a port of the Falkland Islands; or

(c) an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court.

(3) In subsection (2) —

“**inland waters**” includes any part of the sea adjacent to the coast of the Falkland Islands certified by the Governor to be waters falling by international law to be treated as within the territorial sovereignty of Her Majesty apart from the operation of that law in relation to territorial waters;

“**port**” means any port, harbour, river, estuary, haven, dock, canal or other place so long as a person or body of person is empowered by or under an enactment to make charges in respect of ships entering it or using the facilities therein, and “**limits of a port**” means the limits as fixed by or under the enactment in question or, as the case may be, by the relevant charter or custom;

“**charges**” means any charges with the exception of light dues, local light dues and any other charges in respect of lighthouses, buoys or beacons and of charges in respect of pilotage.

(4) The Supreme Court must not entertain any action in personam to enforce a claim to which this section applies until any proceedings previously brought by the plaintiff in any court outside the Falkland Islands against the same defendant in respect of the same incident or series of incidents have been discontinued or otherwise come to an end.

(5) Subsections (2) and (4) apply to counterclaims (except counterclaims in proceedings arising out of the same incident or series of incidents) as they apply to actions, the references to the plaintiff and the defendant being for this purpose read as references to the plaintiff on the counterclaim and the defendant to the counterclaim respectively.

(6) Subsections (2) and (4) do not apply to any action or counterclaim if the defendant thereto submits or has agreed to the jurisdiction of the court.

(7) Subject to the provisions of subsection (4), the Supreme Court has jurisdiction to entertain an action in personam to enforce a claim to which this section applies whenever any of the conditions specified in subsection (2)(a) to (c) is satisfied, and the rules of court relating to the service of process outside the jurisdiction must make such provision as may appear to the rule-making authority to be appropriate having regard to the provisions of this subsection.

(8) Nothing in this section prevents an action which is brought in accordance with the provisions of this section in the Supreme Court being transferred, in accordance with the enactments in that behalf, to some other court.

(9) This section applies in relation to the jurisdiction of the Supreme Court not being admiralty jurisdiction, as well as in relation to its Admiralty jurisdiction.

[Supreme Court Act 1981 [UK], s. 22]

259. Supreme Court not to have jurisdiction in cases within Rhine Convention

The Supreme Court does not have jurisdiction to determine any claim or question certified by the Governor to be a claim or question which, under the Rhine Convention, falls to be determined in accordance with provisions of that Convention; and any proceedings to enforce such a claim which are commenced in the Supreme Court must be set aside.

[Supreme Court Act 1981 [UK], s. 23]

260. Supplementary provisions as to Admiralty jurisdiction

(1) In sections 256 to 259 and this section, unless the context otherwise requires —

“**goods**” includes baggage;

“**master**” includes every person (except the pilot) having command or charge of a ship;

“**The Rhine Navigation Convention**” means the Convention of 7 October 1868 as revised by any subsequent Convention;

“**towage**” and “**pilotage**”, in relation to an aircraft, mean towage and pilotage while the aircraft is water-borne.

(2) Nothing in sections 256 to 259 is to —

(a) be construed as limiting the jurisdiction of the Supreme Court to refuse to entertain an action for wages by the master or a member of the crew of a ship, not being a British ship;

(b) affect any provisions of this Ordinance regarding the power of the receiver of wreck to detain a ship in respect of a salvage claim; or

(c) authorise proceedings in rem in respect of any claim against the Crown, or the arrest, detention or sale of any of Her Majesty’s ships or Her Majesty’s aircraft, or a hovercraft;.

(3) In this section —

“**Her Majesty’s aircraft**” does not include aircraft belonging to Her Majesty otherwise than in the right of Her Government in the Falkland Islands;

“**Her Majesty’s ships**” means ships of which the beneficial interest is vested in Her Majesty or which are registered as Government ships for the purposes of the Act, or which are for the time being demised or subdemised to or in the exclusive possession of the Crown, except that the said expression does not include any ship in which Her Majesty is interested otherwise than in right of Her Government in the Falkland Islands unless that ship is for the time being demised or subdemised to Her Majesty in right of Her said Government or in the exclusive possession of Her Majesty in that right;

“**Her Majesty’s hovercraft**” means hovercraft belonging to the Crown in right of Her Majesty’s Government in the Falkland Islands.

[Supreme Court Act 1981 [UK], s. 24]

PART 13 – LEGAL PROCEEDINGS

Prosecution of offences

261. Offences by officers of bodies corporate

(1) Where a body corporate is convicted of an offence under this Ordinance or the Maritime Labour Ordinance 2019, or to any instrument made under either Ordinance, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in such a capacity, he or she as well as the body corporate commits that offence and each is liable to be proceeded against and punished accordingly.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.

[Merchant Shipping Act 1995 (UK), s. 277]

262. Accessories and abettors

Any person who knowingly or wilfully aids, abets, counsels, causes, procures or commands the commission of an offence under this Ordinance or the Maritime Labour Ordinance 2019 is liable to be dealt with, tried and punished as a principal offender.

[Merchant Shipping Act 1995 (UK), s. 277A]

[s9/Ord.14/2019/w.e.f. 26.09.2019]

Jurisdiction

263. Jurisdiction in relation to offences

(1) For the purpose of conferring jurisdiction, any offence under this Ordinance or the Maritime Labour Ordinance 2019 is deemed to have been committed in any place in the Falkland Islands where the offender may for the time being be.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(2) For the same purpose, any matter of complaint under this Ordinance or the Maritime Labour Ordinance 2019 is deemed to have arisen in any place in the Falkland Islands where the person complained against may for the time being be.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(3) The jurisdiction under subsections (1) and (2) is in addition to and not in derogation of any jurisdiction or power of a court under any other enactment.

[Merchant Shipping Act 1995 (UK), s. 279]

264. Jurisdiction over ships lying off coasts

(1) Where the area within which a court in the Falkland Islands has jurisdiction is situated on the coast of any sea or abuts on or projects into any bay, channel, lake, river or other navigable water, the court has jurisdiction as respects offences under this Ordinance or the Maritime Labour Ordinance 2019 over any vessel being on, or lying or passing off, that coast or being in or near that bay, channel, lake, river or navigable water and over all persons on board that vessel or for the time being belonging to it.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(2) The jurisdiction under subsection (1) is in addition to and not in derogation of any jurisdiction or power of a court under the Administration of Justice Ordinance 1949 and the Criminal Procedure and Evidence Ordinance 2014.

[Merchant Shipping Act 1995 (UK), s. 280]

265. Jurisdiction in case of offences on board ship

Where any person is charged with having committed any offence under this Ordinance or the Maritime Labour Ordinance 2019 then —

(a) if the person has Falkland Islands status and is charged with having committed the offence —

(i) on board any ship registered in the Falkland Islands whilst that ship was on the high seas;

(ii) in any foreign port or harbour; or

(iii) on board any foreign ship to which the person does not belong; or

(b) if the person does not have Falkland Island status and is charged with having committed it on board any ship registered in the Falkland Islands whilst that ship was on the high seas,

and the person is found within the jurisdiction of any court in the Falkland Islands which would have had jurisdiction in relation to the offence if it had been committed on board a ship registered in the Falkland Islands within the limits of its ordinary jurisdiction to try the offence, that court has jurisdiction to try the offence as if it had been so committed.

[Merchant Shipping Act 1995 (UK), s. 281]

[s9/Ord.14/2019/w.e.f. 26.09.2019]

266. Offences committed by Falkland Islands seafarers

(1) Any act in relation to property or a person done in or at any place (ashore or afloat) outside the Falkland Islands by any master or seafarer who at the time is employed in a ship registered in the Falkland Islands, which, if done in the Falkland Islands, would be an offence under the law of the Falkland Islands, is —

(a) an offence under that law; and

(b) to be treated for the purposes of jurisdiction and trial, as if it had been done within the Admiralty jurisdiction of the Supreme Court.

(2) Subsection (1) also applies in relation to a person who had been so employed within the period of three months expiring with the time when the act was done.

(3) Subsections (1) and (2) apply to omissions as they apply to acts.

[Merchant Shipping Act 1995 (UK), s. 282]

Return of offenders

267. Return of offenders

(1) The powers conferred on a proper officer by subsection (2) are exercisable in the event of any complaint being made to him or her that —

(a) any offence against property or persons has been committed at any place (ashore or afloat) outside the Falkland Islands by any master or seafarer who at the time when the offence was committed, or within three months before that time, was employed in a ship registered in the Falkland Islands; or

(b) any offence on the high seas has been committed by any master or seafarer belonging to any ship registered in the Falkland Islands.

(2) Those powers are —

(a) to inquire into the case upon oath; and

(b) if the case so requires, to take any steps in his power for the purpose of placing the offender under the necessary restraint and sending the offender by ship registered in the Falkland Islands as soon as practicable in safe custody to the Falkland Islands for proceedings to be taken against him or her.

(3) The proper officer may, subject to subsections (4) and (5), order the master of any ship registered in the Falkland Islands which is bound for the Falkland Islands to receive and carry the offender and the witnesses to the Falkland Islands; and the officer must endorse upon the agreement of the ship such particulars with respect to them as the Governor requires.

(4) A proper officer must not exercise the power conferred by subsection (3) unless no more convenient means of transport is available or it is available only at disproportionate expense.

(5) No master of a ship may be required under subsection (3) to receive more than one offender for every 100 tons of his or her ship's registered tonnage, or more than one witness for every 50 tons of his ship's registered tonnage.

(6) The master of any ship to whose charge an offender has been committed under subsection (3) must, on his or her ship's arrival in the Falkland Islands, give the offender into the custody of a police officer.

(7) If any master of a ship, when required under subsection (3) to receive and carry any offender or witness in his or her ship —

(a) fails to do so; or

(b) in the case of an offender, fails to deliver him or her as required by subsection (6),

he or she commits an offence and is liable on conviction to a fine not exceeding level 5 on the scale set out in Schedule 7.

(8) The expense of imprisoning any such offender and of carrying the offender and witnesses to the Falkland Islands otherwise than in the ship to which they respectively belong must be paid out of the Consolidated Fund.

(9) References in this section to carrying a person in a ship include affording the person subsistence during the voyage.

[Merchant Shipping Act 1995 (UK), s. 283]

Detention of ship and distress on ship

268. Enforcing detention of ship

(1) Where under this Ordinance or the Maritime Labour Ordinance 2019 a ship is to be or may be detained, any of the following officers may detain the ship —

(a) a commissioned naval or military officer;

(b) a customs officer;

(c) a proper officer;

(d) a departmental officer;

(e) an officer of the Authority.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(2) A notice of detention may —

(a) include a direction that the ship must —

(i) remain in a particular place; or

(ii) be moved to a particular anchorage or berth; and

(b) if it includes such a direction, may specify circumstances relating to safety or the prevention of pollution in which the master may move his or her ship from that place, anchorage or berth.

(3) If a ship as respects which notice of detention has been served on the master proceeds to sea, otherwise than in accordance with such a notice, before it is released by a competent authority, the master of the ship commits an offence.

(4) If a ship as respects which notice of detention has been served on the master fails to comply with a direction given under subsection (2)(a), the master of the ship commits an offence.

(5) A person convicted of an offence under subsection (3) or (4) is liable on conviction, to a fine not exceeding level 5 on the scale set out in Schedule 7; or

(6) The owner of a ship, and any person who sends to sea a ship, as respects which an offence is committed under subsection (3) or (4), if party or privy to the offence, also commits an offence under that subsection.

(7) Where a ship proceeding to sea in contravention of subsection (3), or failing to comply with a direction given under subsection (2)(a), carries away without his or her consent any of the following who is on board the ship in the execution of his duty, namely —

(a) an officer authorised by subsection (1) to detain the ship; or

(b) a surveyor of ships,

the owner and master of the ship are each —

(i) liable to pay all expenses of and incidental to the officer or surveyor being so carried away; and

(ii) commits an offence.

(8) A person convicted of an offence under subsection (7) is liable on conviction, to a fine not exceeding level 7 on the scale set out Schedule 7;

(9) Where under this Ordinance or the Maritime Labour Ordinance 2019 a ship —

(a) must be detained, a customs officer must; or

(b) may be detained, a customs officer may,

refuse to clear the ship outwards or grant a transire to the ship.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(10) When any provision of this Ordinance or the Maritime Labour Ordinance 2019 provides that a ship may be detained until any document is produced to the customs officer, the officer able to grant a clearance or transire of the ship is (unless the context otherwise requires) that officer.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(11) Any reference in this section to proceeding to sea includes a reference to going on a voyage or excursion that does not involve going to sea, and references to sending or taking to sea must be construed accordingly.

[Merchant Shipping Act 1995 (UK), s. 284]

269. Sums ordered to be paid leviable by distress on the ship

(1) Where any court has power to make an order under this Ordinance or the Maritime Labour Ordinance 2019 directing payment to be made of any seafarer's wages, fines or other sums of money, then, if the person directed to pay is the master or owner of the ship and the money directed to be paid is not paid in accordance with the order, the court which made the order may direct the amount remaining unpaid to be levied by distress of the ship and its equipment.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(2) The remedy made available by this section is in addition to any other powers for compelling the payment of money ordered to be paid.

[Merchant Shipping Act 1995 (UK), s. 285]

Special evidential provisions

270. Depositions of persons abroad admissible

(1) If the evidence of any person is required in the course of any legal proceeding before a judge or magistrate in relation to the subject matter of the proceeding and it is proved that that person cannot be found in the Falkland Islands, any deposition that the person may have previously made at a place outside the Falkland Islands in relation to the same subject matter is, subject to subsection (2), admissible in evidence in those proceedings.

(2) For a deposition to be admissible under subsection (1) in any proceedings, the deposition must —

(a) have been taken on oath;

(b) have been taken before a justice or magistrate in any territory or a British consular officer in any other place;

(c) be authenticated by the signature of the justice, magistrate or officer taking it; and

(d) if the proceedings are criminal proceedings, have been taken in the presence of the accused,

and, in a case falling within paragraph (d), the deposition must be certified by the justice, magistrate or officer taking it to have been taken in the presence of the accused.

(3) No proof need be given of the signature or official character of the person appearing to have signed any such deposition and, in any criminal proceedings, a certificate stating that the deposition was taken in the presence of the accused is, unless the contrary is proved, evidence of that fact.

(4) This section also applies to proceedings before any person authorised by law or consent of the parties to receive evidence.

(5) Nothing in this section affects the admissibility in evidence of depositions under any other enactment or the practice of any court.

[Merchant Shipping Act 1995 (UK), s. 286]

271. Admissibility in evidence and inspection of certain documents

(1) The following documents are admissible in evidence and, when in the custody of the Registrar General of Shipping, must be open to public inspection —

(a) documents purporting to be submissions to or decisions by superintendents or proper officers under section 17 of the Maritime Labour Ordinance 2019;

(b) the official log book of any ship kept under section 60 of the Maritime Labour Ordinance 2019 or the official log book of any fishing vessel kept under section 124RR and, without prejudice to section 270(2), any document purporting to be a copy of an entry on the log book and to be certified as a true copy by the master of the ship or the skipper of a fishing vessel;

(c) crew agreements, lists of crews made under section 124SS and notices given under the Maritime Labour Ordinance 2019 of additions to or changes in crew agreements and lists of crews;

(d) returns or reports under section 112;

(e) documents transmitted to the Registrar General of Shipping under section 280.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(2) A certificate issued under section 48 is admissible in evidence.

[Merchant Shipping Act 1995 (UK), s. 287]

272. Admissibility of documents in evidence

(1) Where a document is by this Ordinance declared to be admissible in evidence the document is, on its production from proper custody —

(a) admissible in evidence in any court or before any person having by law or consent of parties authority to receive evidence; and

(b) subject to all just exceptions, evidence of the matters stated in the document.

(2) A copy of, or extract from, any document so made admissible in evidence is, subject to subsection (3), also admissible in evidence and evidence of the matters stated in the document.

(3) A copy of, or extract from, a document is not admissible by virtue of subsection (2) unless—

(a) it is proved to be an examined copy or extract; or

(b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted,

and that officer must furnish the certified copy or extract to any person who applies for it at a reasonable time and pays such reasonable price as the Governor determines.

(4) A person is, on payment of such reasonable price as the Governor determines, entitled to have a certified copy of any declaration or document a copy of which is made evidence by this Ordinance.

(5) If any officer having duties of certification under subsection (3) in relation to any document intentionally certifies any document as being a true copy or extract knowing that the copy or extract is not a true copy or extract, he or she commits an offence and is liable on conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 7 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 288]

273. Inspection and admissibility in evidence of copies of certain documents

(1) Where under any enactment a document is open to public inspection when in the custody of the Registrar General of Shipping —

(a) there may be supplied for public inspection a copy or other reproduction of the document instead of the original; but

(b) the original must nevertheless be made available for public inspection if the copy or other reproduction is illegible.

(2) Where the Registrar General of Shipping destroys any document which has been sent to him or her under or by virtue of any enactment, and keeps a copy or other reproduction of that document, then —

(a) any enactment providing for that document to be admissible in evidence or open to public inspection; and

(b) in the case of a document falling within subsection (1), that subsection,

applies to the copy or other reproduction as if it were the original.

(3) For the purposes of this section, and of section 270(2) in its application to documents in the custody of the Registrar General of Shipping, a copy is to be taken to be the copy of a document notwithstanding that it is taken from a copy or other reproduction of the original.

[Merchant Shipping Act 1995 (UK), s. 289]

274. Proof, etc. of exemptions

(1) Where any exception, exemption, excuse or qualification applies in relation to an offence under this Ordinance —

(a) it may be proved by the defendant; but

(b) need not be specified or negated in any information or complaint,

and, if so specified or negated, must not require to be proved by the informant or complainant.

(2) This section applies in relation to an offence whether or not the exception, exemption, excuse or qualification is contained in the section creating the offence.

[Merchant Shipping Act 1995 (UK), s. 290]

Service of documents

275. Service of documents

(1) Any document authorised or required to be served on any person under this Ordinance or the Maritime Labour Ordinance 2019 may be served on that person by —

(a) delivering it to the person;

(b) leaving it at the person's proper address; or

(c) sending it by post to the person at his or her proper address.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(2) Any such document required to be served on the master of a ship may be served —

(a) where there is a master, by leaving it for him or her on board the ship with the person appearing to be in command or charge of the ship;

(b) where there is no master, on —

(i) the managing owner of the ship; or

(ii) if there is no managing owner, any agent of the owner; or

(iii) where no such agent is known or can be found, by leaving a copy of the document firmly fixed to the mast of the ship.

(3) Any document authorised or required to be served on any person may —

(a) in the case of a body corporate, be served on the secretary or clerk of that body; or

(b) in the case of a partnership, be served on a partner or a person having the control or management of the partnership business.

(4) Any notice authorised or required by or under Part 3 to be served on the Governor may be served by post.

(5) Any notice authorised by section 243, 244, 245 or 246 to be given to an inspector may be given by delivering it to him or her or by leaving it at, or sending it by post to, his or her office.

(6) Any document authorised or required by or under any enactment to be served on the registered owner of a ship registered in the Falkland Islands will be treated as duly served on him or her if served on such persons, in such circumstances and by such method, as may be specified in registration regulations.

(7) For the purposes of this section and of section 9 of the Interpretation and General Clauses Ordinance 1977 (service of documents by post) in its application to this section, the proper address of any person on whom any document is to be served must be the person's last known address, except that —

(a) in the case of a body corporate or their secretary or clerk it must be the address of the registered or principal office of that body;

(b) in the case of a partnership or a person having the control or management of the partnership business, it must be the principal office of the partnership,

and for the purposes of this subsection the principal office of a company registered outside the Falkland Islands or of a partnership carrying on business outside the Falkland Islands is their principal office in the Falkland Islands.

(8) If the person to be served with any notice has (whether in pursuance of registration regulations or otherwise) specified an address in the Falkland Islands other than the person's proper address within the meaning of subsection (7) as the one at which the person or someone on the person's behalf will accept notices of the same description as that notice, that address must also be treated for the purposes of this section and section 9 of the Interpretation Ordinance 1977 as the person's proper address.

(9) For the purposes of the said section 9 of the Interpretation and General Clauses Ordinance 1977 a letter containing —

(a) a notice to be served on any person in pursuance of subsection (6); or

(b) a notice authorised or required to be served under registration regulations on a representative person (within the meaning of those regulations),

will be deemed to be properly addressed if it is addressed to that person at the address for the time being recorded in relation to the person in the register; and a letter containing any other

notice under registration regulations will be deemed to be properly addressed if it is addressed to the last known address of the person to be served (whether of the person's residence or of a place where the person carries on business).

[Merchant Shipping Act 1995 (UK), s. 291]

PART 14 – DUMPING AND DEPOSITS AT SEA

276. Interpretation

(1) In this Part, unless the context otherwise requires —

“**the 1985 Act**” means the Food and Environment Protection Act 1985(1985 c.48 s. 24);

“**the Convention**” means the Convention on the Prevention of Maritime Pollution by the Dumping of Wastes and Other Matter concluded at London in December 1972;

“**Convention State**” means a state which is a party to the Convention;

“**designated area of the continental shelf**” has the same meaning as it has under section 2(1) of the Offshore Minerals Ordinance 1994;

“**Falkland Islands controlled waters**” means any part of the sea within the limits of any designated area of the continental shelf;

“**Falkland Islands marine structure**” means a marine structure within Falkland Islands waters or Falkland Islands controlled waters;

“**Falkland Islands waters**” means any part of the sea within the seaward limits of the Falkland Islands territorial sea;

“**incineration**” means any combustion of substances and materials for the purpose of their thermal destruction;

“**licence**” means a licence granted by the licensing authority;

“**the licensing authority**” means the person who, under the provisions of section 280(1), is for the time being the licensing authority;

“**marine structure**” means a platform or other man-made structure at sea, other than a pipe- line;

“**scuttling**” in relation to a vessel, means the deliberate sinking of that vessel by one or more members of the crew of that vessel or by or on behalf of any person having an interest in the ownership of that vessel, in a mortgage or charge of that vessel, in a demise of that vessel or in the proceeds of a policy of insurance effected in relation to that vessel;

“**sea**” includes any area submerged at mean high water springs and also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of any channel, creek, bay or river; and

“vessel” includes any ship or boat, or any other description of vessel used in navigation.

(2) Any reference in this Ordinance to the Convention is a reference to it as it has effect from time to time.

[Marine Environment (Protection) Ordinance 1995, s. 2]

Requirement for licences

277. Requirement of licences for deposit of substances and articles in the sea.

Subject to the following provisions of this Part, a licence under this Part is needed for —

(a) the deposit of substances or articles within Falkland Islands waters or Falkland Islands controlled waters, either in the sea or under the sea-bed from —

(i) a vehicle, vessel, aircraft, hovercraft or marine structure;

(ii) a container floating in the sea;

(iii) a structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea;

(b) the deposit of substances or articles anywhere in the sea or under the sea-bed from —

(i) a vessel, aircraft or hovercraft registered in the Falkland Islands, or a Falkland Islands marine structure; or

(ii) a container floating in the sea, if the deposit is controlled from a vessel, aircraft or hovercraft registered in the Falkland Islands, or a Falkland Islands marine structure;

(c) the scuttling of vessels —

(i) in Falkland Islands waters or Falkland Islands controlled waters;

(ii) anywhere at sea if the scuttling is controlled from a vessel, aircraft or hovercraft registered in the Falkland Islands, or a Falkland Islands marine structure;

(d) the loading of a vessel, aircraft, hovercraft, marine structure or floating container in the Falkland Islands or Falkland Islands waters with substances or articles for deposit anywhere in the sea or under the sea-bed;

(e) the loading of a vehicle in the Falkland Islands with substances or articles for deposit from that vehicle as mentioned in paragraph (a) or (b); and

(f) the towing or propelling from the Falkland Islands or Falkland Islands waters of a vessel for scuttling anywhere at sea.

[Marine Environment (Protection) Ordinance 1995, s. 3]

278. Requirement of licences for incineration at sea, etc.

Subject to the following provisions of this Part, a licence is needed —

(a) for the incineration of substances or articles on a vessel or marine structure —

(i) in Falkland Islands waters or Falkland Islands controlled waters; or

(ii) anywhere at sea if the incineration takes place on a vessel registered in the Falkland Islands or a Falkland Islands marine structure; and

(b) for the loading of a vessel or marine structure in the Falkland Islands or Falkland Islands waters with substances or articles for incineration at sea.

[Marine Environment (Protection) Ordinance 1995, s. 4]

279. Exemptions

(1) The Governor may by order specify operations for which —

(a) a licence is not required; or

(b) a licence is not required if the operations satisfy the conditions specified in the order.

(2) The conditions that an order under this section may be required to specify include conditions enabling the licensing authority to require a person to obtain the authority's approval before the person does anything for which a licence would be needed but for the order.

[Marine Environment (Protection) Ordinance 1995, s. 5]

280. Licences

(1) The Governor may appoint a public officer to be the licensing authority for the purposes of this Part and may from time to time revoke any such appointment and appoint another public officer to be the licensing authority in his or her place.

(2) If no appointment of a public officer is for the time being in force under this subsection, the Governor will 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 to the marine environment, the living resources which it supports, and human health;

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

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

(4) Without prejudice to the generality of subsection (1), where it appears to the licensing authority that an applicant has applied for a licence with a view to the disposal of articles or

substances to which it would relate, the authority, in determining whether to issue a licence, must have regard to the practical availability of any alternative methods of dealing with them.

(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 provisions as the licensing authority considers appropriate.

(6) Without prejudice to the generality of subsection (3), the licensing authority —

(a) may include in a licence provisions requiring —

(i) 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

(ii) the use of automatic equipment to record such information relating to the operation of any deposit, scuttling or incineration authorised by the licence; and

(b) may include in a licence which only authorises loading operations such as are mentioned in section 277(d) or section 278(b) provisions requiring that any operation of deposit, scuttling or incineration which is mentioned in it must take place at a specified site.

(7) The licensing authority may require an applicant for a licence to supply such information and permit such examinations and tests as in the opinion of the licensing authority may be necessary or expedient to enable the licensing authority to decide whether a licence should be issued to the applicant and the provisions which any licence that is issued to the applicant ought to contain.

(8) Where automatic recording equipment is used in accordance with a provision included in a licence by virtue of subsection (6)(a) of this section, any record produced by means of the equipment is, in any proceedings under this Part, evidence of the matters appearing from the record.

(9) The licensing authority may require an applicant for a licence, on making his or her application, to pay a reasonable fee towards the expense of —

(a) carrying out any examinations and tests which, in the opinion of the licensing authority, are necessary or expedient to enable the licensing authority to decide —

(i) whether to issue a licence to the applicant; and

- (ii) the provisions which any licence issued to the applicant ought to include;
- (b) checking the manner in which operations for which a licence is needed have been or are being conducted; and
- (c) monitoring the effect of such operation.

(10) Fees under this section must be determined by the Governor.
[*Marine Environment (Protection) Ordinance 1995, s. 6*]

281. Revocation or variation of licence

(1) The licensing authority may vary or revoke a licence if it appears to the licensing authority that the licence ought to be varied or revoked —

- (a) because of a change in circumstances relating to the marine environment, the living resources it supports, or human health; or
- (b) because of increased scientific knowledge relating to any of those matters; or
- (c) for any other reason that appears to the licensing authority to be relevant.

(2) Schedule 8 has effect in relation to the right to make representations and other matters relating to licences.

Offences relating to the licensing system

282. Offences related to the licensing system

(1) Subject to subsections (3) to (7), 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 —

- (a) makes a statement which the person knows to be false in a material particular;
- (b) recklessly makes a statement which is false in a material particular; or
- (c) intentionally fails to disclose any material particular.

(3) Subject to subsection (4), it is a defence for a person charged with an offence under subsection (1) in relation to any operation to prove that —

(a) the operation was carried out for the purposes of securing the safety of a vessel, aircraft, hovercraft or marine structure, or of saving life; and

(b) the person took steps within a reasonable time to inform the licensing authority of —

(i) the operation;

(ii) the locality and circumstances in which it took place; and

(iii) any substances or articles concerned.

(4) A person does not have the defence provided by subsection (3) if the court is satisfied that —

(a) the operation —

(i) was not necessary for any purpose mentioned in paragraph (a) of that subsection; or

(ii) was not a reasonable step in the circumstances; or

(b) it was necessary for one of those purposes but the necessity was due to the fault of the defendant.

(5) It is a defence for a person charged with an offence under subsection (1) in relation to any operation —

(a) which falls within section 277(b) or section 278(1)(a)(ii); and

(b) which was not conducted within either Falkland Islands waters or Falkland Islands controlled waters,

to prove that subsections (6) and (7) of this section are satisfied in respect of that operation.

(6) This subsection is satisfied in respect of an operation falling within —

(a) section 277(b) if the vessel, aircraft, hovercraft, marine structure or container (as the case may be) was loaded in a Convention State or the national or territorial waters of a Convention State with the substances or articles deposited;

(b) section 277(c)(ii), if the vessel scuttled was towed or propelled from a Convention State to the place where the scuttling was carried out; or

(c) section 278(a)(ii), if the vessel or marine structure on which the incineration took place was loaded in a Convention State or the national or territorial waters of a Convention State with the substances or articles incinerated.

(7) This subsection is satisfied in respect of an operation if the operation took place in pursuance of a licence issued by the responsible authority in the Convention State concerned and in accordance with the provisions of that licence.

[Marine Environment (Protection) Ordinance 1995, s. 7]

283. 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 Crown may recover any expenses reasonably incurred on the Governor's behalf in carrying it out from any person who has been convicted of an offence in consequence of the act or omission which made it appear to the Governor to be necessary or expedient for the operation to be carried out.

[Marine Environment (Protection) Ordinance 1995, s. 8]

Enforcement

284. Power of officers

(1) The Governor may authorise any person, subject to such limitations as may be specified in the instrument authorising the person, to enforce this Part, and the following provisions of this Part must be construed, in reference to a person so authorised, as subject to any such limitation.

(2) Subject to the following provisions of this Ordinance, a person so authorised may enter —

(a) any land or vehicle in the Falkland Islands;

(b) foreign vessels, foreign aircraft, foreign hovercraft and foreign marine structures in the Falkland Islands or within Falkland Islands waters or Falkland Islands controlled waters; or

(c) any of the following, wherever they may be —

(i) vessels, aircraft or hovercraft registered in the Falkland Islands; or

(ii) Falkland Islands marine structures,

if the person has reasonable grounds for believing that any substances or articles intended to be deposited in the sea or under the sea-bed or incinerated on a vessel or marine structure at sea are or have been present there.

(3) A person so authorised may board —

(a) any vessel within Falkland Islands waters or Falkland Islands controlled waters; and

(b) any vessel registered in the Falkland Islands, wherever it may be,

if it appears to the person that it is intended to be scuttled.

(4) A person so authorised must not enter premises used only as a dwelling for the purpose of enforcing this Ordinance.

(5) Schedule 9 has effect with respect to persons authorised to enforce this Chapter.

[Marine Environment (Protection) Ordinance 1995, s. 9]

285. Enforcement of Convention

(1) The Governor may by order —

(a) declare that any procedure which has been developed for the effective application of the Convention and is specified in the order is an agreed procedure; and

(b) specify that any of the powers conferred by this Ordinance for the purpose of enforcing this Part as a power that may be exercised, by such persons and in such circumstances and subject to such conditions or modifications as may be specified, for the purposes of enforcing that procedure.

(2) An order under subsection (1) may apply to the Falkland Islands, Falkland Islands waters and Falkland Islands controlled waters any statutory instrument made under section 12(1) of the 1985 Act and with such modifications and adaptations as the Governor may consider necessary or expedient.

(3) A person who exercises any powers by virtue of an order under this section has the same right and liabilities in relation to their exercise that a person authorised under section 284 would have in relation to the exercise of any powers for the purpose of enforcing of this Part.

[Marine Environment (Protection) Ordinance 1995, s. 10]

Miscellaneous

286. Power of Governor to test and charge for testing

(1) At the request of any person, the Governor may conduct tests to ascertain the probable effect on the marine environment and the living resources which it supports of using for the purpose of treating oil on the surface of the sea any substance produced for that purpose.

(2) If the Governor causes tests to be conducted under this section, the Governor may recover from any person at whose request they were conducted any expenses reasonably incurred by the Governor in having them conducted.

[Marine Environment (Protection) Ordinance 1995, s. 11]

287. Offences, penalties, etc.

(1) A person convicted of an offence under section 282(1) is liable to a fine or to imprisonment for a term not exceeding two years.

(2) A person convicted of an offence under section 282(2) is liable to a fine.

(3) A person convicted of an offence under Schedule 9 is liable to a fine not exceeding level 5 on the scale set out in Schedule 7.

(4) Where an offence under this Ordinance which has been committed by a body corporate is proved to have been committed with the consent or the connivance of, or attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, that person as well as the body corporate has committed that offence and is liable to be prosecuted accordingly.

(5) Where the affairs of a body corporate are managed by its members, subsection (4) applies in relation to the acts and defaults of a member in connection with his functions of management as if the member were a director of the body corporate.

[Marine Environment (Protection) Ordinance 1995, s. 12]

288. General defence of due diligence

(1) In any proceedings for an offence under this Part it is a defence for the person charged to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) Without prejudice to the generality of subsection (1), a person is to be taken to have established the defence provided by that subsection if the person proves —

(a) that the person acted under instructions given to the person by his or her employer; or

(b) that the person acted in reliance on information supplied by another person without any reason to suppose that the information was false or misleading,

and, in either case, that the person took all such steps as were reasonably open to him or her to ensure that no offence would be committed.

(3) If in any case the defence provided by subsection (1) involves an allegation that the commission of the offence was due to an act or omission by another person, other than the giving of instructions to the person charged with the offence by that person's employer, or to reliance on information supplied by another person, the person charged is not, without the leave of the court, entitled to rely on that defence unless within a period ending seven clear days before the hearing, the person charged has served on the prosecutor a notice giving such information identifying or assisting in the identification of that other person as was then in that person's possession.

[Marine Environment (Protection) Ordinance 1995, s. 13]

PART 15 – GENERAL PROVISIONS

Administration

289. General functions of Governor

(1) The Governor continues to have the general superintendence of all matters relating to merchant shipping and seafarers and is authorised to carry into execution the provisions of this Ordinance and of all enactments relating to merchant shipping and seafarers for the time being in force, except where otherwise provided or so far as relating to revenue.

(2) The Attorney General may take any legal proceedings under this Ordinance.

[Merchant Shipping Act 1995 (UK), s. 292]

290. Functions of Governor in relation to marine pollution

(1) The Governor continues to have the functions of taking, or co-ordinating, measures to prevent, reduce and minimise the effects of, marine pollution.

(2) Without prejudice to the generality of subsection (1), the functions of the Governor under that subsection, or of such person or authority to whom the Governor may delegate any of those functions, include —

(a) the preparation, review and implementation of a national plan setting out arrangements for responding to incidents which cause or may cause marine pollution with a view to preventing such pollution or reducing or minimising its effects;

(b) the acquisition, maintenance, use and disposal of ships, aircraft, equipment and other property;

(c) the provision of services, including research, training and advice; and

(d) the giving of assistance to any other State or international institution under any international agreement relating to the prevention, reduction or control of marine pollution subject to approval by the Secretary of State.

(3) Assistance under subsection (2)(d) may be given only on such terms as will secure reimbursement of the cost of giving the assistance if and to the extent that reimbursement will be practicable in the circumstances.

(4) The Governor may make reasonable charges for the supply of goods or services.

(5) Where under subsection (1) the Governor agrees that another person must take any measures to prevent, reduce or minimise the effects of marine pollution, the Governor may agree to indemnify that other person in respect of liabilities incurred by that person in connection with the taking of the measures.

(6) In this section —

“**marine pollution**” means pollution caused by ships, offshore installations or submarine pipelines affecting or likely to affect the Falkland Islands or Falkland Islands waters or Falkland Islands controlled waters;

“**offshore installation**” has the same meaning as in section 35 of the Offshore Minerals Ordinance 1994;

“**pipeline**” has the same meaning as in section 38 of the Offshore Minerals Ordinance 1994;

“**submarine**” means in, under or over Falkland Islands waters or Falkland Islands controlled waters;

“**Falkland Islands controlled waters**” has the same meaning as “controlled waters” has in section 2(1) of the Offshore Minerals Ordinance 1994, but no restriction as to the seas to which functions under this section extend is implied as regards the functions mentioned in subsection (2)(c).

[Merchant Shipping Act 1995 (UK), s. 293]

291. General power to dispense

(1) The Governor may, if he or she thinks fit, and upon such conditions (if any) as he or she thinks fit to impose, exempt any ship from any specified requirement of, or prescribed under, this Ordinance other than Chapter II of Part 7 (Waste reception facilities at harbours), or dispense with the observance of any such requirement in the case of any ship, if he or she is satisfied, as respects that requirement, of the matters specified in subsection (2).

(2) Those matters are that —

(a) the requirement has been substantially complied with in the case of that ship or that compliance with it is unnecessary in the circumstances; and

(b) the action taken or provision made as respects the subject-matter of the requirement in the case of the ship is as effective as, or more effective than, actual compliance with the requirement.

(3) The Governor must annually lay before the Legislative Assembly a special report stating —

(a) the cases in which the Governor has exercised his or her powers under this section during the preceding year; and

(b) the grounds upon which the Governor has acted in each case.

[Merchant Shipping Act 1995 (UK), s. 294]

292. Registrar General of Shipping

(1) This section establishes the office of Registrar General of Shipping, which is a public office.

(2) The Registrar General of Shipping is responsible for exercising such functions as are conferred on him or her by this Ordinance and for keeping such records and performing such other duties as the Governor may direct.

(3) The Governor may appoint and remove persons to perform on behalf of the Registrar General of Shipping such functions as the Governor or the Registrar General of Shipping may direct.

(4) Subsection (3) does not apply in relation to the functions of the Registrar General of Shipping as registrar under Part 2.

[Merchant Shipping Act 1995 (UK), s. 295]

293. Mercantile marine superintendents

(1) The Governor must appoint such number of public officers as the Governor thinks are appropriate as mercantile marine superintendents.

(2) Mercantile marine superintendents appointed under subsection (1) are responsible for exercising and discharging the functions conferred on marine superintendents by this Ordinance.

[Merchant Shipping Act 1995 (UK), s. 296]

294. Wreck commissioners, etc.

(1) The Governor may appoint such number of persons as he or she thinks fit to be —

(a) wreck commissioners to discharge the functions of wreck commissioners under this Ordinance or any other enactment which provides for wrecks;

(b) assessors for purposes of this Ordinance.

(2) There must be paid to any wreck commissioner such remuneration as the Governor may determine.

(3) There must be paid to any assessor appointed under this Ordinance such remuneration as the Governor may determine.

[Merchant Shipping Act 1995 (UK) s. 297]

295. Transmission of documents to Registrar General

(1) The following duties are imposed on all superintendents and all customs officers as respects all documents which are delivered or transmitted to or retained by them in pursuance of this Ordinance.

(2) The officers mentioned under subsection (1) must take charge of the documents and keep them for such time (if any) as may be necessary for the purpose of settling any business arising at the place where the documents come into their hands, or for any other proper purpose.

(3) The officers mentioned under subsection (1) must, if required, produce them for any of the purposes referred to under subsection (2), and must then transmit them to the Registrar General of Shipping.

(4) The Registrar General of Shipping must retain documents transmitted to him or her under subsection (3) for such period as the Governor may direct.

[Merchant Shipping Act 1995 (UK), s. 298]

296. Returns, etc. to Governor

(1) All superintendents must make and send to the Governor such returns or reports on any matter relating to Falkland Islands merchant shipping or seafarers as the Governor may require.

(2) All superintendents must, when required by the Governor, produce to the Governor or to the Governor's officers all official log-books and other documents which are delivered to the superintendents under this Ordinance or the Maritime Labour Ordinance 2019.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(3) All surveyors of ships must make such returns to the Governor as the Governor may require with respect to —

(a) the build, dimensions, draught, burden, speed and room for fuel of ships surveyed by them; and

(b) the nature and particulars of machinery and equipment of such ships.

(4) The owner, master and engineer of any ship being surveyed must, when required to do so, give to the surveyors all such information and assistance within his or her power as the surveyors require for the purpose of returns under subsection (3).

(5) If the owner, master or engineer, on being required under subsection (4) to give any information or assistance, fails, without reasonable excuse, to give the information or assistance, he or she commits an offence and is liable on conviction to a fine not exceeding level 3 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 299]

297. Advisory committees

(1) The Governor may, if he or she thinks fit, appoint committees for the purpose of advising him or her when considering the making or alteration of any regulations, rules or scales for the purpose of this Ordinance other than Chapter II of Part 7 or the Maritime Labour Ordinance 2019.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(2) A committee appointed under this section must consist of persons representing the interests principally affected or having special knowledge of the subject matter.

(3) The Governor must pay to the members of any committee under this section such travelling and other allowances as the Governor determines after consulting the Financial Secretary.

(4) Committees may be appointed under this section to advise the Governor specially as regards any special regulations, rules or scales or generally as regards any class or classes of regulations, rules or scales which the Governor may assign to them.

[Merchant Shipping Act 1995 (UK), s. 301]

Financial provisions

298. Fees

- (1) The Governor may make regulations prescribing fees to be charged in respect of —
- (a) the issue or recording in pursuance of this Ordinance of any certificate, licence or other document; or
 - (b) the doing of anything in pursuance of this Ordinance.

(2) In the case of fees for the measurement of a ship's tonnage, the fees may be prescribed as maximum fees.

[Merchant Shipping Act 1995 (UK), s. 302]

299. Funding of maritime services

The funding of maritime services must be provided for in annual Appropriation Ordinances.

[Merchant Shipping Act 1995 (UK), s. 302A]

300. Expenses of Collector of Customs

(1) All expenses incurred by the Collector of Customs in the conduct of proceedings or otherwise in carrying into effect the provisions of this Ordinance or the Maritime Labour Ordinance 2019 must be treated as expenses relating to the revenue of customs and excise and must be paid accordingly.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(2) The Governor may, however, repay all or any part of such of the expenses paid in accordance with subsection (1) as are chargeable under this Ordinance or the Maritime Labour Ordinance 2019 on the Consolidated Fund.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

[Merchant Shipping Act 1995 (UK), s. 303]

301. Expenses charged on money provided by the Crown in virtue of its Government in the Falkland Islands

The following expenses and other amounts are payable by the Crown in virtue of its Government in the Falkland Islands —

- (a) the expenses incurred by the Governor under this Ordinance or the Maritime Labour Ordinance 2019;
- (b) the salaries, pensions, gratuities and allowances of surveyors of ships, Departmental inspectors and superintendents;
- (c) the expenses of obtaining depositions, reports and returns respecting wrecks and casualties;
- (d) such sums as the Governor may, in his or her discretion, think fit to pay in respect of claims on account of the proceeds of wreck;

- (e) the expenses incurred in respect of receivers of wreck and the performance of their duties;
- (f) such expenses as the Governor directs for —
 - (i) establishing and maintaining on the coasts of the Falkland Islands proper lifeboats with the necessary crews and equipment;
 - (ii) affording assistance towards the preservation of life and property in cases of shipwreck and distress at sea; or
 - (iii) rewarding the preservation of life in such cases; and
- (g) any other amounts which are by virtue of any provision of this Ordinance or the Maritime Labour Ordinance 2019 as are so payable.

[Merchant Shipping Act 1995 (UK), s. 304]

[s9/Ord.14/2019/w.e.f. 26.09.2019]

302. Payments to be made into Consolidated Fund

(1) The following sums must be paid into the Consolidated Fund —

- (a) all fees, charges and expenses payable in respect of the survey and measurement of ships;
- (b) any fees received by receivers of wreck;
- (c) any sums received by the Governor under this Ordinance or the Maritime Labour Ordinance 2019 or which are, by any provision of it, required to be paid into the Consolidated Fund.

[s9/Ord.14/2019/w.e.f. 26.09.2019]

(2) All fees mentioned in this section must be paid at such time and in such manner as the Governor directs.

[Merchant Shipping Act 1995 (UK), s. 305]

Application of Ordinance to certain descriptions of ships, etc.

303. Application of Ordinance to ships not registered in the Falkland Islands

(1) The Governor may make regulations specifying any description of ships not registered in the Falkland Islands and also directing that the provisions of this Ordinance and of instruments under this Ordinance as may be specified in the regulations —

- (a) extend to ships not registered in the Falkland Islands, those ships description and to masters and seafarers employed in them; or
- (b) extend in such circumstances as may be specified, with such modifications (if any) as may be specified.

(2) Regulations under this section may contain such transitional, supplementary and consequential provisions as appear to the Governor to be expedient.

[Merchant Shipping Act 1995 (UK), s. 307]

304. Application of Ordinance to United Kingdom Government ships

(1) Subject to any other provision within this Ordinance, this Ordinance does not apply to ships belonging to Her Majesty.

(2) Part 2 of this Ordinance applies to United Kingdom Government ships where an Order in Council has been made under section 308 of the Act specifying the registration of United Kingdom Government ships in the Falkland Islands as British ships under Part 2 subject to any exceptions and modifications which may be made by the Order in Council, either generally or as respects any special class of United Kingdom Government ships.

[s46/Ord.14/2019/w.e.f. 26.09.2019]

(3) In this section “**United Kingdom Government ships**” has the same meaning given to it in section 5(4).

[Merchant Shipping Act 1995 (UK), s. 308]

[s46/Ord.14/2019/w.e.f. 26.09.2019]

305. Application of Ordinance to ships chartered by demise to the Crown

(1) This section applies to a ship if, for the time being —

(a) the ship is —

(i) registered in the Falkland Islands; and

(ii) in the service of the Falkland Islands Government by reason of a charter by demise to the Crown; and

(b) there is in force under section 308(2) of the Act an Order in Council providing for the registration of United Kingdom Government ships in the service of the Falkland Islands Government.

[s46/Ord.14/2019/w.e.f. 26.09.2019]

(2) Where this section applies to any ship, the following statutory provisions, namely —

(a) the provisions of the Order in Council referred to in subsection (1)(b) (excluding those relating to registration under the Order); and

(b) section 304 (as it applies by virtue of section 308(2) of the Act and that Order in Council),

have (subject to subsections (3) and (5)) the same effect in relation to that ship as they have in relation to a Government ship in the service of the Falkland Islands government (whether referred to as such, or a ship registered in pursuance of that Order in Council).

(3) Subject to subsection (5), Part 3 has effect in relation to a ship to which this section applies in like manner as if it were not, for the purposes of this Ordinance, a ship belonging to Her Majesty.

(4) In the application of any provision of this Ordinance (other than a provision of Part 3) in relation to a ship to which this section applies, any reference to the owner of the ship must be construed as a reference to the relevant Falkland Island government department.

(5) Subsections (2) and (3) apply subject to the provisions of an Order in Council made under section 309(4) of the Act.

[Merchant Shipping Act 1995 (UK), s. 309]

306. Application of Ordinance to certain structures, etc.

(1) The Governor may by order provide that a thing designed or adapted for use at sea and described in the order is or is not to be treated as a ship for the purposes of any specified provision of this Ordinance or of an instrument made under this Ordinance.

(2) An order under this section may —

(a) make different provision in relation to different occasions; and

(b) if it provides that a thing is to be treated as a ship for the purposes of a specified provision, provide that the provision has effect in relation to the thing with such modifications as are specified.

(3) In this section “**specified**” means specified in the order.

[Merchant Shipping Act 1995 (UK), s. 311]

Subordinate legislation

307. Regulations, rules and orders, etc.

(1) Before making the following regulations, rules or orders, namely —

(a) regulations under Part 3 or section 112 or 135;

(b) rules under Chapter II of Part 6;

(c) an order under section 306,

the Governor must consult with organisations in the Falkland Islands appearing to the Governor to be representative of persons who will be affected by the regulations, rules or orders.

[s41/Ord.14/2019/w.e.f. 26.09.2019]

(2) Any direction, notice, order or authorisation under this Ordinance given or made by the Governor must be in writing.

(3) Any power to give a direction includes power to vary or revoke the direction by a subsequent direction.

[Merchant Shipping Act 1995 (UK), s.306]

307A. Issue of mandatory and general guidance

(1) The Governor may —

(a) issue, or delegate to the Authority the issue of, mandatory guidance in the form of Merchant Shipping Notices which is equivalent to, or based on, United Kingdom Merchant Shipping Notices relevant to the provisions of this Ordinance or any regulations made under it; or

(b) adopt, or delegate to the Authority the adoption of, any United Kingdom Merchant Shipping Notices relevant to the provisions of this Ordinance or any regulations made under it as if those United Kingdom Merchant Shipping Notices were issued by the Governor or the Authority.

(2) The Governor may —

(a) issue, or delegate to the Authority, the issuing of general guidance which is equivalent to, or based on, United Kingdom Marine Guidance Notices or United Kingdom Marine Information Notices relevant to the provisions of this Ordinance or any regulations made under it, or

(b) adopt, or delegate to the Authority the adoption of, any United Kingdom Marine Guidance Notices or United Kingdom Marine Information Notices relevant to the provisions of this Ordinance or any regulations made under it as if those United Kingdom Marine Guidance Notices or Marine Information Notices were issued by the Governor or the Authority.

(3) The Governor must cause any mandatory or general guidance issued under this section to be marked with the distinguishing mark of the Authority.

(4) The power to issue any mandatory or general guidance under this section includes power to vary or revoke that guidance.

(5) Any United Kingdom Merchant Shipping Notices, United Kingdom Marine Guidance Notices or United Kingdom Marine Information Notices adopted under this section may be amended or varied with such modifications as may be necessary, or revoked.

(6) Any mandatory or general guidance issued under this section must be published.

[s42/Ord.14/2019/w.e.f. 26.09.2019]

308. Regulations

(1) The Governor may make regulations for giving effect to the provisions of this Ordinance.

(2) The power conferred by this section (1) is in addition to the power to make regulations that is given to the Governor by any provision of this Ordinance.

(3) Without prejudice to subsection (2) or to the generality of subsection (1), the Governor may in particular make regulations —

(a) prescribing anything required by this Ordinance to be prescribed, including but not limited to any procedure for the doing by any person of anything authorised or permitted by this Ordinance;

(b) prescribing or changing fees for anything in relation to which, by this Ordinance, a fee is to be or has been prescribed;

(c) to provide for their operation anywhere outside the Falkland Islands and for their application to persons, whether or not Commonwealth citizens, and to companies, whether or not incorporated under the law of the Falkland Islands;

(d) to provide that in any proceedings for an offence under the regulations (other than proceedings to which sub-paragraph (c) applied) an averment in any process of the fact that anything was done or situated within Falkland Islands waters is, unless the contrary is proved, sufficient evidence of that fact as stated in the averment;

(e) to provide that in any proceedings for an offence under the regulations a statement in any complaint or indictment of any such fact as is mentioned in sub-paragraph (b) is, unless the contrary is proved, sufficient evidence of the fact as so stated;

(f) to provide that proceedings for an offence under the regulations may be taken, and the offence be treated for all incidental purposes as having been committed, in the Falkland Islands;

(g) to provide for any provisions relating to inquiries and investigations into marine accidents to apply (with such modifications as may be specified) in relation to accidents involving any submersible apparatus (section 87) which is not a ship as they apply to ships;

(h) to provide that specified provisions of any enactment (other than section 87) does not, in such circumstances as may be prescribed, have effect in relation to such class or description of, or to such particular, submersible or supporting apparatus as may be prescribed;

(i) to make different provision for different classes or descriptions of submersible or supporting apparatus and for different circumstances;

(j) contain such supplemental and incidental provisions as appear to the Governor to be expedient.

308A. Power to make ambulatory references to international instruments

(1) This section applies where —

(a) a person has power under this Ordinance to make subsidiary legislation; and

(b) the person proposes to exercise that power to make subsidiary legislation which refers to an international instrument.

(2) The power may be exercised so as to have the effect that the reference to the international instrument is construed —

- (a) as a reference to the international instrument as modified from time to time;
 - (b) if the international instrument is replaced by another instrument, as a reference to that other instrument.
- (3) For the purposes of subsection (2)(a), an international instrument is modified if —
- (a) omissions, additions or other alterations to the text of the instrument take effect; or
 - (b) supplementary provision made under the instrument takes effect.
- (4) In this section, provision included in subsidiary legislation by virtue of subsection (2) is referred to as ambulatory provision.
- (5) Subsidiary legislation which makes ambulatory provision may make provision as to —
- (a) when a modification of an international instrument is to be treated as taking effect for the purposes of subsection (2)(a) (read with subsection (3));
 - (b) when an international instrument is to be treated as having been replaced by another instrument for the purposes of subsection (2)(b).
- (6) In this section —
- (a) “**international instrument**” means an international convention or treaty or an instrument made under such a convention or treaty;
 - (b) “**subsidiary legislation**” has the same meaning as in the Interpretation and General Clauses Ordinance 1977.

[Merchant Shipping Ordinance 1995 (UK), s. 306A]

[s43/Ord.14/2019/w.e.f. 26.09.2019]

309. Forms

- (1) The Governor must prescribe the form of any book, instrument or paper required under this Ordinance but may delegate this function to the Authority or the Director of Natural Resources, and where the Governor delegates this function, the Authority or the Director may alter such forms.
- (2) The Governor must cause every form prescribed under subsection (1) to be marked with the distinguishing mark of the Authority or the Department responsible for maritime services and, before finally issuing any form or making any alteration in a form, must publish a notice about the forms or their alteration in such manner as he or she thinks requisite in order to avoid inconvenience.
- (3) The Governor must cause the forms to be supplied at the Authority or the Department responsible for maritime services free of charge or at such reasonable prices as the Governor may fix, or the Governor may licence any persons to print and sell the forms.

(4) Every book, instrument or paper must be made in the form (if any) prescribed under this section, or as near as circumstances permit; and unless so made is not admissible in evidence in any civil proceedings on the part of the owner or master of any ship.

(5) Every book, instrument or paper, if made in a form purporting to be the proper form and to be marked in accordance with subsection (2), is deemed to be in the form required by this Ordinance, unless the contrary is proved.

(6) The foregoing provisions do not apply where special provision is made by this Ordinance and in particular to forms approved by the Registrar under section 15(3)(h)(i).

[s44/Ord.14/2019/w.e.f. 02.11.2023]

(7) If any person prints, sells or uses any document purporting to be a form prescribed under this section knowing that the document is not the form approved for the time being or that the document has not been prepared or issued in a manner required under this section, that person commits an offence and is liable, on conviction, to a fine not exceeding level 2 on the scale set out in Schedule 7.

[Merchant Shipping Act 1995 (UK), s. 300]

Final provisions

310. Repeals and savings

(1) The Ordinances and subsidiary legislation listed in Part A of Schedule 10 are repealed.

(2) A UK Act listed in Part B of Schedule 10 (being a UK Act that applies in the Falkland Islands by its own force or by virtue of an Order made by Her Majesty the Queen in Council) will no longer have force in the Falkland Islands on commencement of a UK enactment which provides that the UK Act no longer extends to the Falkland Islands.

(3) A UK statutory instrument listed in Part C of Schedule 10 (being a UK statutory instrument that applies in the Falkland Islands by its own force or by virtue of an Order made by Her Majesty the Queen in Council) will no longer have force in the Falkland Islands on commencement of a UK enactment which provides that the UK statutory instrument no longer extends to the Falkland Islands.

(4) Any subsidiary legislation made under a repealed Ordinance, and which could have been made under a corresponding provision of this Ordinance, continues in force as if made under this Ordinance, in so far as it is not inconsistent with this Ordinance, until replaced under this Ordinance.

(5) Subject to subsection (3), any subsidiary legislation made in the Falkland Islands under a UK Act listed in Part B of Schedule 10, and which could have been made under a corresponding provision of this Ordinance, continues in force as if made under this Ordinance, in so far as it is not inconsistent with this Ordinance, until replaced under this Ordinance.

(6) Subject to subsection (3), any UK statutory instrument made under a UK Act listed in Part B of Schedule 10, and which applies in the Falkland Islands by its own force or by virtue of an

Order made by Her Majesty the Queen in Council, continues in force until the commencement of a UK enactment which provides that the instrument no longer extends to the Falkland Islands.

(7) If there is no corresponding provision of this Ordinance under which any item of subsidiary legislation referred to in subsection (4) or (5) could be made, the item is repealed, except that it continues to have effect in relation to proceedings that had commenced before the repeal.

(8) Any reference to the registration, in the Falkland Islands, of a ship or fishing vessel made under —

(a) any UK Act or any UK statutory instrument listed in Part B or C of Schedule 10;

(b) any Ordinance or subsidiary legislation listed in Part A of Schedule 10;

(c) any UK Act or any UK statutory instrument not amended by Schedule 10; or

(d) any Ordinance or subsidiary legislation not amended by Schedule 10,

must be construed and continues to have effect (unless the context otherwise requires), as, or as including, a reference to registration under Part 3 of this Ordinance; and connected phrases must be construed accordingly.

[s45/Ord.14/2019/w.e.f. 26.09.2019]

**SCHEDULE 1 -
PRIVATE LAW PROVISIONS FOR REGISTERED SHIPS**

(section 22 and 23(7))

General

1.(1) Subject to any rights and powers appearing from the register to be vested in any other person, the registered owner of a ship or of a share in a ship has power to dispose of it provided the disposal is made in accordance with this Schedule and registration regulations.

(2) Sub-paragraph (1) above does not imply that interests arising under contract or other equitable interests cannot subsist in relation to a ship or a share in a ship; and such interests may be enforced by or against owners and mortgagees of ships in respect of their interest in the ship or share in the same manner as in respect of any other personal property.

(3) The registered owner of a ship or of a share in a ship has power to give effectual receipts for any money paid or advanced by way of consideration on any disposal of the ship or share.

Transfers etc. of registered ships

2.(1) Any transfer of a registered ship, or a share in such a ship, must be effected by a bill of sale satisfying the prescribed requirements, unless the transfer will result in the ship ceasing to have a Falkland Islands connection.

(2) Where any such ship or share has been transferred in accordance with sub-paragraph (1) above, the transferee must not be registered as owner of the ship or share unless —

(a) the transferee has made the prescribed application to the registrar; and

(b) the registrar is satisfied that the ship retains a Falkland Islands connection and that he or she would not refuse to register the ship.

(3) If an application under sub-paragraph (2) above is granted by the registrar, the registrar must register the bill of sale in the prescribed manner.

(4) Bills of sale must be registered in the order in which they are produced to the registrar for the purposes of registration.

3.(1) Where a registered ship, or a share in a registered ship, is transmitted to any person by any lawful means other than a transfer under paragraph 2 above and the ship continues to have a Falkland Islands connection, that person must not be registered as owner of the ship or share unless —

(a) the person has made the prescribed application to the registrar; and

(b) the registrar is satisfied that the ship retains a Falkland Islands connection and that he or she would not refuse to register the ship.

(2) If an application under sub-paragraph (1) is granted by the registrar, the registrar must cause the applicant's name to be registered as owner of the ship or share.

4.(1) Where the property in a registered ship or share in a registered ship is transmitted to any person by any lawful means other than a transfer under paragraph 2 above, but as a result the ship no longer has a Falkland Islands connection, the Supreme Court may, on application by or on behalf of that person, order a sale of the property so transmitted and direct that the proceeds of sale, after deducting the expenses of the sale, must be paid to that person or otherwise as the court direct.

(2) The court may require any evidence in support of the application they think requisite, and may make the order on any terms and conditions they think 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 must be made within the period of 28 days beginning with the date of the occurrence of the event on which the transmission has taken place, or within such further time (not exceeding one year) as the court may allow.

(4) If—

(a) such an application is not made within the time allowed by or under sub-paragraph (3) above; or

(b) the court refuse an order for sale,

the ship or share transmitted shall be liable to forfeiture.

5.(1) Where any court (whether under paragraph 4 above or otherwise) order the sale of any registered ship or share in a registered ship, the order of the court must contain a declaration vesting in some named person the right to transfer the ship or share.

(2) The person so named is entitled to transfer the ship or share in the same manner and to the same extent as if he were the registered owner of the ship or share.

(3) The registrar must deal with any application relating to the transfer of the ship or share made by the person so named as if that person were the registered owner.

6.(1) The Supreme Court may, if it thinks fit (without prejudice to the exercise of any other power), on the application of any interested person, make an order prohibiting for a specified time any dealing with a registered ship or share in a registered ship.

(2) The court may make the order on any terms or conditions it thinks just, or may refuse to make the order, or may discharge the order when made (with or without costs or, in Scotland, expenses) and generally may act in the case as the justice of the case requires.

(3) The order, when a copy is served on the registrar, is binding on the registrar whether or not he or she was made a party to the proceedings.

Mortgages of registered ships

7.(1) A registered ship, or share in a registered ship, may be made a security for the repayment of a loan or the discharge of any other obligation.

(2) The instrument creating any such security (referred to in the following provisions of this Schedule as a “mortgage”) must be in the form prescribed by or approved under registration regulations.

(3) Where a mortgage executed in accordance with sub-paragraph (2) above is produced to the registrar, the registrar must register the mortgage in the prescribed manner.

(4) Mortgages must be registered in the order in which they are produced to the registrar for the purposes of registration.

Priority of registered mortgages

8.(1) Where two or more mortgages are registered in respect of the same ship or share, the priority of the mortgagees between themselves must, subject to sub-paragraph (2) below, be determined by the order in which the mortgages were registered (and not by reference to any other matter).

(2) Registration regulations may provide for the giving to the registrar by intending mortgagees of “priority notices” in a form prescribed by or approved under the regulations which, when recorded in the register, determine the priority of the interest to which the notice relates.

Registered mortgagee’s power of sale

9.(1) Subject to sub-paragraph (2) below, every registered mortgagee has power, if the mortgage money or any part of it is due, to sell the ship or share in respect of which he or she is registered, and to give effectual receipts for the purchase money.

(2) Where two or more mortgagees are registered in respect of the same ship or share, a subsequent mortgagee must not, except under an order of a court of competent jurisdiction, sell the ship or share without the concurrence of every prior mortgagee.

Protection of registered mortgagees

10. Where a ship or share is subject to a registered mortgage then —

(a) except so far as is necessary for making the ship or share available as a security for the mortgage debt, the mortgagee must not by reason of the mortgage be treated as owner of the ship or share; and

(b) the mortgagor must be treated as not having ceased to be owner of the ship or share.

Transfer of registered mortgage

11.(1) A registered mortgage may be transferred by an instrument made in the form prescribed by or approved under registration regulations.

(2) Where any such instrument is produced to the registrar, the registrar must register the transferee in the prescribed manner.

Transmission of registered mortgage by operation of law

12. Where the interest of a mortgagee in a registered mortgage is transmitted to any person by any lawful means other than by a transfer under paragraph 11 above, the registrar must, on production of the prescribed evidence, cause the name of that person to be entered in the register as mortgagee of the ship or share in question.

Discharge of registered mortgage

13. Where a registered mortgage has been discharged, the registrar must, on production of the mortgage deed and such evidence of the discharge of the mortgage as may be prescribed, cause an entry to be made in the register to the effect that the mortgage has been discharged.

Definitions

14. In this Schedule —

“**mortgage**” must be construed in accordance with paragraph 7(2) above;

“**prescribed**” means prescribed in registration regulations; and

“**registered mortgage**” means a mortgage registered under paragraph 7(3).

**SCHEDULE 2 -
OVERALL LIMIT ON LIABILITY OF FUND**

(sections 185(1), (5) and 186(4)(a))

(Section 176 of the 1995 Act as applied to the Falkland Islands by S.I. 1997/2584)

(Schedule 5 to the 1995 Act as applied to the Falkland Islands by S.I. 1997/2584)

PART I

PERMANENT PROVISION

Article 4-paragraphs 4 and 5

4. (a) Except as otherwise provided in sub paragraphs (b) and (c) of this paragraph, the aggregate amount of compensation payable by the Fund under this Article shall in respect of any one incident be limited, so that the total sum of that amount and the amount of compensation actually paid under the Liability Convention for pollution damage within the scope of application of this Convention as defined in Article 3 shall not exceed 203 million units of account.

(b) Except as otherwise provided in sub paragraph (c), the aggregate amount of compensation payable by the Fund under this Article for pollution damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 203 million units of account.

(c) The maximum amount of compensation referred to in sub-paragraphs (a) and (b) shall be 300.74 million units of account with respect to any incident occurring during any period when there are three Parties to this Convention in respect of which the combined relevant quantity of contributing oil received by persons in the territories of such Parties, during the preceding calendar year, equalled or exceeded 600 million tons.

(d) Interest accrued on a fund constituted in accordance with Article V, paragraph 3, of the Liability Convention, if any, shall not be taken into account for the computation of the maximum compensation payable by the Fund under this Article.

(e) The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the Fund as to the first date of payment of compensation.
5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants.

**SCHEDULE 2A -
TEXT OF SUPPLEMENTARY FUND LIABILITY**

(sections 184A(4), 184B(5)) and 186(4)(b))

(SCHEDULE 5ZA to the 1995 Act)

Article 4 — paragraphs 1, 2 and 3

1. The Supplementary Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the 1992 Fund Convention, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in article 4, paragraph 4, of the 1992 Fund Convention in respect of any one incident.

2.—(a) The aggregate amount of compensation payable by the Supplementary Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount together with the amount of compensation actually paid under the 1992 Liability Convention and the 1992 Fund Convention within the scope of application of this Protocol shall not exceed 750 million units of account.

(b) The amount of 750 million units of account mentioned in paragraph 2(a) shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date determined by the Assembly of the 1992 Fund for conversion of the maximum amount payable under the 1992 Liability and 1992 Fund Conventions.

3. Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under paragraph 2, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Protocol shall be the same for all claimants.

Article 13 — paragraph 1

1. Contracting States shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with article 15 of the 1992 Fund Convention provided, however, that communications made to the Director of the 1992 Fund under article 15, paragraph 2, of the 1992 Fund Convention shall be deemed to have been made also under this Protocol.

Article 15 — paragraphs 1, 2 and 3

1. If in a Contracting State there is no person meeting the conditions of article 10, that Contracting State shall for the purposes of this Protocol inform the Director of the Supplementary Fund thereof.

2. No compensation shall be paid by the Supplementary Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with article 3(a)(ii), of this Protocol, of a Contracting State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director of the Supplementary Fund according to article 13, paragraph 1 and paragraph 1 of this

article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the circumstances under which a Contracting State shall be considered as having failed to comply with its obligations.

3. Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently in respect of that incident if the obligations to communicate to the Director of the Supplementary Fund under article 13, paragraph 1 and paragraph 1 of this article, have not been complied with within one year after the Director of the Supplementary Fund has notified the Contracting State of its failure to report.

[s47/Ord.14/2019/w.e.f. 02.11.2023]

SCHEDULE 3 -
TEXT OF INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION FOR
DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS
SUBSTANCES BY SEA

(sections , 190(2) and 192(1))

(SCHEDULE 5A to the 1995 Act – sections 182A to 182C)

The States parties to the present Convention,

Conscious of the dangers posed by the world-wide carriage by sea of hazardous and noxious substances,

Convinced of the need to ensure that adequate, prompt and effective compensation is available to persons who suffer damage caused by incidents in connection with the carriage by sea of such substances,

Desiring to adopt uniform international rules and procedures for determining questions of liability and compensation in respect of such damage,

Considering that the economic consequences of damage caused by the carriage by sea of hazardous and noxious substances should be shared by the shipping industry and the cargo interests involved,

Have agreed as follows:

Chapter I
GENERAL PROVISIONS

Definitions

Article 1

For the purposes of this Convention:

1. “Ship” means any seagoing vessel and seaborne craft, of any type whatsoever.
2. “Person” means any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions.
3. “Owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a

State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company.

4. "Receiver" means either:

(a) the person who physically receives contributing cargo discharged in the ports and terminals of a State Party; provided that if at the time of receipt the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver, if the agent discloses the principal to the HNS Fund; or

(b) the person in the State Party who in accordance with the national law of that State Party is deemed to be the receiver of contributing cargo discharged in the ports and terminals of a State Party, provided that the total contributing cargo received according to such national law is substantially the same as that which would have been received under (a).

5. "Hazardous and noxious substances" (HNS) means:

(a) any substances, materials and articles carried on board a ship as cargo, referred to in (i) to (vii) below:

(i) oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;

(ii) noxious liquid substances carried in bulk referred to in appendix II of Annex II to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended, and those substances and mixtures provisionally categorized as falling in pollution category A, B, C or D in accordance with regulation 3(4) of the said Annex II;

(iii) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, 1983, as amended, and the dangerous products for which the preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.3 of the Code;

(iv) dangerous, hazardous and harmful substances, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code, as amended;

(v) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1983, as amended, and the products for which preliminary suitable conditions for the carriage have been prescribed by the Administration and port administrations involved in accordance with paragraph 1.1.6 of the Code;

(vi) liquid substances carried in bulk with a flashpoint not exceeding 60°C (measured by a closed cup test);

(vii) solid bulk materials possessing chemical hazards covered by appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended, to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code when carried in packaged form; and

(b) residues from the previous carriage in bulk of substances referred to in (a)(i) to (iii) and (v) to (vii) above.

6. "Damage" means:

(a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances;

(b) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;

(c) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and

(d) the costs of preventive measures and further loss or damage caused by preventive measures.

Where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage shall be deemed to be caused by the hazardous and noxious substances except if, and to the extent that, the damage caused by other factors is damage of a type referred to in article 4, paragraph 3.

In this paragraph, "caused by those substances" means caused by the hazardous or noxious nature of the substances.

7. "Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize damage.

8. "Incident" means any occurrence or series of occurrences having the same origin, which causes damage or creates a grave and imminent threat of causing damage.

9. "Carriage by sea" means the period from the time when the hazardous and noxious substances enter any part of the ship's equipment, on loading, to the time they cease to be present in any part of the ship's equipment, on discharge. If no ship's equipment is used, the period begins and ends respectively when the hazardous and noxious substances cross the ship's rail.

10. "Contributing cargo" means any hazardous and noxious substances which are carried by sea as cargo to a port or terminal in the territory of a State Party and discharged in that State. Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

11. The “HNS Fund” means the International Hazardous and Noxious Substances Fund established under article 13.
12. “Unit of account” means the Special Drawing Right as defined by the International Monetary Fund.
13. “State of the ship’s registry” means in relation to a registered ship the State of registration of the ship, and in relation to an unregistered ship the State whose flag the ship is entitled to fly.
14. “Terminal” means any site for the storage of hazardous and noxious substances received from waterborne transportation, including any facility situated off-shore and linked by pipeline or otherwise to such site.
15. “Director” means the Director of the HNS Fund.
16. “Organization” means the International Maritime Organization.
17. “Secretary-General” means the Secretary-General of the Organization.

Annexes

Article 2

The Annexes to this Convention shall constitute an integral part of this Convention.

Scope of application

Article 3

This Convention shall apply exclusively:

- (a) to any damage caused in the territory, including the territorial sea, of a State Party;
- (b) to damage by contamination of the environment caused in the exclusive economic zone of a State Party, established in accordance with international law, or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;
- (c) to damage, other than damage by contamination of the environment, caused outside the territory, including the territorial sea, of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party or, in the case of an unregistered ship, on board a ship entitled to fly the flag of a State Party; and
- (d) to preventive measures, wherever taken.

Article 4

1. This Convention shall apply to claims, other than claims arising out of any contract for the carriage of goods and passengers, for damage arising from the carriage of hazardous and noxious substances by sea.
2. This Convention shall not apply to the extent that its provisions are incompatible with those of the applicable law relating to workers' compensation or social security schemes.
3. This Convention shall not apply:
 - (a) to pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended, whether or not compensation is payable in respect of it under that Convention; and
 - (b) to damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code, as amended, or in appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended.

4. Except as provided in paragraph 5, the provisions of this Convention shall not apply to warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on Government non-commercial service.

5. A State Party may decide to apply this Convention to its warships or other vessels described in paragraph 4, in which case it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

6. With respect to ships owned by a State Party and used for commercial purposes, each State shall be subject to suit in the jurisdictions set forth in article 38 and shall waive all defences based on its status as a sovereign State.

Article 5

1. A State may, at the time of ratification, acceptance, approval of, or accession to, this Convention, or any time thereafter, declare that this Convention does not apply to ships:

(a) which do not exceed 200 gross tonnage; and

(b) which carry hazardous and noxious substances only in packaged form; and

(c) while they are engaged on voyages between ports or facilities of that State.

2. Where two neighbouring States agree that this Convention does not apply also to ships which are covered by paragraph 1(a) and (b) while engaged on voyages between ports or facilities of those States, the States concerned may declare that the exclusion from the application of this Convention declared under paragraph 1 covers also ships referred to in this paragraph.

3. Any State which has made the declaration under paragraph 1 or 2 may withdraw such declaration at any time.

4. A declaration made under paragraph 1 or 2, and the withdrawal of the declaration made under paragraph 3, shall be deposited with the Secretary-General who shall, after the entry into force of this Convention, communicate it to the Director.

5. Where a State has made a declaration under paragraph 1 or 2 and has not withdrawn it, hazardous and noxious substances carried on board ships covered by that paragraph shall not be considered to be contributing cargo for the purpose of application of articles 18, 20, article 21, paragraph 5 and article 43.

6. The HNS Fund is not liable to pay compensation for damage caused by substances carried by a ship to which the Convention does not apply pursuant to a declaration made under paragraph 1 or 2, to the extent that:

(a) the damage as defined in article 1, paragraph 6(a), (b) or (c) was caused in:

(i) the territory, including the territorial sea, of the State which has made the declaration, or in the case of neighbouring States which have made a declaration under paragraph 2, of either of them; or

(ii) the exclusive economic zone, or area mentioned in article 3(b), of the State or States referred to in (i);

(b) the damage includes measures taken to prevent or minimize such damage.

Duties of State Parties

Article 6

Each State Party shall ensure that any obligation arising under this Convention is fulfilled and shall take appropriate measures under its law including the imposing of sanctions as it may deem necessary, with a view to the effective execution of any such obligation.

Chapter II LIABILITY

Liability of the owner

Article 7

1. Except as provided in paragraphs 2 and 3, the owner at the time of an incident shall be liable for damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship, provided that if an incident consists of a series of occurrences having the same origin the liability shall attach to the owner at the time of the first of such occurrences.

2. No liability shall attach to the owner if the owner proves that:

(a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or

(b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or

(c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or

(d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either:

(i) has caused the damage, wholly or partly; or

(ii) has led the owner not to obtain insurance in accordance with article 12;

provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.

3. If the owner proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from liability to such person.

4. No claim for compensation for damage shall be made against the owner otherwise than in accordance with this Convention.

5. Subject to paragraph 6, no claim for compensation for damage under this Convention or otherwise may be made against:

(a) the servants or agents of the owner or the members of the crew;

(b) the pilot or any other person who, without being a member of the crew, performs services for the ship;

(c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;

(d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;

(e) any person taking preventive measures; and

(f) the servants or agents of persons mentioned in (c), (d) and (e);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

6. Nothing in this Convention shall prejudice any existing right of recourse of the owner against any third party, including, but not limited to, the shipper or the receiver of the substance causing the damage, or the persons indicated in paragraph 5.

Incidents involving two or more ships

Article 8

1. Whenever damage has resulted from an incident involving two or more ships each of which is carrying hazardous and noxious substances, each owner, unless exonerated under article 7, shall be liable for the damage. The owners shall be jointly and severally liable for all such damage which is not reasonably separable.

2. However, owners shall be entitled to the limits of liability applicable to each of them under article 9.

3. Nothing in this article shall prejudice any right of recourse of an owner against any other owner.

Limitation of liability

Article 9

1. The owner of a ship shall be entitled to limit liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:

(a) 10 million units of account for a ship not exceeding 2,000 units of tonnage; and

(b) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (a):

for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 units of account

for each unit of tonnage in excess of 50,000 units of tonnage, 360 units of account

provided, however, that this aggregate amount shall not in any event exceed 100 million units of account.

2. The owner shall not be entitled to limit liability under this Convention if it is proved that the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

3. The owner shall, for the purpose of benefitting from the limitation provided for in paragraph 1, constitute a fund for the total sum representing the limit of liability established in accordance with paragraph 1 with the court or other competent authority of any one of the States Parties in which action is brought under article 38 or, if no action is brought, with any court or other competent authority in any one of the States Parties in which an action can be brought under article 38. The fund can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the law of the State Party where the fund is constituted, and considered to be adequate by the court or other competent authority.

4. Subject to the provisions of article 11, the fund shall be distributed among the claimants in proportion to the amounts of their established claims.

5. If before the fund is distributed the owner or any of the servants or agents of the owner or any person providing to the owner insurance or other financial security has as a result of the incident in question, paid compensation for damage, such person shall, up to the amount that person has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

6. The right of subrogation provided for in paragraph 5 may also be exercised by a person other than those mentioned therein in respect of any amount of compensation for damage which such person may have paid but only to the extent that such subrogation is permitted under the applicable national law.

7. Where owners or other persons establish that they may be compelled to pay at a later date in whole or in part any such amount of compensation, with regard to which the right of subrogation would have been enjoyed under paragraphs 5 or 6 had the compensation been paid before the fund was distributed, the court or other competent authority of the State where the fund has been

constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce the claim against the fund.

8. Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall rank equally with other claims against the fund.

9. (a) The amounts mentioned in paragraph 1 shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the constitution of the fund referred to in paragraph 3.

The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

(b) Nevertheless, a State Party which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 9(a) may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the unit of account referred to in paragraph 9(a) shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five-and-a-half milligrammes of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

(c) The calculation mentioned in the last sentence of paragraph 9(a) and the conversion mentioned in paragraph 9(b) shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in paragraph 1 as would result from the application of the first two sentences of paragraph 9(a). States Parties shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 9(a), or the result of the conversion in paragraph 9(b) as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

10. For the purpose of this article the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

11. The insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this article on the same conditions and having the same effect as if it were constituted by the owner. Such a fund may be constituted even if, under the provisions of paragraph 2, the owner is not entitled to limitation of liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.

Article 10

1. Where the owner, after an incident, has constituted a fund in accordance with article 9 and is entitled to limit liability:

(a) no person having a claim for damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim; and

(b) the court or other competent authority of any State Party shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

2. The foregoing shall, however, only apply if the claimant has access to the court administering the fund and the fund is actually available in respect of the claim.

Death and injury

Article 11

Claims in respect of death or personal injury have priority over other claims save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with article 9, paragraph 1.

Compulsory insurance of the owner

Article 12

1. The owner of a ship registered in a State Party and actually carrying hazardous and noxious substances shall be required to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, in the sums fixed by applying the limits of liability prescribed in article 9, paragraph 1, to cover liability for damage under this Convention.

2. A compulsory insurance certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party such compulsory insurance certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in Annex I and shall contain the following particulars:

(a) name of the ship, distinctive number or letters and port of registry;

(b) name and principal place of business of the owner;

(c) IMO ship identification number;

(d) type and duration of security;

(e) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and

(f) period of validity of certificate, which shall not be longer than the period of validity of the insurance or other security.

3. The compulsory insurance certificate shall be in the official language or languages of the issuing State. If the language used is neither English, nor French nor Spanish, the text shall include a translation into one of these languages.

4. The compulsory insurance certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.

5. An insurance or other financial security shall not satisfy the requirements of this article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 4, unless the compulsory insurance certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or security no longer satisfying the requirements of this article.

6. The State of the ship's registry shall, subject to the provisions of this article, determine the conditions of issue and validity of the compulsory insurance certificate.

7. Compulsory insurance certificates issued or certified under the authority of a State Party in accordance with paragraph 2 shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as compulsory insurance certificates issued or certified by them even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the compulsory insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

8. Any claim for compensation for damage may be brought directly against the insurer or other person providing financial security for the owner's liability for damage. In such case the defendant may, even if the owner is not entitled to limitation of liability, benefit from the limit of liability prescribed in accordance with paragraph 1. The defendant may further invoke the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the owner against the defendant. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

9. Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention.

10. A State Party shall not permit a ship under its flag to which this article applies to trade unless a certificate has been issued under paragraph 2 or 12.

11. Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security in the sums specified in paragraph 1 is in force in respect of any ship, wherever registered, entering or leaving a port in its territory, or arriving at or leaving an offshore facility in its territorial sea.

12. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a compulsory insurance certificate issued by the appropriate authorities of the State of the ship's registry stating that the ship is owned by that State and that the ship's liability is covered within the limit prescribed in accordance with paragraph 1. Such a compulsory insurance certificate shall follow as closely as possible the model prescribed by paragraph 2.

Chapter III

COMPENSATION BY THE INTERNATIONAL HAZARDOUS AND NOXIOUS SUBSTANCES FUND (HNS FUND)

Establishment of the HNS Fund

Article 13

1. The International Hazardous and Noxious Substances Fund (HNS Fund) is hereby established with the following aims:

(a) to provide compensation for damage in connection with the carriage of hazardous and noxious substances by sea, to the extent that the protection afforded by chapter II is inadequate or not available; and

(b) to give effect to the related tasks set out in article 15.

2. The HNS Fund shall in each State Party be recognized as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each State Party shall recognize the Director as the legal representative of the HNS Fund.

Compensation

Article 14

1. For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall pay compensation to any person suffering damage if such person has been unable to obtain full and adequate compensation for the damage under the terms of chapter II:

(a) because no liability for the damage arises under chapter II;

(b) because the owner liable for the damage under chapter II is financially incapable of meeting the obligations under this Convention in full and any financial security that may be provided under chapter II does not cover or is insufficient to satisfy the claims for compensation for damage; an owner being treated as financially incapable of meeting these

obligations and a financial security being treated as insufficient if the person suffering the damage has been unable to obtain full satisfaction of the amount of compensation due under chapter II after having taken all reasonable steps to pursue the available legal remedies;

(c) because the damage exceeds the owner's liability under the terms of chapter II.

2. Expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimize damage shall be treated as damage for the purposes of this article.

3. The HNS Fund shall incur no obligation under the preceding paragraphs if:

(a) it proves that the damage resulted from an act of war, hostilities, civil war or insurrection or was caused by hazardous and noxious substances which had escaped or been discharged from a warship or other ship owned or operated by a State and used, at the time of the incident, only on Government non-commercial service; or

(b) the claimant cannot prove that there is a reasonable probability that the damage resulted from an incident involving one or more ships.

4. If the HNS Fund proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the HNS Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The HNS Fund shall in any event be exonerated to the extent that the owner may have been exonerated under article 7, paragraph 3. However, there shall be no such exoneration of the HNS Fund with regard to preventive measures.

5. (a) Except as otherwise provided in subparagraph (b), the aggregate amount of compensation payable by the HNS Fund under this article shall in respect of any one incident be limited, so that the total sum of that amount and any amount of compensation actually paid under chapter II for damage within the scope of application of this Convention as defined in article 3 shall not exceed 250 million units of account.

(b) The aggregate amount of compensation payable by the HNS Fund under this article for damage resulting from a natural phenomenon of an exceptional, inevitable and irresistible character shall not exceed 250 million units of account.

(c) Interest accrued on a fund constituted in accordance with article 9, paragraph 3, if any, shall not be taken into account for the computation of the maximum compensation payable by the HNS Fund under this article.

(d) The amounts mentioned in this article shall be converted into national currency on the basis of the value of that currency with reference to the Special Drawing Right on the date of the decision of the Assembly of the HNS Fund as to the first date of payment of compensation.

6. Where the amount of established claims against the HNS Fund exceeds the aggregate amount of compensation payable under paragraph 5, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Convention shall be the same for all claimants.

Claims in respect of death or personal injury shall have priority over other claims, however, save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with paragraph 5.

7. The Assembly of the HNS Fund may decide that, in exceptional cases, compensation in accordance with this Convention can be paid even if the owner has not constituted a fund in accordance with chapter II. In such cases paragraph 5(d) applies accordingly.

Related tasks of the HNS Fund

Article 15

For the purpose of fulfilling its function under article 13, paragraph 1(a), the HNS Fund shall have the following tasks:

- (a) to consider claims made against the HNS Fund;
- (b) to prepare an estimate in the form of a budget for each calendar year of:

Expenditure:

- (i) costs and expenses of the administration of the HNS Fund in the relevant year and any deficit from operations in the preceding years; and
- (ii) payments to be made by the HNS Fund in the relevant year;

Income:

- (iii) surplus funds from operations in preceding years, including any interest;
 - (iv) initial contributions to be paid in the course of the year;
 - (v) annual contributions if required to balance the budget; and
 - (vi) any other income;
- (c) to use at the request of a State Party its good offices as necessary to assist that State to secure promptly such personnel, material and services as are necessary to enable the State to take measures to prevent or mitigate damage arising from an incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention; and
- (d) to provide, on conditions laid down in the internal regulations, credit facilities with a view to the taking of preventive measures against damage arising from a particular incident in respect of which the HNS Fund may be called upon to pay compensation under this Convention.

General provisions on contributions

Article 16

1. The HNS Fund shall have a general account, which shall be divided into sectors.
2. The HNS Fund shall, subject to article 19, paragraphs 3 and 4, also have separate accounts in respect of:
 - (a) oil as defined in article 1, paragraph 5(a)(i) (oil account);
 - (b) liquefied natural gases of light hydrocarbons with methane as the main constituent (LNG) (LNG account); and
 - (c) liquefied petroleum gases of light hydrocarbons with propane and butane as the main constituents (LPG) (LPG account).
3. There shall be initial contributions and, as required, annual contributions to the HNS Fund.
4. Contributions to the HNS Fund shall be made into the general account in accordance with article 18, to separate accounts in accordance with article 19 and to either the general account or separate accounts in accordance with article 20 or article 21, paragraph 5. Subject to article 19, paragraph 6, the general account shall be available to compensate damage caused by hazardous and noxious substances covered by that account, and a separate account shall be available to compensate damage caused by a hazardous and noxious substance covered by that account.
5. For the purposes of article 18, article 19, paragraph 1(a)(i), paragraph 1(a)(ii) and paragraph 1(c), article 20 and article 21, paragraph 5, where the quantity of a given type of contributing cargo received in the territory of a State Party by any person in a calendar year when aggregated with the quantities of the same type of cargo received in the same State Party in that year by any associated person or persons exceeds the limit specified in the respective subparagraphs, such a person shall pay contributions in respect of the actual quantity received by that person notwithstanding that that quantity did not exceed the respective limit.
6. "Associated person" means any subsidiary or commonly controlled entity. The question whether a person comes within this definition shall be determined by the national law of the State concerned.

General provisions on annual contributions

Article 17

1. Annual contributions to the general account and to each separate account shall be levied only as required to make payments by the account in question.
2. Annual contributions payable pursuant to articles 18, 19 and article 21, paragraph 5 shall be determined by the Assembly and shall be calculated in accordance with those articles on the basis of the units of contributing cargo received or, in respect of cargoes referred to in article 19,

paragraph 1(b), discharged during the preceding calendar year or such other year as the Assembly may decide.

3. The Assembly shall decide the total amount of annual contributions to be levied to the general account and to each separate account. Following that decision the Director shall, in respect of each State Party, calculate for each person liable to pay contributions in accordance with article 18, article 19, paragraph 1 and article 21, paragraph 5, the amount of that person's annual contribution to each account, on the basis of a fixed sum for each unit of contributing cargo reported in respect of the person during the preceding calendar year or such other year as the Assembly may decide. For the general account, the above-mentioned fixed sum per unit of contributing cargo for each sector shall be calculated pursuant to the regulations contained in Annex II to this Convention. For each separate account, the fixed sum per unit of contributing cargo referred to above shall be calculated by dividing the total annual contribution to be levied to that account by the total quantity of cargo contributing to that account.

4. The Assembly may also levy annual contributions for administrative costs and decide on the distribution of such costs between the sectors of the general account and the separate accounts.

5. The Assembly shall also decide on the distribution between the relevant accounts and sectors of amounts paid in compensation for damage caused by two or more substances which fall within different accounts or sectors, on the basis of an estimate of the extent to which each of the substances involved contributed to the damage.

Annual contributions to the general account

Article 18

1. Subject to article 16, paragraph 5, annual contributions to the general account shall be made in respect of each State Party by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of aggregate quantities exceeding 20,000 tonnes of contributing cargo, other than substances referred to in article 19, paragraph 1, which fall within the following sectors:

(a) solid bulk materials referred to in article 1, paragraph 5(a)(vii);

(b) substances referred to in paragraph 2; and

(c) other substances.

2. Annual contributions shall also be payable to the general account by persons who would have been liable to pay contributions to a separate account in accordance with article 19, paragraph 1 had its operation not been postponed or suspended in accordance with article 19. Each separate account the operation of which has been postponed or suspended under article 19 shall form a separate sector within the general account.

Annual contributions to separate accounts

Article 19

1. Subject to article 16, paragraph 5, annual contributions to separate accounts shall be made in respect of each State Party:

(a) in the case of the oil account,

(i) by any person who has received in that State in the preceding calendar year, or such other year as the Assembly may decide, total quantities exceeding 150,000 tonnes of contributing oil as defined in article 1, paragraph 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended, and who is or would be liable to pay contributions to the International Oil Pollution Compensation Fund in accordance with article 10 of that Convention; and

(ii) by any person who was the receiver in that State in the preceding calendar year, or such other year as the Assembly may decide, of total quantities exceeding 20,000 tonnes of other oils carried in bulk listed in appendix I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended;

(b) in the case of the LNG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, immediately prior to its discharge, held title to an LNG cargo discharged in a port or terminal of that State;

(c) in the case of the LPG account, by any person who in the preceding calendar year, or such other year as the Assembly may decide, was the receiver in that State of total quantities exceeding 20,000 tonnes of LPG.

2. Subject to paragraph 3, the separate accounts referred to in paragraph 1 above shall become effective at the same time as the general account.

3. The initial operation of a separate account referred to in article 16, paragraph 2 shall be postponed until such time as the quantities of contributing cargo in respect of that account during the preceding calendar year, or such other year as the Assembly may decide, exceed the following levels:

(a) 350 million tonnes of contributing cargo in respect of the oil account;

(b) 20 million tonnes of contributing cargo in respect of the LNG account; and

(c) 15 million tonnes of contributing cargo in respect of the LPG account.

4. The Assembly may suspend the operation of a separate account if:

(a) the quantities of contributing cargo in respect of that account during the preceding calendar year fall below the respective level specified in paragraph 3; or

(b) when six months have elapsed from the date when the contributions were due, the total unpaid contributions to that account exceed ten per cent of the most recent levy to that account in accordance with paragraph 1.

5. The Assembly may reinstate the operation of a separate account which has been suspended in accordance with paragraph 4.

6. Any person who would be liable to pay contributions to a separate account the operation of which has been postponed in accordance with paragraph 3 or suspended in accordance with paragraph 4, shall pay into the general account the contributions due by that person in respect of that separate account. For the purpose of calculating future contributions, the postponed or suspended separate account shall form a new sector in the general account and shall be subject to the HNS points system defined in Annex II.

Initial contributions

Article 20

1. In respect of each State Party, initial contributions shall be made of an amount which shall for each person liable to pay contributions in accordance with article 16, paragraph 5, articles 18, 19 and article 21, paragraph 5 be calculated on the basis of a fixed sum, equal for the general account and each separate account, for each unit of contributing cargo received or, in the case of LNG, discharged in that State, during the calendar year preceding that in which this Convention enters into force for that State.

2. The fixed sum and the units for the different sectors within the general account as well as for each separate account referred to in paragraph 1 shall be determined by the Assembly.

3. Initial contributions shall be paid within three months following the date on which the HNS Fund issues invoices in respect of each State Party to persons liable to pay contributions in accordance with paragraph 1.

Reports

Article 21

1. Each State Party shall ensure that any person liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article appears on a list to be established and kept up to date by the Director in accordance with the provisions of this article.

2. For the purposes set out in paragraph 1, each State Party shall communicate to the Director, at a time and in the manner to be prescribed in the internal regulations of the HNS Fund, the name and address of any person who in respect of the State is liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article, as well as data on the relevant quantities of contributing cargo for which such a person is liable to contribute in respect of the preceding calendar year.

3. For the purposes of ascertaining who are, at any given time, the persons liable to pay contributions in accordance with articles 18, 19 or paragraph 5 of this article and of establishing,

where applicable, the quantities of cargo to be taken into account for any such person when determining the amount of the contribution, the list shall be prima facie evidence of the facts stated therein.

4. Where a State Party does not fulfil its obligations to communicate to the Director the information referred to in paragraph 2 and this results in a financial loss for the HNS Fund, that State Party shall be liable to compensate the HNS Fund for such loss. The Assembly shall, on the recommendation of the Director, decide whether such compensation shall be payable by a State Party.

5. In respect of contributing cargo carried from one port or terminal of a State Party to another port or terminal located in the same State and discharged there, States Parties shall have the option of submitting to the HNS Fund a report with an annual aggregate quantity for each account covering all receipts of contributing cargo, including any quantities in respect of which contributions are payable pursuant to article 16, paragraph 5. The State Party shall, at the time of reporting, either:

(a) notify the HNS Fund that that State will pay the aggregate amount for each account in respect of the relevant year in one lump sum to the HNS Fund; or

(b) instruct the HNS Fund to levy the aggregate amount for each account by invoicing individual receivers or, in the case of LNG, the title holder who discharges within the jurisdiction of that State Party, for the amount payable by each of them. These persons shall be identified in accordance with the national law of the State concerned.

Non-payment of contributions

Article 22

1. The amount of any contribution due under articles 18, 19, 20 or article 21, paragraph 5 and which is in arrears shall bear interest at a rate which shall be determined in accordance with the internal regulations of the HNS Fund, provided that different rates may be fixed for different circumstances.

2. Where a person who is liable to pay contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5 does not fulfil the obligations in respect of any such contribution or any part thereof and is in arrears, the Director shall take all appropriate action, including court action, against such a person on behalf of the HNS Fund with a view to the recovery of the amount due. However, where the defaulting contributor is manifestly insolvent or the circumstances otherwise so warrant, the Assembly may, upon recommendation of the Director, decide that no action shall be taken or continued against the contributor.

Optional liability of States Parties for the payment of contributions

Article 23

1. Without prejudice to article 21, paragraph 5, a State Party may at the time when it deposits its instrument of ratification, acceptance, approval or accession or at any time thereafter declare that it assumes responsibility for obligations imposed by this Convention on any person liable to pay

contributions in accordance with articles 18, 19, 20 or article 21, paragraph 5 in respect of hazardous and noxious substances received or discharged in the territory of that State. Such a declaration shall be made in writing and shall specify which obligations are assumed.

2. Where a declaration under paragraph 1 is made prior to the entry into force of this Convention in accordance with article 46, it shall be deposited with the Secretary-General who shall after the entry into force of this Convention communicate the declaration to the Director.

3. A declaration under paragraph 1 which is made after the entry into force of this Convention shall be deposited with the Director.

4. A declaration made in accordance with this article may be withdrawn by the relevant State giving notice thereof in writing to the Director. Such a notification shall take effect three months after the Director's receipt thereof.

5. Any State which is bound by a declaration made under this article shall, in any proceedings brought against it before a competent court in respect of any obligation specified in the declaration, waive any immunity that it would otherwise be entitled to invoke.

Organization and administration

Article 24

The HNS Fund shall have an Assembly and a Secretariat headed by the Director.

Assembly

Article 25

The Assembly shall consist of all States Parties to this Convention.

Article 26

The functions of the Assembly shall be:

(a) to elect at each regular session its President and two Vice-Presidents who shall hold office until the next regular session;

(b) to determine its own rules of procedure, subject to the provisions of this Convention;

(c) to develop, apply and keep under review internal and financial regulations relating to the aim of the HNS Fund as described in article 13, paragraph 1(a), and the related tasks of the HNS Fund listed in article 15;

(d) to appoint the Director and make provisions for the appointment of such other personnel as may be necessary and determine the terms and conditions of service of the Director and other personnel;

(e) to adopt the annual budget prepared in accordance with article 15(b);

(f) to consider and approve as necessary any recommendation of the Director regarding the scope of definition of contributing cargo;

(g) to appoint auditors and approve the accounts of the HNS Fund;

(h) to approve settlements of claims against the HNS Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with article 14 and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of damage are compensated as promptly as possible;

(i) to establish a Committee on Claims for Compensation with at least 7 and not more than 15 members and any temporary or permanent subsidiary body it may consider to be necessary, to define its terms of reference and to give it the authority needed to perform the functions entrusted to it; when appointing the members of such body, the Assembly shall endeavour to secure an equitable geographical distribution of members and to ensure that the States Parties are appropriately represented; the Rules of Procedure of the Assembly may be applied, *mutatis mutandis*, for the work of such subsidiary body;

(j) to determine which States not party to this Convention, which Associate Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to take part, without voting rights, in meetings of the Assembly and subsidiary bodies;

(k) to give instructions concerning the administration of the HNS Fund to the Director and subsidiary bodies;

(l) to supervise the proper execution of this Convention and of its own decisions;

(m) to review every five years the implementation of this Convention with particular reference to the performance of the system for the calculation of levies and the contribution mechanism for domestic trade; and

(n) to perform such other functions as are allocated to it under this Convention or are otherwise necessary for the proper operation of the HNS Fund.

Article 27

1. Regular sessions of the Assembly shall take place once every calendar year upon convocation by the Director.

2. Extraordinary sessions of the Assembly shall be convened by the Director at the request of at least one-third of the members of the Assembly and may be convened on the Director's own initiative after consultation with the President of the Assembly. The Director shall give members at least thirty days' notice of such sessions.

Article 28

A majority of the members of the Assembly shall constitute a quorum for its meetings.

Secretariat

Article 29

1. The Secretariat shall comprise the Director and such staff as the administration of the HNS Fund may require.
2. The Director shall be the legal representative of the HNS Fund.

Article 30

1. The Director shall be the chief administrative officer of the HNS Fund. Subject to the instructions given by the Assembly, the Director shall perform those functions which are assigned to the Director by this Convention, the internal regulations of the HNS Fund and the Assembly.
2. The Director shall in particular:
 - (a) appoint the personnel required for the administration of the HNS Fund;
 - (b) take all appropriate measures with a view to the proper administration of the assets of the HNS Fund;
 - (c) collect the contributions due under this Convention while observing in particular the provisions of article 22, paragraph 2;
 - (d) to the extent necessary to deal with claims against the HNS Fund and to carry out the other functions of the HNS Fund, employ the services of legal, financial and other experts;
 - (e) take all appropriate measures for dealing with claims against the HNS Fund, within the limits and on conditions to be laid down in the internal regulations of the HNS Fund, including the final settlement of claims without the prior approval of the Assembly where these regulations so provide;
 - (f) prepare and submit to the Assembly the financial statements and budget estimates for each calendar year;
 - (g) prepare, in consultation with the President of the Assembly, and publish a report on the activities of the HNS Fund during the previous calendar year; and
 - (h) prepare, collect and circulate the documents and information which may be required for the work of the Assembly and subsidiary bodies.

Article 31

In the performance of their duties the Director and the staff and experts appointed by the Director shall not seek or receive instructions from any Government or from any authority external to the HNS Fund. They shall refrain from any action which might adversely reflect on their position as international officials. Each State Party on its part undertakes to respect the exclusively international character of the responsibilities of the Director and the staff and experts appointed by the Director, and not to seek to influence them in the discharge of their duties.

Finances

Article 32

1. Each State Party shall bear the salary, travel and other expenses of its own delegation to the Assembly and of its representatives on subsidiary bodies.
2. Any other expenses incurred in the operation of the HNS Fund shall be borne by the HNS Fund.

Voting

Article 33

The following provisions shall apply to voting in the Assembly:

- (a) each member shall have one vote;
- (b) except as otherwise provided in article 34, decisions of the Assembly shall be made by a majority vote of the members present and voting;
- (c) decisions where a two-thirds majority is required shall be a two-thirds majority vote of members present; and
- (d) for the purpose of this article the phrase "members present" means "members present at the meeting at the time of the vote", and the phrase "members present and voting" means "members present and casting an affirmative or negative vote". Members who abstain from voting shall be considered as not voting.

Article 34

The following decisions of the Assembly shall require a two-thirds majority:

- (a) a decision under article 19, paragraphs 4 or 5 to suspend or reinstate the operation of a separate account;
- (b) a decision under article 22, paragraph 2, not to take or continue action against a contributor;
- (c) the appointment of the Director under article 26(d);

(d) the establishment of subsidiary bodies, under article 26(i), and matters relating to such establishment; and

(e) a decision under article 51, paragraph 1, that this Convention shall continue to be in force.

Tax exemptions and currency regulations

Article 35

1. The HNS Fund, its assets, income, including contributions, and other property necessary for the exercise of its functions as described in article 13, paragraph 1, shall enjoy in all States Parties exemption from all direct taxation.
2. When the HNS Fund makes substantial purchases of movable or immovable property, or of services which are necessary for the exercise of its official activities in order to achieve its aims as set out in article 13, paragraph 1, the cost of which include indirect taxes or sales taxes, the Governments of the States Parties shall take, whenever possible, appropriate measures for the remission or refund of the amount of such duties and taxes. Goods thus acquired shall not be sold against payment or given away free of charge unless it is done according to conditions approved by the Government of the State having granted or supported the remission or refund.
3. No exemption shall be accorded in the case of duties, taxes or dues which merely constitute payment for public utility services.
4. The HNS Fund shall enjoy exemption from all customs duties, taxes and other related taxes on articles imported or exported by it or on its behalf for its official use. Articles thus imported shall not be transferred either for consideration or gratis on the territory of the country into which they have been imported except on conditions agreed by the Government of that country.
5. Persons contributing to the HNS Fund as well as victims and owners receiving compensation from the HNS Fund shall be subject to the fiscal legislation of the State where they are taxable, no special exemption or other benefit being conferred on them in this respect.
6. Notwithstanding existing or future regulations concerning currency or transfers, States Parties shall authorize the transfer and payment of any contribution to the HNS Fund and of any compensation paid by the HNS Fund without any restriction.

Confidentiality of information

Article 36

Information relating to individual contributors supplied for the purpose of this Convention shall not be divulged outside the HNS Fund except in so far as it may be strictly necessary to enable the HNS Fund to carry out its functions including the bringing and defending of legal proceedings.

Chapter IV CLAIMS AND ACTIONS

Limitation of actions

Article 37

1. Rights to compensation under chapter II shall be extinguished unless an action is brought thereunder within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage and of the identity of the owner.
2. Rights to compensation under chapter III shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to article 39, paragraph 7, within three years from the date when the person suffering the damage knew or ought reasonably to have known of the damage.
3. In no case, however, shall an action be brought later than ten years from the date of the incident which caused the damage.
4. Where the incident consists of a series of occurrences, the ten-year period mentioned in paragraph 3 shall run from the date of the last of such occurrences.

Jurisdiction in respect of action against the owner

Article 38

1. Where an incident has caused damage in the territory, including the territorial sea or in an area referred to in article 3(b), of one or more States Parties, or preventive measures have been taken to prevent or minimize damage in such territory including the territorial sea or in such area, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of any such States Parties.
2. Where an incident has caused damage exclusively outside the territory, including the territorial sea, of any State and either the conditions for application of this Convention set out in article 3(c) have been fulfilled or preventive measures to prevent or minimize such damage have been taken, actions for compensation may be brought against the owner or other person providing financial security for the owner's liability only in the courts of:
 - (a) the State Party where the ship is registered or, in the case of an unregistered ship, the State Party whose flag the ship is entitled to fly; or
 - (b) the State Party where the owner has habitual residence or where the principal place of business of the owner is established; or
 - (c) the State Party where a fund has been constituted in accordance with article 9, paragraph 3.
3. Reasonable notice of any action taken under paragraph 1 or 2 shall be given to the defendant.

4. Each State Party shall ensure that its courts have jurisdiction to entertain actions for compensation under this Convention.

5. After a fund under article 9 has been constituted by the owner or by the insurer or other person providing financial security in accordance with article 12, the courts of the State in which such fund is constituted shall have exclusive jurisdiction to determine all matters relating to the apportionment and distribution of the fund.

Jurisdiction in respect of action against the HNS Fund or taken by the HNS Fund

Article 39

1. Subject to the subsequent provisions of this article, any action against the HNS Fund for compensation under article 14 shall be brought only before a court having jurisdiction under article 38 in respect of actions against the owner who is liable for damage caused by the relevant incident or before a court in a State Party which would have been competent if an owner had been liable.

2. In the event that the ship carrying the hazardous or noxious substances which caused the damage has not been identified, the provisions of article 38, paragraph 1, shall apply *mutatis mutandis* to actions against the HNS Fund.

3. Each State Party shall ensure that its courts have jurisdiction to entertain such actions against the HNS Fund as are referred to in paragraph 1.

4. Where an action for compensation for damage has been brought before a court against the owner or the owner's guarantor, such court shall have exclusive jurisdiction over any action against the HNS Fund for compensation under the provisions of article 14 in respect of the same damage.

5. Each State Party shall ensure that the HNS Fund shall have the right to intervene as a party to any legal proceedings instituted in accordance with this Convention before a competent court of that State against the owner or the owner's guarantor.

6. Except as otherwise provided in paragraph 7, the HNS Fund shall not be bound by any judgement or decision in proceedings to which it has not been a party or by any settlement to which it is not a party.

7. Without prejudice to the provisions of paragraph 5, where an action under this Convention for compensation for damage has been brought against an owner or the owner's guarantor before a competent court in a State Party, each party to the proceedings shall be entitled under the national law of that State to notify the HNS Fund of the proceedings. Where such notification has been made in accordance with the formalities required by the law of the court seized and in such time and in such a manner that the HNS Fund has in fact been in a position effectively to intervene as a party to the proceedings, any judgement rendered by the court in such proceedings shall, after it has become final and enforceable in the State where the judgement was given, become binding upon the HNS Fund in the sense that the facts and findings in that judgement

may not be disputed by the HNS Fund even if the HNS Fund has not actually intervened in the proceedings.

Recognition and enforcement

Article 40

1. Any judgement given by a court with jurisdiction in accordance with article 38, which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in any State Party, except:

(a) where the judgement was obtained by fraud; or

(b) where the defendant was not given reasonable notice and a fair opportunity to present the case.

2. A judgement recognized under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

3. Subject to any decision concerning the distribution referred to in article 14, paragraph 6, any judgement given against the HNS Fund by a court having jurisdiction in accordance with article 39, paragraphs 1 and 3 shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each State Party.

Subrogation and recourse

Article 41

1. The HNS Fund shall, in respect of any amount of compensation for damage paid by the HNS Fund in accordance with article 14, paragraph 1, acquire by subrogation the rights that the person so compensated may enjoy against the owner or the owner's guarantor.

2. Nothing in this Convention shall prejudice any rights of recourse or subrogation of the HNS Fund against any person, including persons referred to in article 7, paragraph 2(d), other than those referred to in the previous paragraph, in so far as they can limit their liability. In any event the right of the HNS Fund to subrogation against such persons shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

3. Without prejudice to any other rights of subrogation or recourse against the HNS Fund which may exist, a State Party or agency thereof which has paid compensation for damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

Supersession clause

Article 42

This Convention shall supersede any convention in force or open for signature, ratification or accession at the date on which this Convention is opened for signature, but only to the extent that

such convention would be in conflict with it; however, nothing in this article shall affect the obligations of States Parties to States not party to this Convention arising under such convention.

Chapter V TRANSITIONAL PROVISIONS

Information on contributing cargo

Article 43

When depositing an instrument referred to in article 45, paragraph 3, and annually thereafter until this Convention enters into force for a State, that State shall submit to the Secretary-General data on the relevant quantities of contributing cargo received or, in the case of LNG, discharged in that State during the preceding calendar year in respect of the general account and each separate account.

First session of the Assembly

Article 44

The Secretary-General shall convene the first session of the Assembly. This session shall take place as soon as possible after the entry into force of this Convention and, in any case, not more than thirty days after such entry into force.

Chapter VI FINAL CLAUSES

Signature, ratification, acceptance, approval and accession

Article 45

1. This Convention shall be open for signature at the Headquarters of the Organization from 1 October 1996 to 30 September 1997 and shall thereafter remain open for accession.
2. States may express their consent to be bound by this Convention by:
 - (a) signature without reservation as to ratification, acceptance or approval; or
 - (b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
 - (c) accession.
3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

Entry into force

Article 46

1. This Convention shall enter into force eighteen months after the date on which the following conditions are fulfilled:
 - (a) at least twelve States, including four States each with not less than 2 million units of gross tonnage, have expressed their consent to be bound by it, and
 - (b) the Secretary-General has received information in accordance with article 43 that those persons in such States who would be liable to contribute pursuant to article 18, paragraphs 1(a) and (c) have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account.
2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force have been met, such consent shall take effect three months after the date of expression of such consent, or on the date on which this Convention enters into force in accordance with paragraph 1, whichever is the later.

Revision and amendment

Article 47

1. A conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Secretary-General shall convene a conference of the States Parties to this Convention for revising or amending the Convention, at the request of six States Parties or one-third of the States Parties, whichever is the higher figure.
3. Any consent to be bound by this Convention expressed after the date of entry into force of an amendment to this Convention shall be deemed to apply to the Convention as amended.

Amendment of limits

Article 48

1. Without prejudice to the provisions of article 47, the special procedure in this article shall apply solely for the purposes of amending the limits set out in article 9, paragraph 1 and article 14, paragraph 5.
2. Upon the request of at least one half, but in no case less than six, of the States Parties, any proposal to amend the limits specified in article 9, paragraph 1, and article 14, paragraph 5, shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.

3. Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.
4. All Contracting States, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
5. Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided in paragraph 4, on condition that at least one half of the Contracting States shall be present at the time of voting.
6. When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance. It shall also take into account the relationship between the limits established in article 9, paragraph 1, and those in article 14, paragraph 5.
7. (a) No amendment of the limits under this article may be considered less than five years from the date this Convention was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.

(b) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Convention increased by six per cent per year calculated on a compound basis from the date on which this Convention was opened for signature.

(c) No limit may be increased so as to exceed an amount which corresponds to a limit laid down in this Convention multiplied by three.
8. Any amendment adopted in accordance with paragraph 5 shall be notified by the Organization to all Contracting States.

The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period no less than one-fourth of the States which were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

9. An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force eighteen months after its acceptance.
10. All Contracting States shall be bound by the amendment, unless they denounce this Convention in accordance with article 49, paragraphs 1 and 2, at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.
11. When an amendment has been adopted but the eighteen month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that

period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Convention enters into force for that State, if later.

Article 49

1. This Convention may be denounced by any State Party at any time after the date on which it enters into force for that State Party.
2. Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General.
3. Denunciation shall take effect twelve months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.
4. Notwithstanding a denunciation by a State Party pursuant to this article, any provisions of this Convention relating to obligations to make contributions under articles 18, 19 or article 21, paragraph 5 in respect of such payments of compensation as the Assembly may decide relating to an incident which occurs before the denunciation takes effect shall continue to apply.

Extraordinary sessions of the Assembly

Article 50

1. Any State Party may, within ninety days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions from the remaining States Parties, request the Director to convene an extraordinary session of the Assembly. The Director shall convene the Assembly to meet not less than sixty days after receipt of the request.
2. The Director may take the initiative to convene an extraordinary session of the Assembly to meet within sixty days after the deposit of any instrument of denunciation, if the Director considers that such denunciation will result in a significant increase in the level of contributions from the remaining States Parties.
3. If the Assembly, at an extraordinary session, convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions from the remaining States Parties, any such State may, not later than one hundred and twenty days before the date on which the denunciation takes effect, denounce this Convention with effect from the same date.

Cessation

Article 51

1. This Convention shall cease to be in force:
 - (a) on the date when the number of States Parties falls below 6; or
 - (b) twelve months after the date on which data concerning a previous calendar year were to be communicated to the Director in accordance with article 21, if the data shows that the total

quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c) received in the States Parties in that preceding calendar year was less than 30 million tonnes.

Notwithstanding (b), if the total quantity of contributing cargo to the general account in accordance with article 18, paragraphs 1(a) and (c) received in the States Parties in the preceding calendar year was less than 30 million tonnes but more than 25 million tonnes, the Assembly may, if it considers that this was due to exceptional circumstances and is not likely to be repeated, decide before the expiry of the above-mentioned twelve month period that the Convention shall continue to be in force. The Assembly may not, however, take such a decision in more than two subsequent years.

2. States which are bound by this Convention on the day before the date it ceases to be in force shall enable the HNS Fund to exercise its functions as described under article 52 and shall, for that purpose only, remain bound by this Convention.

Winding up of the HNS Fund

Article 52

1. If this Convention ceases to be in force, the HNS Fund shall nevertheless:

(a) meet its obligations in respect of any incident occurring before this Convention ceased to be in force; and

(b) be entitled to exercise its rights to contributions to the extent that these contributions are necessary to meet the obligations under (a), including expenses for the administration of the HNS Fund necessary for this purpose.

2. The Assembly shall take all appropriate measures to complete the winding up of the HNS Fund including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the HNS Fund.

3. For the purposes of this article the HNS Fund shall remain a legal person.

Depositary

Article 53

1. This Convention and any amendment adopted under article 48 shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(a) inform all States which have signed this Convention or acceded thereto, and all Members of the Organization, of:

(i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession together with the date thereof;

(ii) the date of entry into force of this Convention;

(iii) any proposal to amend the limits on the amounts of compensation which has been made in accordance with article 48, paragraph 2;

(iv) any amendment which has been adopted in accordance with article 48, paragraph 5;

(v) any amendment deemed to have been accepted under article 48, paragraph 8, together with the date on which that amendment shall enter into force in accordance with paragraphs 9 and 10 of that article;

(vi) the deposit of any instrument of denunciation of this Convention together with the date on which it is received and the date on which the denunciation takes effect; and

(vii) any communication called for by any article in this Convention; and

(b) transmit certified true copies of this Convention to all States which have signed this Convention or acceded thereto.

3. As soon as this Convention enters into force, a certified true copy thereof shall be transmitted by the depositary to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Languages

Article 54

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

SCHEDULE 4

(sections 193(1))

(SCHEDULE 6 of the 1995 Act – mentioned in section 183 of the 1995 Act)

Part I - TEXT OF THE CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, AS AMENDED BY THE 2002 PROTOCOL

ARTICLE 1 Definitions

In this Convention the following expressions have the meaning hereby assigned to them:

1. (a) “carrier” means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by that person or by a performing carrier;

(b) “performing carrier” means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage;

(c) “carrier who actually performs the whole or a part of the carriage” means the performing carrier, or, in so far as the carrier actually performs the carriage, the carrier;
2. “contract of carriage” means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be;
3. “ship” means only a seagoing vessel, excluding an air-cushion vehicle;
4. “passenger” means any person carried in a ship,
 - (a) under a contract of carriage, or
 - (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention;
5. “luggage” means any article or vehicle carried by the carrier under a contract of carriage, excluding:
 - (a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods, and

- (b) live animals;
6. “cabin luggage” means luggage which the passenger has in his cabin or is otherwise in this possession, custody or control. Except for the application of paragraph 8 of this Article and Article 8, cabin luggage includes luggage which the passenger has in or on his vehicle;
7. “loss of or damage to luggage” includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;
8. “carriage” covers the following periods:
- (a) with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on-board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice-versa, if the cost of such transport is included in the fare or if the vessel used for this purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in a marine terminal or station or on a quay or in or on any other port installation;
- (b) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been re-delivered to the passenger;
- (c) with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent on shore or on board until the time of its re-delivery by the carrier or his servant or agent;
9. “international carriage” means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State;
10. “Organization” means the International Maritime Organization.
11. “Secretary-General” means the Secretary-General of the Organization.

ARTICLE 1 bis
Annex

The annex to this Convention shall constitute an integral part of the Convention.

ARTICLE 2
Application

1. This Convention shall apply to any international carriage if:
 - (a) the ship is flying the flag of or is registered in a State Party to this Convention, or
 - (b) the contract of carriage has been made in a State Party to this Convention, or
 - (c) the place of departure or destination, according to the contract of carriage, is in a State Party to this Convention.
2. Notwithstanding paragraph 1 of this Article, this Convention shall not apply where the carriage is subject, under any other international convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such convention, in so far as those provisions have mandatory application to carriage by sea.

ARTICLE 3
Liability of the carrier

1. For the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the carrier shall be liable to the extent that such loss in respect of that passenger on each distinct occasion does not exceed 250,000 units of account, unless the carrier proves that the incident:
 - (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
 - (b) was wholly caused by an act or omission done with the intent to cause the incident by a third party.
- If and to the extent that the loss exceeds the above limit, the carrier shall be further liable unless the carrier provides that the incident which caused the loss occurred without the fault or neglect of the carrier.
2. For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect shall lie the claimant.
 3. For the loss suffered as a result of the loss of or damage to cabin luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.
 4. For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

5. For the purposes of this article:

(a) “shipping incident” means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship;

(b) “fault or neglect of the carrier” includes the fault or neglect of the servants of the carrier, acting within the scope of their employment;

(c) “defect in the ship” means any malfunction, failure or non-compliance with applicable safety regulations in respect of any part of the ship or its equipment when used for the escape, evacuation, embarkation and disembarkation of passengers, or when used for the propulsion, steering, safe navigation, mooring, anchoring, arriving at or leaving berth or anchorage, or damage control after flooding; or when used for the launching of the life saving appliances; and

(d) “loss” shall not include punitive or exemplary damages.

6. The liability of the carrier under this Article only relates to loss arising from incidents that occurred in the course of the carriage. The burden of proving that the incident which caused the loss occurred in the course of the carriage, and the extent of the loss, shall lie with the claimant.

7. Nothing in this Convention shall prejudice any right of recourse of the carrier against any third party, or the defence of contributory negligence under Article 6 of this Convention. Nothing in this Article shall prejudice any right of limitation under Articles 7 or 8 of this Convention.

8. Presumptions of fault or neglect of a party or the allocation of the burden of proof to a party shall not prevent evidence in favour of that party from being considered.

ARTICLE 4 *Performing carrier*

1. If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of this Convention for the part of the carriage performed by him.

2. The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.

3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.

4. Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.

5. Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

ARTICLE 4bis
Compulsory insurance

1. When passengers are carried on-board a ship registered in a State Party that is licensed to carry more than twelve passengers and this Convention applies, any carrier who actually performs the whole or a part of the carriage shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under this Convention in respect of the death of an personal injury to passengers. The limit of the compulsory insurance or other financial security shall not be less than 250,000 units of account per passenger on each distinct occasion.

2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry, with respect to a ship not registered in a State Party. This certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:

(a) name of ship, distinctive number or letters and port of registry;

(b) name and principal place of business of the carrier who actually performs the whole or part of the carriage;

(c) IMO ship identification number;

(d) type and duration of security;

(e) name and principal place of business of insurer or other person providing financial security and, where appropriate, place of business where the insurance or other financial security is established; and

(f) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other financial security.

3. (a) A State Party may authorize an institution or an organization recognised by it to issue the certificate. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued, and shall undertake to ensure the necessary arrangements to satisfy this obligation.

(b) A State Party shall notify the Secretary-General of:

- (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognised by it;
- (ii) the withdrawal of such authority; and
- (iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date from which notification to that effect was given to the Secretary-General.

(c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not complied with. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

4. The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of those languages, and, where the State so decides, the official language of the State may be omitted.

5. The certificate shall be carried on board the ship, and a copy shall be deposited with the authorities who keep a record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.

6. An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or other financial security no longer satisfying the requirements of this Article.

7. The State of the ship's registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.

8. Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or other financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate.

9. Certificates issued or certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them, even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the issuer or guarantor

named in the insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

10. Any claim for compensation covered by insurance or other financial security pursuant to this Article may be brought directly against the insurer or other person providing financial security. In such case, the amount set out in paragraph 1 applies as the limit of liability of the insurer or other person providing financial security, even if the carrier or the performing carrier is not entitled to limitation of liability. The defendant may further invoke the defences (other than the bankruptcy or winding up) which the carrier referred to in paragraph 1 would have been entitled to invoke in accordance with this Convention. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the assured, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the assured against the defendant. The defendant shall in any event have the right to require the carrier and the performing carrier to be joined in the proceedings.

11. Any sum provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention, and any payments made of such sums shall discharge any liability arising under this Convention to the extent of the amounts paid.

12. A State Party shall not permit a ship under its flag to which this Article applies to operate at any time unless a certificate has been issued under paragraphs 2 or 15.

13. Subject to the provisions of this Article, each State Party shall ensure, under its national law, that insurance or other financial security, to the extent specified in paragraph 1, is in force in respect of any ship that is licensed to carry more than twelve passengers, wherever registered, entering or leaving a port in its territory in so far as this Convention applies.

14. Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 13, ships are not required to carry on board or to produce the certificate required by paragraph 2 when entering or leaving ports in its territory, provided that the State Party which issues the certificate has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 13.

15. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this Article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authorities of the State of the ship's registry, stating that the ship is owned by that State and that the liability is covered within the amount prescribed in accordance with paragraph 1. Such certificate shall follow as closely as possible the model prescribed by paragraph 2.

ARTICLE 5

Valuables

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables

have been deposited with the carrier for the agreed purpose of safe-keeping in which case the carrier shall be liable up to the limit provided for in paragraph 3 of Article 8 unless a higher limit is agreed upon in accordance with paragraph 1 of Article 10.

ARTICLE 6
Contributory fault

If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the Court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court.

ARTICLE 7
Limit of liability for death and personal injury

1. The liability of the carrier for the death of or personal injury to a passenger under Article 3 shall in no case exceed 400,000 units of account per passenger on each distinct occasion. Where, in accordance with the law of the court seized of the case, damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

2. A State Party may regulate by specific provisions of national law the limit of liability prescribed in paragraph 1, provided that the national limit of liability, if any, is not lower than that prescribed in paragraph 1. A State Party which makes use of the option provided for in this paragraph, shall inform the Secretary-General of the limit of liability adopted or of the fact that there is none.

ARTICLE 8
Limit of liability for loss of or damage to luggage and vehicles

1. The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 2,250 units of account per passenger, per carriage.

2. The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 12,700 units of account per vehicle, per carriage.

3. The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 shall in no case exceed 3,375 units of account per passenger, per carriage.

4. The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 330 units of account in the case of damage to a vehicle and not exceeding 149 units of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

ARTICLE 9

Unit of Account and conversion

1. The Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1, and Article 8 shall be converted into the national currency of the State of the court seized of the case on the basis of the value of that currency by reference to the Special Drawing Right on the date of the judgment of the date agreed upon by the parties. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State Party.

2. Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the Unit of Account referred to in paragraph 1 shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1, and the conversion mentioned in paragraph 2 shall be made in such manner as to express in the national currency of the States Parties, as far as possible, the same real value for the amounts in Article 3, paragraph 1, Article 4bis, paragraph 1, Article 7, paragraph 1, and Article 8 as would result from the application of the first three sentences of paragraph 1. States shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 2, as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

ARTICLE 10

Supplementary provisions on limits of liability

1. The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in Articles 7 and 8.

2. Interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 7 and 8.

ARTICLE 11

Defences and limits for carriers' servants

If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by this Convention, such servant or agent, if he proves that he acted

within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier or the performing carrier is entitled to invoke under this Convention.

ARTICLE 12
Aggravation of claims

1. Where the limits of liability prescribed in Articles 7 and 8 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.

2. In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could have been awarded against either the carrier or the performing carrier under this Convention, but none of those persons mentioned shall be liable for a sum in excess of the limit applicable to him.

3. In any case where a servant or agent of the carrier or of the performing carrier is entitled under Article 11 of this Convention to avail himself of the limits of liability prescribed in Articles 7 and 8, the aggregate of the amounts recoverable from the carrier, or the performing carrier as the case may be, and from that servant or agent, shall not exceed those limits.

ARTICLE 13
Loss of right to limit liability

1. The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 7 and 8 and paragraph 1 of Article 10, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

2. The servant or agent of the carrier or the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of the servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

ARTICLE 14
Basis for claims

No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with this Convention.

ARTICLE 15
Notice of loss or damage to luggage

1. The passenger shall give written notice to the carrier or his agent:
 - (a) in the case of apparent damage to luggage:
 - (i) for cabin luggage, before or at the time of disembarkation of the passenger;
 - (ii) for all other luggage, before or at the time of its re-delivery;
 - (b) in the case of damage to luggage which is not apparent, or loss of luggage, within fifteen days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.
2. If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.
3. The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

ARTICLE 16
Time-bar for actions

1. Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.
2. The limitation period shall be calculated as follows:
 - (a) in the case of personal injury, from the date of disembarkation of the passenger;
 - (b) in the case of death occurring during carriage, from the date when the passenger should have disembarked and in the case of personal injury occurring during the carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation;
 - (c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.
3. The law of the Court seized of the case shall govern the grounds for suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of any one of the following periods of time:
 - (a) a period of five years beginning with the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later; or, if earlier

(b) a period of three years beginning with the date when the claimant knew or ought reasonably to have known of the injury, loss or damage caused by the incident.

4. Notwithstanding paragraphs 1, 2 and 3 of this Article, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing.

ARTICLE 17
Competent jurisdiction

1. An action arising under Articles 3 and 4 of this Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State Party to this Convention, and subject to the domestic law of each State Party governing proper venue within those States with multiple possible forums:

(a) the Court of the State of permanent residence or principal place of business of the defendant, or

(b) the Court of the State of departure or that of the destination according to the contract of carriage, or

(c) the Court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State, or

(d) the Court of the State where the contract of carriage was made, if the defendant has a place of business and is subject jurisdiction in that State.

2. Actions under article 4bis of this Convention shall, at the option of the claimant, be brought before one of the courts where action could be brought against the carrier or performing carrier according to paragraph 1.

3. After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.

ARTICLE 17bis
Recognition and enforcement

1. Any judgment given by a court with jurisdiction in accordance with Article 17 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognised in any State Party, except

(a) where the judgment was obtained by fraud; or

(b) where the defendant was not given reasonable notice and a fair opportunity to present his or her case.

2. A judgment recognised under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

3. A State Party to this Protocol may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognised and enforced at least to the same extent as under paragraphs 1 and 2.

ARTICLE 18

Invalidity of contractual provisions

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to the passenger's luggage, purporting to relieve any person liable under this Convention of liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Convention except as provided in Article 8, paragraph 4, and any such provision purporting to shift the burden of proof which rests on the carrier or performing carrier or having the effect of restricting the options specified in Article 17, paragraphs 1 or 2, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of this Convention.

ARTICLE 19

Other conventions on limitation of liability

This Convention shall not modify the rights or duties of the carrier, the performing carrier, and their servants or agents provided for in international conventions relating to the limitation of liability of owners of seagoing ships.

ARTICLE 20

Nuclear damage

No liability shall arise under this Convention for damage caused by a nuclear incident:

(a) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or any amendment or Protocol thereto which is in force; or

(b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or Vienna Conventions or any amendment or Protocol thereto which is in force.

ARTICLE 21
Commercial carriage by public authorities

This Convention shall apply to commercial carriage undertaken by States or Public Authorities under contract of carriage within the meaning of Article 1.

ANNEX -
CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF
LIABILITY FOR THE DEATH AND PERSONAL INJURY TO PASSENGERS

Issued in accordance with the provisions of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002

Name of Ship	Distinctive number or letters	IMO Ship Identification Number	Port of Registry	Name and full address of the principal place of business of the carrier who actually performs the carriage.

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Type of Security

Duration of Security

Name and address of the insurer(s) and/or guarantor(s)

Name

Address

.....

This certificate is valid until

Issued or certified by the Government of

.....

(Full designation of the State)

OR

The following text should be used when a State Party avails itself of Article 4bis, paragraph 3:

The present certificate is issued under the authority of the Government of

(full designation of the State) by(name of institution or organization)

At On

(Place)

(Date)

(Signature and Title of issuing or certifying official)

Explanatory Notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
3. If security is furnished in several forms, these should be enumerated.
4. The entry "Duration of Security" must stipulation the date on which such security takes effect.
5. The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

Part II - Provisions having effect in connection with Convention

Interpretation

1. In this Part of this Schedule any reference to a numbered article is a reference to the article of the Convention which is so numbered and any expression to which a meaning is assigned by article 1 of the Convention has that meaning.

Provisions adapting or supplementing specified articles of the Convention

2. For the purposes of paragraph 2 of article 2, provisions of such an international convention as is mentioned in that paragraph which apart from this paragraph do not have mandatory application to carriage by sea shall be treated as having mandatory application to carriage by sea if it is stated in the contract of carriage for the carriage in question that those provisions are to apply in connection with the carriage.

3. The reference to the law of the court in article 6 shall be construed as a reference to the Law Reform (Contributory Negligence) Act 1945 except that in relation to Northern Ireland it shall be construed as a reference to section 2 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948.

4. The Secretary of State may by order provided that, in relation to a carrier whose principle place of business is in the United Kingdom, paragraph 1 of article 7 shall have effect with the substitution for the limit for the time being specified in that paragraph of a different limit specified in the order (which shall not be lower than 46,666 units of account).

5.(1) For the purposes of conversion from special drawing rights into sterling the amounts mentions in articles 7 and 8 of the Convention in respect of which a judgment is given, one special drawing right shall be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for –

(a) the day on which the judgment is given; or

(b) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed.

(2) A certificate given by or on behalf of the Treasury stating -

(a) that a particular sum in sterling has been fixed as mentioned in sub-paragraph (1) above for a particular day; or

(b) that no sum has been so fixed for that day and a particular sum in sterling has been so fixed for that day which is the last day for which a sum has been so fixed before the particular day,

shall be conclusive evidence of those matters for the purposes of articles 7 to 9 of the Convention; and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

6. It is hereby declared that by virtue of article 12 the limitations on liability there mentioned in respect of a passenger or his luggage apply to the aggregate liabilities of the persons in question in all proceedings for enforcing the liabilities or nay of them which may be brought whether in the United Kingdom or elsewhere.

7. Article 16 applies to arbitral proceedings as it applies to an action.

8. The court before which proceedings are brought in pursuance of article 17 to enforce a liability which is limited by virtue of article 12 may at any stage of the proceedings make such orders as appear to the court to be just and equitable in view of the provisions of article 12 and of any other proceedings which have been or are likely to be begun in the United Kingdom or elsewhere to enforce the liability in whole or in part; and without prejudice to the generality of the preceding provisions of this paragraph such a court shall, where the liability is or may be partly enforceable in other proceeding in the United Kingdom or elsewhere, have jurisdiction to award an amount less than the court would have awarded if the limitation applied solely to the

proceeding before the court or to make any part of its award conditional on the results of any other proceedings.

Other provisions adaption or supplementing the Convention

9. Any reference in the Convention to a contract of carriage excludes a contract of carriage which is not for reward.

10. If Her Majesty by Order in Council declares that any State specified in the Order is a party to the Convention in respect of a particular country the Order shall, subject to the provisions of any subsequent Order made by virtue of this paragraph, be conclusive evidence that the State is a party to the Convention in respect of that country.

11. The Governor may by order make provision –

(a) for requiring a person who is the carrier in relation to a passenger to give to the passenger, in a manner specified in the order, notice of such of the provisions of Part I of this Schedule as are so specified;

(b) for a person who fails to comply with a requirement imposed on him by the order to be guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale or not exceeding a lesser amount.

Application of ss. 185 and 186 of the Act (sections 194 and 195 of this Ordinance)

12. It is hereby declared that nothing in the Convention affects the operation of section 185 of the Act (section 194) (which limits a shipowner's liability in certain cases of loss of life, injury or damage).

13. Nothing in section 186 of the Act (section 195) (which among other things limits a shipowner's liability for the loss or damage of goods in certain cases) shall relieve a person of any liability imposed on him by the Convention.

SCHEDULE 5

(sections 178, 194(1), 195(3) and 200)

Part I TEXT OF THE LLMC

[s48/Ord.14/2019/w.e.f. 26.09.2019]

Convention on Limitation of Liability for Maritime Claims, 1976
London, 19 November 1976

as amended by

Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims of 19
November 1976
London, 2 May 1996

THE STATES PARTIES TO THIS CONVENTION,

HAVING RECOGNIZED the desirability of determining by agreement certain uniform rules relating to the limitation of liability for maritime claims,

HAVE DECIDED to conclude a Convention for this purpose and have thereto agreed as follows:

CHAPTER I: THE RIGHT OF LIMITATION

Article 1 Persons entitled to limit liability

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.
2. The term “shipowner” shall mean the owner, charterer, manager and operator of a seagoing ship.
3. Salvor shall mean any person rendering services in direct connexion with salvage operations. Salvage operations shall also include operations referred to in Article 2, paragraph 1(d), (e) and (f).
4. If any claims set out in Article 2 are made against any person for whose act, neglect or default the shipowner or salvor is responsible; such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.

5. In this Convention the liability of a shipowner shall include liability in an action brought against the vessel itself.
6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself.
7. The act of invoking limitation of liability shall not constitute an admission of liability.

Article 2

Claims subject to limitation

1. Subject to Articles 3 and 4 the following claims, whatever the basis of liability may be shall be subject to limitation of liability:

- (a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connexion with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
- (b) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connexion with the operation of the ship or salvage operations;
- (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direction connexion with the operation of the ship or salvage operations;
- (d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;
- (e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
- (f) claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

2. Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise; however, claims set out under paragraph 1(d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

Article 3

Claims excepted from limitation

The rules of this Convention shall not apply to:

(a) claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;

(b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated 29 November 1969 or of any amendment or Protocol thereto which is in force;

(c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;

(d) claims against the shipowner of a nuclear ship for nuclear damage;

(e) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6.

Article 4 **Conduct barring limitation**

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

Article 5 **Counterclaims**

Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Convention shall only apply to the balance, if any.

CHAPTER II: LIMITS OF LIABILITY

Article 6 **The general limits**

1. The limits of liability for claims, other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows:

(a) in respect of claims for loss of life or personal injury,

(i) 3.02 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i): for each ton from 2,001 to 30,000 tons, 1,208 Units of Account;

for each ton from 30,001 to 70,000 tons, 906 Units of Account; and

for each ton in excess of 70,000 tons, 604 Units of Account,

(b) in respect of any other claims,

(i) 1.51 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

(ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 604 Units of Account;

for each ton from 30,001 to 70,000 tons, 453 Units of Account; and

for each ton in excess of 70,000 tons, 302 Units of Account.

[s48/Ord.14/2019/w.e.f. 26.09.2019]

2. Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b).

3. However, without prejudice to the right of claims for loss of life or personal injury according to paragraph 2, a State Party may provide in its national law that claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have such priority over other claims under paragraph 1(b) as is provided by that law.

4. The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

5. For the purpose of this Convention the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

6. The references in paragraph 1 to relevant limits in this Convention have effect as follows —

(a) the references to the relevant limits are to be construed as references to those limits as modified from time to time pursuant to Article 8 of the 1996 Protocol;

(b) a modification of a reference to a relevant limit by virtue of paragraph (a) has effect at the time that the modification of that limit pursuant to Article 8 of the 1996 Protocol comes into force in accordance with paragraph 8 of that Article;

(c) no modification of a reference to a relevant limit by virtue of paragraph (a) affects any rights or liabilities arising out of an occurrence which took place before the day on which the modification has effect;

(d) paragraph (a) does not apply to a modification pursuant to Article 8 of the 1996 Protocol which reduces a relevant limit.

[s48/Ord.14/2019/w.e.f. 26.09.2019]

Article 7

The limit for passenger claims

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate.

2. For the purpose of this Article "claims for loss of life or personal injury to passengers of a ship" shall mean any such claims brought by or on behalf of any person carried in that ship:

(a) under a contract of passenger carriage, or

(b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

Article 8

Unit of Account

1. The Unit of Account referred to in Articles 6 and 7 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles 6 and 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment. The value of a national currency in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of a national currency in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State Party.

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval or at the time of ratification, acceptance, approval or accession or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as follows:

(a) in respect of Article 6, paragraph 1(a), at an amount of:

(i) 30 million monetary units for a ship with a tonnage not exceeding 2,000 tons;

(ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 12,000 monetary units;

for each ton from 30,001 to 70,000 tons, 9,000 monetary units; and

for each ton in excess of 70,000 tons, 6,000 monetary units; and

(b) in respect of Article 6, paragraph 1(b), at an amount of:

(i) 15 million monetary units for a ship with a tonnage not exceeding 2,000 tons;

(ii) for a ship with tonnage in excess thereof, the following amount in addition to that mentioned in (i):

for each ton from 2,001 to 30,000 tons, 6,000 monetary units;

for each ton from 30,001 to 70,000 tons, 4,500 monetary units; and

for each ton in excess of 70,000 tons, 3,000 monetary units; and

(c) in respect of Article 7, paragraph 1, at an amount of 2,625,000 monetary units multiplied by the number of passengers which the ship is authorized to carry according to its certificate.

Paragraphs 2 and 3 of Article 6 apply correspondingly to subparagraphs (a) and (b) of this paragraph.

3. The monetary unit referred to in paragraph 2 corresponds to sixty-five and a half milligrams of gold millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency shall be made according to the law of the State concerned.

4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 6 and 7 as is expressed there in units of account. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 3, as the case may be, at the time of the signature without reservation as to ratification, acceptance or approval, or when depositing an instrument referred to in Article 16 and whenever there is a change in either.

Article 9

Aggregation of claims

1. The limits of liability determined in accordance with Article 6 shall apply to the aggregate of all claims which arise on any distinct occasion:

(a) against the person or persons mentioned in paragraph 2 of Article 1 and any person for whose act, neglect or default he or they are responsible; or

(b) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible; or

(c) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.

2. The limits of liability determined in accordance with Article 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in paragraph 2 of Article 1 in respect of the ship referred to in Article 7 and any person for whose act, neglect or default he or they are responsible.

Article 10

Limitation of liability without constitution of a limitation fund

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article 11 has not been constituted. However, a State Party may provide in its national law that, where an action is brought in its Courts to enforce a claim subject to limitation, a person liable may only invoke the right to limit liability if a limitation fund has been constituted in accordance with the provisions of this Convention or is constituted when the right to limit liability is invoked.

2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article 12 shall apply correspondingly.

3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

CHAPTER III: THE LIMITATION FUND

Article 11

Constitution of the fund

1. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.

2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the Court or other competent authority.

3. A fund constituted by one of the persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2, respectively.

Article 12

Distribution of the fund

1. Subject to the provisions of paragraphs 1, 2 and 3 of Article 6 and of Article 7, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

3. The rights of subrogation provided for in paragraph 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.

4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

Article 13

Bar to other actions

1. Where a limitation fund has been constituted in accordance with Article 11, any person having made a claim against the fund shall be barred from exercising any right in respect of such claim against any other assets of a person by or on behalf of whom the fund has been constituted.

2. After a limitation fund has been constituted in accordance with Article 11, any ship or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, may be released by order of the Court or other competent authority of such State. However, such release shall always be ordered if the limitation fund has been constituted:

(a) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter; or

(b) at the port of disembarkation in respect of claims for loss of life or personal injury; or

(c) at the port of discharge in respect of damage to cargo; or

(d) in the State where the arrest is made.

3. The rules of paragraphs 1 and 2 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

Article 14 **Governing law**

Subject to the provisions of this Chapter the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connexion therewith, shall be governed by the law of the State Party in which the fund is constituted.

CHAPTER IV: SCOPE OF APPLICATION

Article 15

1. This Convention shall apply whenever any person referred to in Article 1 seeks to limit his liability before the Court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State. Nevertheless, each State Party may exclude wholly or partially from the application of this Convention any person referred to in Article 1 who at the time when the rules of this Convention are invoked before the Courts of that State does not have his habitual residence in a State Party or does not have his principal place of business in a State Party or any ship in relation to which the right of limitation is invoked or whose release is sought and which does not at the time specified above fly the flag of a State Party.

2. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to vessels which are:

(a) according to the law of that State, ships intended for navigation on inland waterways;

(b) ships of less than 300 tons.

A State Party which makes use of the option provided for in this paragraph shall inform the depositary of the limits of liability adopted in its national legislation or of the fact that there are none.

3. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to claims arising in cases in which interests of persons who are nationals of other States Parties are in no way involved.

3bis. Notwithstanding the limit of liability prescribed in paragraph 1 of Article 7, a State Party may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided that the limit of liability is not lower than that prescribed in paragraph 1 of Article 7. A State Party which makes use of the

option provided for in this paragraph shall inform the Secretary-General of the limit of liability adopted or of the fact that there are none.

4. The Courts of a State Party shall not apply this Convention to ships constructed for, or adapted to, and engaged in, drilling:

(a) when that State has established under its national legislation a higher limit of liability than that otherwise provided for in Article 6; or

(b) when that State has become party to an international convention regulating the system of liability in respect of such ships.

In a case to which sub-paragraph (a) applies that State Party shall inform the depositary accordingly.

5. This Convention shall not apply to:

(a) air-cushion vehicles;

(b) floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof.

CHAPTER V: FINAL CLAUSES

Article 16

Signature, ratification and accession

1. This Convention shall be open for signature by all States at the Headquarters of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as “the Organization”) from 1 February 1977 until 31 December 1977 and shall thereafter remain open for accession.

2. All States may become parties to this Convention by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General of the Organization (hereinafter referred to as “Secretary-General”).

Article 17

Entry into force

1. This Convention shall enter into force on the first day of the month following one year after the date on which twelve States have either signed it without reservation as to ratification, acceptance or approval or have deposited the requisite instruments of ratification, acceptance, approval or accession.
2. For a State which deposits an instrument of ratification, acceptance, approval or accession, or signs without reservation as to ratification, acceptance or approval, in respect of this Convention after the requirements for entry into force have been met but prior to the date of entry into force, the ratification, acceptance, approval or accession or the signature without reservation as to ratification, acceptance or approval, shall take effect on the date of entry into force of the Convention or on the first day of the month following the ninetieth day after the date of the signature or the deposit of the instrument, whichever is the later date.
3. For any State which subsequently becomes a Party to this Convention, the Convention shall enter into force on the first day of the month following the expiration of ninety days after the date when such State deposited its instrument.
4. In respect of the relations between States which ratify, accept, or approve this Convention or accede to it, this Convention shall replace and abrogate the International Convention relating to Limitation of the Liability of Owners of Sea-going Ships, done at Brussels on 10 October 1957, and the International Convention for the Unification of certain Rules relating to the Limitation of Liability of the Owners of Sea-going Vessels, signed at Brussels on 25 August 1924.

Article 18

Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right:
 - (a) to exclude the application of Article 2, paragraphs 1(d) and (e);
 - (b) to exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention.

2. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.
3. Any State which has made a reservation to this Convention may withdraw it at any time by means of a notification addressed to the Secretary-General. Such withdrawal shall take effect on the date the notification is received. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the Secretary-General, the withdrawal shall take effect on such later date.

Article 19
Denunciation

1. This Convention may be denounced by a State Party at any time one year from the date on which the Convention entered into force for that Party.
2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.
3. Denunciation shall take effect on the first day of the month following the expiration of one year after the date of deposit of the instrument, or after such longer period as may be specified in the instrument.

Article 20
Revision and amendment

1. A Conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Organization shall convene a Conference of the States Parties to this Convention for revising or amending it at the request of not less than one-third of the Parties.
3. After the date of the entry into force of an amendment to this Convention, any instrument of ratification, acceptance, approval or accession deposited shall be deemed to apply to the Convention as amended, unless a contrary intention is expressed in the instrument.

Article 21
Revision of the limitation amounts and Unit of Account or monetary unit

1. Notwithstanding the provisions of Article 20, a Conference only for the purposes of altering the amounts specified in Articles 6 and 7 and in Article 8, paragraph 2, or of substituting either or both of the Units defined in Article 8, paragraphs 1 and 2, by other units shall be convened by the Organization in accordance with paragraphs 2 and 3 of this Article. An alteration of the amounts shall be made only because of a significant change in their real value.
2. The Organization shall convene such a Conference at the request of not less than one fourth of the States Parties.
3. A decision to alter the amounts or to substitute the Units by other units of account shall be taken by a two-thirds majority of the States Parties present and voting in such Conference.
4. Any State depositing its instrument of ratification, acceptance, approval or accession to the Convention, after entry into force of an amendment, shall apply to the Convention as amended.

Article 22
Depositary

1. The Convention shall be deposited with the Secretary-General.

2. The Secretary-General shall:

(a) transmit certified true copies of this Convention to all States which were invited to attend the Conference on Limitation of Liability for Maritime Claims and to any other States which accede to this Convention;

(b) inform all States which have signed or acceded to this Convention of:

(i) each new signature and each deposit of an instrument and any reservation thereto together with the date thereof;

(ii) the date of entry into force of this Convention or any amendment thereto;

(iii) any denunciation of this Convention and the date on which it takes effect;

(iv) any amendment adopted in conformity with Articles 20 or 21;

(v) any communication called for by any Article of this Convention.

3. Upon entry into force of this Convention, a certified true copy thereof shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 23 Languages

This Convention is established in a single original in the English, French, Russian and Spanish languages, each text being equally authentic.

Part II Provisions having effect in connection with Convention

[s48/Ord.14/2019/w.e.f. 26.09.2019]

Interpretation

1. In this Part of this Schedule any reference to a numbered article is a reference to the article of the Convention which is so numbered.

[s48/Ord.14/2019/w.e.f. 26.09.2019]

Right to limit liability

2. Subject to paragraph 6 below, the right to limit liability under the Convention applies in relation to any ship whether seagoing or not, and the definition of “shipowner” in paragraph 2 of article 1 must be construed accordingly.

Paragraph 1(a) of article 2 has effect as if the reference to “loss of life or personal injury” did not include a reference to loss of life or personal injury to passengers of seagoing ships.

[s48/Ord.14/2019/w.e.f. 26.09.2019]

Claims subject to limitation

3. (1) Paragraph 1(d) of article 2 does not apply unless provision has been made by an order of the Governor for the setting up and management of a fund to be used for the making to the Authority of payments needed to compensate the Authority for the reduction, in consequence of the said paragraph 1(d), of amounts recoverable by the Authority in claims of the kind mentioned there, and to be maintained by contributions from the Authority raised and collected by it in respect of vessels in like manner as other sums so raised by it.

(2) Any order under sub-paragraph (1) above may contain such incidental and supplemental provisions as appear to the Governor to be necessary or expedient.

[s48/Ord.14/2019/w.e.f. 26.09.2019]

Claims excluded from limitation

4. (1) Claims for Damages within the meaning of the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, or any amendment of or Protocol to the Convention, which arise from occurrences which take place after the coming into force of the first Order in Council made by Her Majesty under section 182B of the Act are excluded from the Convention.

(2) The claims excluded from the Convention by paragraph (b) of article 3 are claims in respect of any liability incurred under section 163 of this Ordinance.

(3) The claims excluded from the Convention by paragraph (c) of article 3 are claims made by virtue of any of sections 7 to 11 of the Nuclear Installations Act 1965 (*in its application to the Falkland Islands*).

[s48/Ord.14/2019/w.e.f. 26.09.2019]

The general limits

5.(1) In the application of article 6 to a ship with a tonnage less than 300 tons that article has effect as if —

(a) paragraph 1(a)(i) referred to 1,000,000 Units of Account; and

(b) paragraph 1(b)(i) referred to 500,000 Units of Account.

(2) For the purposes of article 6 and this paragraph a ship’s tonnage is its gross tonnage calculated in such manner as may be prescribed by an order made by the Governor.

(3) Any order under this paragraph must, so far as appears to the Governor to be practicable, give effect to the regulations in Annex I of the International Convention on Tonnage Measurement of Ships 1969.

[s48/Ord.14/2019/w.e.f. 26.09.2019]

Limit for passenger claims

6. Article 7 does not apply in respect of any sea going ship and has effect in respect of any ship which is not as if in paragraph 1 of that article.

In paragraph 2 of article 7 the reference to claims brought on behalf of a person includes a reference to any claim in respect of the death of a person under the Fatal Accidents Act 1976 (*in its application to the Falkland Islands*).

[s48/Ord.14/2019/w.e.f. 26.09.2019]

Units of Account

7. (1) For the purpose of converting the amounts mentioned in articles 6 and 7 from special drawing rights into sterling one special drawing right will be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right for —

(a) the relevant date under paragraph 1 of article 8; or

(b) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.

(2) A certificate given by or on behalf of the Financial Secretary stating —

(a) that a particular sum in sterling has been fixed as mentioned in sub-paragraph (1) above for a particular date; or

(b) that no sum has been so fixed for that date and that a particular sum in sterling has been so fixed for a date which is the last preceding date for which a sum has been so fixed,

will be conclusive evidence of those matters for the purposes of those articles; and a document purporting to be such a certificate must, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

[s48/Ord.14/2019/w.e.f. 26.09.2019]

Constitution of fund

8. (1) The Governor may, with the concurrence of the Financial Secretary, by order prescribe the rate of interest to be applied for the purposes of paragraph 1 of article 11.

(2) Any statutory instrument containing an order under sub-paragraph (1) above must be laid before the Legislative Assembly after being made.

(3) Where a fund is constituted with the court in accordance with article 11 for the payment of claims arising out of any occurrence, the court may stay any proceedings relating to any claim arising out of that occurrence which are pending against the person by whom the fund has been constituted.

[s48/Ord.14/2019/w.e.f. 26.09.2019]

Distribution of fund

9. No lien or other right in respect of any ship or property will affect the proportions in which under article 12 the fund is distributed among several claimants.

[s48/Ord.14/2019/w.e.f. 26.09.2019]

Bar to other actions

10. Where the release of a ship or other property is ordered under paragraph 2 of article 13 the person on whose application it is ordered to be released will be deemed to have submitted to the jurisdiction of the court to adjudicate on the claim for which the ship or property was arrested or attached.

[s48/Ord.14/2019/w.e.f. 26.09.2019]

Meaning of “court”

11. References in the Convention and the preceding provisions of this Part of this Schedule to the court are references to the Supreme Court.

[s48/Ord.14/2019/w.e.f. 26.09.2019]

Meaning of “ship”

12. References in the Convention and in the preceding provisions of this Part of this Schedule (*paragraphs 1 to 11*) to a ship include references to any structure (whether completed or in course of completion) launched and intended for use in navigation as a ship or part of a ship.

[s48/Ord.14/2019/w.e.f. 26.09.2019]

Meaning of “State Party”

An Order in Council made under the Act for the purposes of this paragraph and declaring that any State specified in the Order is a party to the Convention as amended by the 1996 Protocol, subject to the provisions of any subsequent Order made for those purposes, will be conclusive evidence that the State is a party to the Convention as amended by the 1996 Protocol.

[s48/Ord.14/2019/w.e.f. 26.09.2019]

DONE AT LONDON this nineteenth day of November one thousand nine hundred and seventy-six.

IN WITNESS WHEREOF the undersigned being duly authorized for that purpose have signed this Convention.

**SCHEDULE 6 -
INTERNATIONAL CONVENTION ON SALVAGE 1989**

(section 209(1))

(Merchant Shipping Act 1995, Schedule 11; Merchant Shipping (Salvage Convention) (Overseas Territories) Order 1997 Schedule 2)

**Part I
Text of Convention**

**Chapter I
General Provisions**

**Article 1
Definitions**

For the purpose of this Convention—

- (a) Salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.
- (b) Vessel means any ship or craft, or any structure capable of navigation.
- (c) Property means any property not permanently and intentionally attached to the shoreline and includes freight at risk.
- (d) Damage to the environment means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents.
- (e) Payment means any reward, remuneration or compensation due under this Convention.
- (f) Organisation means the International Maritime Organisation.
- (g) Secretary-General means the Secretary-General of the Organisation.

**Article 2
Application of the Convention**

This Convention shall apply whenever judicial or arbitral proceedings relating to matters dealt with in this Convention are brought in a State Party.

Article 3
Platforms and drilling units

This Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

Article 4
State-owned vessels

1. Without prejudice to article 5, this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognised principles of international law unless that State decides otherwise.
2. Where a State Party decides to apply the Convention to its warships or other vessels described in paragraph 1, it shall notify the Secretary-General thereof specifying the terms and conditions of such application.

Article 5
Salvage operations controlled by public authorities

1. This Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.
2. Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.
3. The extent to which a public authority under a duty to perform salvage operations may avail itself of the rights and remedies provided for in this Convention shall be determined by the law of the State where such authority is situated.

Article 6
Salvage contracts

1. This Convention shall apply to any salvage operations save to the extent that a contract otherwise provides expressly or by implication.
2. The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel.
3. Nothing in this article shall affect the application of article 7 nor duties to prevent or minimise damage to the environment.

Article 7
Annulment and modification of contracts

A contract or any terms thereof may be annulled or modified if—

- (a) the contract has been entered into under undue influence or the influence of danger and its terms are inequitable; or
- (b) the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

Chapter II
Performance of Salvage Operations

Article 8
Duties of the salvor and of the owner and master

1. The salvor shall owe a duty to the owner of the vessel or other property in danger—
 - (a) to carry out the salvage operations with due care;
 - (b) in performing the duty specified in subparagraph (a), to exercise due care to prevent or minimise damage to the environment;
 - (c) whenever circumstances reasonably require, to seek assistance from other salvors; and
 - (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.
2. The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor—
 - (a) to co-operate fully with him during the course of the salvage operations;
 - (b) in so doing, to exercise due care to prevent or minimise damage to the environment; and
 - (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested by the salvor to do so.

Article 9
Rights of coastal States

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognised principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful

consequences, including the right of a coastal State to give directions in relation to salvage operations.

Article 10 **Duty to render assistance**

1. Every master is bound, so far as he can do so without serious danger to his vessel and persons thereon, to render assistance to any person in danger of being lost at sea.
2. The States Parties shall adopt the measures necessary to enforce the duty set out in paragraph 1.
3. The owner of the vessel shall incur no liability for a breach of the duty of the master under paragraph 1.

Article 11 **Co-operation**

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

Chapter III **Rights of Salvors**

Article 12 **Conditions for reward**

1. Salvage operations which have had a useful result give right to a reward.
2. Except as otherwise provided, no payment is due under this Convention if the salvage operations have had no useful result.
3. This chapter shall apply, notwithstanding that the salvaged vessel and the vessel undertaking the salvage operations belong to the same owner.

Article 13 **Criteria for fixing the reward**

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below—
 - (a) the salvaged value of the vessel and other property;
 - (b) the skill and efforts of the salvors in preventing or minimising damage to the environment;

- (c) the measure of success obtained by the salvor;
- (d) the nature and degree of the danger;
- (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
- (f) the time used and expenses and losses incurred by the salvors;
- (g) the risk of liability and other risks run by the salvors or their equipment;
- (h) the promptness of the services rendered;
- (i) the availability and use of vessels or other equipment intended for salvage operations;
- (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

2. Payment of a reward fixed according to paragraph 1 shall be made by all of the vessel and other property interests in proportion to their respective salvaged values. However, a State Party may in its national law provide that the payment of a reward has to be made by one of these interests, subject to a right of recourse of this interest against the other interests for their respective shares. Nothing in this article shall prevent any right of defence.

3. The rewards, exclusive of any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the vessel and other property.

Article 14 **Special compensation**

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.

2. If, in the circumstances set out in paragraph 1, the salvor by his salvage operations has prevented or minimised damage to the environment, the special compensation payable by the owner to the salvor under paragraph 1 may be increased up to a maximum of 30 per cent. of the expenses incurred by the salvor. However, the tribunal, if it deems it fair and just to do so and bearing in mind the relevant criteria set out in article 13, paragraph 1, may increase such special compensation further, but in no event shall the total increase be more than 100 per cent. of the expenses incurred by the salvor.

3. Salvor's expenses for the purpose of paragraphs 1 and 2 means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13, paragraph 1(h), (i) and (j).

4. The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13.
5. If the salvor has been negligent and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.
6. Nothing in this article shall affect any right of recourse on the part of the owner of the vessel.

Article 15
Apportionment between salvors

1. The apportionment of a reward under article 13 between salvors shall be made on the basis of the criteria contained in that article.
2. The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the flag of that vessel. If the salvage has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servants.

Article 16
Salvage of persons

1. No remuneration is due from persons whose lives are saved, but nothing in this article shall affect the provisions of national law on this subject.
2. A salvor of human life, who has taken part in the services rendered on the occasion of the accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salving the vessel or other property or preventing or minimising damage to the environment.

Article 17
Services rendered under existing contracts

No payment is due under the provisions of this Convention unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger arose.

Article 18
The effect of salvor's misconduct

A salvor may be deprived of the whole or part of the payment due under this Convention to the extent that the salvage operations have become necessary or more difficult because of fault or neglect on his part or if the salvor has been guilty of fraud or other dishonest conduct.

Article 19
Prohibition of salvage operations

Services rendered notwithstanding the express and reasonable prohibition of the owner or master of the vessel or the owner of any other property in danger which is not and has not been on board the vessel shall not give rise to payment under this Convention.

Chapter IV
Claims and Actions

Article 20
Maritime lien

1. Nothing in this Convention shall affect the salvor's maritime lien under any international convention or national law.
2. The salvor may not enforce his maritime lien when satisfactory security for his claim, including interest and costs, has been duly tendered or provided.

Article 21
Duty to provide security

1. Upon the request of the salvor a person liable for a payment due under this Convention shall provide satisfactory security for the claim, including interest and costs of the salvor.
2. Without prejudice to paragraph 1, the owner of the salvaged vessel shall use his best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them including interest and costs before the cargo is released.
3. The salvaged vessel and other property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operations until satisfactory security has been put up for the salvor's claim against the relevant vessel or property.

Article 22
Interim payment

1. The tribunal having jurisdiction over the claim of the salvor may, by interim decision, order that the salvor shall be paid on account such amount as seems fair and just, and on such terms including terms as to security where appropriate, as may be fair and just according to the circumstances of the case.
2. In the event of an interim payment under this article the security provided under article 21 shall be reduced accordingly.

Article 23
Limitation of actions

1. Any action relating to payment under this Convention shall be time-barred if judicial or arbitral proceedings have not been instituted within a period of two years. The limitation period commences on the day on which the salvage operations are terminated.
2. The person against whom a claim is made may at any time during the running of the limitation period extend that period by a declaration to the claimant. This period may in the like manner be further extended.
3. An action for indemnity by a person liable may be instituted even after the expiration of the limitation period provided for in the preceding paragraphs, if brought within the time allowed by the law of the State where proceedings are instituted.

Article 24
Interest

The right of the salvor to interest on any payment due under this Convention shall be determined according to the law of the State in which the tribunal seized of the case is situated.

Article 25
State-owned cargoes

Unless the State owner consents, no provision of this Convention shall be used as a basis for the seizure, arrest or detention by any legal process of, nor for any proceedings in rem against, non-commercial cargoes owned by a State and entitled, at the time of the salvage operations, to sovereign immunity under generally recognised principles of international law.

Article 26
Humanitarian cargoes

No provision of this Convention shall be used as a basis for the seizure, arrest or detention of humanitarian cargoes donated by a State, if such State has agreed to pay for salvage services rendered in respect of such humanitarian cargoes.

Article 27
Publication of arbitral awards

States Parties shall encourage, as far as possible and with the consent of the parties, the publication of arbitral awards made in salvage cases.

Part II
Provisions having effect in connection with Convention

Interpretation

1. In this Part of this Schedule —

(a) “the Convention” means the Convention as set out in Part I of this Schedule and any reference to a numbered article is a reference to the article of the Convention which is so numbered;

(b) “the waters of the Falkland Islands” means the sea or other waters within the seaward limits of the territorial sea of the Falkland Islands.

Claims excluded from Convention

2.(1) The provisions of the Convention do not apply—

(a) to a salvage operation which takes place in inland waters of the Falkland Islands and in which all the vessels involved are of inland navigation; and

(b) to a salvage operation which takes place in inland waters of the Falkland Islands and in which no vessel is involved.

(2) In this paragraph “inland waters” does not include any waters within the ebb and flow of the tide at ordinary spring tides or the waters of any dock which is directly or (by means of one or more other docks) indirectly, connected with such waters.

Assistance to persons in danger at sea

3.(1) The master of a vessel who fails to comply with the duty imposed on him by article 10, paragraph 1 commits an offence and shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(2) Compliance by the master of a vessel with that duty shall not affect his right or the right of any other person to a payment under the Convention or under any contract.

The reward and special compensation: the common understanding

4. In fixing a reward under article 13 and assessing special compensation under article 14 the court or arbitrator is under no duty to fix a reward under article 13 up to the maximum salvaged value of the vessel and other property before assessing the special compensation to be paid under article 14.

Recourse for life salvage payment

5.(1) This paragraph applies where—

(a) services are rendered wholly or in part in Falkland Islands waters in saving life from a vessel of any nationality or elsewhere in saving life from any ship registered in the Falkland Islands; and

(b) either—

(i) the vessel and other property are destroyed, or

(ii) the sum to which the salvor is entitled under article 16, paragraph 2 is less than a reasonable amount for the services rendered in saving life.

(2) Where this paragraph applies, the Governor or the authority acting under the Governor's direction may, if he thinks fit, pay to the salvor such sum or, as the case may be, such additional sum as he thinks fit in respect of the services rendered in saving life.

Meaning of "judicial proceedings"

6. References in the Convention to judicial proceedings are references to proceedings—

(a) in the Supreme Court;

(b) in the Magistrate's Court,

and any reference to the tribunal having jurisdiction (so far as it refers to judicial proceedings) shall be construed accordingly.

Meaning of "State Party"

7.(1) An Order in Council made for the purposes of this paragraph and declaring that any State specified in the Order is a party to the Convention in respect of a specified country shall, subject to the provisions of any subsequent Order made for those purposes, be conclusive evidence that the State is a party to the Convention in respect of that country.

(2) In this paragraph "country" includes "territory".

SCHEDULE 7 - SCALE OF FINES FOR OFFENCES UNDER THIS ORDINANCE

Level	Maximum Fine
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

SCHEDULE 8 -
LICENCES: RIGHT TO MAKE REPRESENTATIONS, ETC.

(section 281(2))

1. If within twenty-eight days of the issue of a licence the person to whom it is issued requests the licensing authority to give him or her notice in writing of the reasons for the inclusion of any provision in it, the authority must comply with his request within 28 days of receiving it.
2. On issuing a licence to a person the licensing authority must notify him or her of the effect of paragraph 1.
3. If the licensing authority refuses an application for a licence, the licensing authority must give the applicant notice in writing of the reasons for the refusal.
4. If the licensing authority varies or revokes a licence without the holder's consent, the authority must give the holder notice in writing of the reasons for variation or revocation.
5. If within twenty-eight days of receipt of a notice under this Schedule giving the licensing authority's reasons the person to whom it is given makes written representations to the authority concerning the matter to which the notice related, the authority must consider those written representations and must reconsider the matter in the light of those representations.
6. A notice under this Schedule stating the licensing authority's reasons must state the effect of paragraph 5.
7. The licensing authority must notify the person who made the representations as to the result of the authority's reconsideration and the reasons for it.

**SCHEDULE 9 -
PERSONS AUTHORISED TO ENFORCE THIS ORDINANCE**

(section 284(5) and 287(3))

1. Introductory

In this Schedule “**officer**” means a person authorised to enforce Part 14 of this Ordinance.

2. Assistants for officers etc.

(1) An officer may take with him or her, to assist the officer in performing his or her functions —

(a) any other person; and

(b) any equipment or materials.

(2) A person whom an officer takes with him or her to assist the officer may perform any of the officer's functions, but only under the officer's supervision.

3. Powers in relation to vessels, aircraft etc.

(1) In order to perform the functions under Part 14 of this Ordinance an officer may require any person —

(a) to give details of any substances or articles on board, a vessel, aircraft, hovercraft or marine structure; and

(b) to give information concerning any substances or articles lost from a vessel, aircraft, hovercraft or marine structure.

(2) In order to perform any such functions an officer —

(a) may require any vessel, aircraft, hovercraft or marine structure to stop; and

(b) may require the attendance-

(i) of the master, captain or commander of a vessel, aircraft or hovercraft;

(ii) of the person in charge of a marine structure; and

(iii) of any other person who is on board a vessel, aircraft, hovercraft or marine structure,

and may require any person on board to assist the officer in the performance of his or her functions.

(3) In order to perform functions under Part 14 of this Ordinance an officer —

(a) may require —

(i) the master, captain or commander of a vessel, aircraft or hovercraft; and

(ii) the person in charge of a marine structure,

to take it and its crew to the port which appears to the officer to be the nearest convenient port; or

(b) may take it there personally.

(4) In order to perform any such functions an officer may detain a vessel, aircraft, hovercraft or marine structure.

(5) If an officer detains a vessel, aircraft, hovercraft or marine structure, the officer must serve on the master, captain, commander or person in charge a notice in writing stating that it is to be detained until the notice is withdrawn by the service on him or her of a further notice in writing signed by the officer.

4. Containers etc.

Without prejudice to his powers under any other provision of this Ordinance, in order to perform his functions an officer —

(a) may open any container;

(b) may carry out searches, inspections, measurements and tests;

(c) may take samples;

(d) may require the production of documents, books and records; and

(e) may photograph or copy anything the production of which he or she has power to require under paragraph (d).

5. Evidence of officer's authority

(1) An officer must be furnished with a certificate of his authorisation, and when the officer proposes to perform any functions under this Ordinance, it is the officer's his duty if so requested, to produce that certificate.

(2) It is also the officer's duty, if so requested, to state —

(a) his or her name;

(b) the functions that he or she proposes to perform; and

(c) his or her grounds for proposing to perform it.

6. Time of performance of functions

An officer must perform his functions under this Ordinance at a reasonable hour unless it appears to the officer that there are grounds for suspecting that the purposes of their performance may be frustrated if he seeks to perform them at a reasonable hour.

7. Entry into dwellings

(1) An officer may only enter a dwelling for the purposes of performing his functions under this Ordinance if a justice of the peace has issued a warrant authorising him or her to enter and search that dwelling.

(2) A justice of the peace may only issue such a warrant if on application by the officer he is satisfied —

(a) that the officer has reasonable grounds for believing that there is present in the dwelling anything to which those functions relates; and

(b) that —

(i) it is not practicable to communicate with any person entitled to grant entry to the dwelling; or

(ii) a person entitled to grant entry to the dwelling has unreasonably refused an officer entry; or

(iii) entry to the dwelling is unlikely to be granted unless a warrant is produced; or

(iv) the purpose of entry may be frustrated or seriously prejudiced unless an officer arriving at the dwelling can secure immediate entry to it.

(3) In this paragraph “**justice of the peace**” includes the Senior Magistrate.

8. Power of officer to use reasonable force

An officer may use reasonable force, if necessary, in the performance of his functions.

9. Protection of officers

An officer is not liable in any civil or criminal proceedings for anything done in the purported performance of his functions under this Ordinance if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

10. Offences

A person commits an offence who —

(a) intentionally obstructs an officer in the performance of any of his functions under this Ordinance;

(b) fails without reasonable excuse to comply with a requirement made or direction given by an officer in the performance of his functions under this Ordinance; or

(c) in purporting to give information required by an officer for the performance of any of his functions under this Ordinance —

(i) makes a statement which he knows to be false in a material particular;

(ii) recklessly makes a statement which is false in a material particular; or

(iii) intentionally fails to disclose any material particular.

SCHEDULE 10

Part A - Repealed Falkland Islands Legislation

(section 310(1))

Number	Title
3 of 1960	Oil in Territorial Waters Ordinance 1960
15 of 2001	Merchant Shipping Ordinance 2001
9 of 1995	Marine Environment (Protection) Ordinance 1995
15 of 1995	Merchant Shipping (Registry) (Amendment) Ordinance 1995
24 of 1998	Merchant Shipping (Amendment) Ordinance 1998
S. R. & O. No: 3 of 1995	Commencement in the Falkland Islands of Amendments to the Merchant Shipping Act 1974 Order 1995
S. R. & O. No. 14 of 1996	Merchant Shipping Act 1995 (Adoption) (Limitation of Liability for Maritime Claims) Order 1996
S R & O No. 35 of 1996	Merchant Shipping (Adoption of Legislation) (Amendment) Order 1996
S.R. & O. No. 9 of 1997	Merchant Shipping Act 1979 (Commencement of Certain Provisions in the Falkland Islands) Order 1997
S. R. & O. No. 22 of 2004	Merchant Shipping Ordinance 2001 (Correction) Order 2004

Part B -
UK Acts (which apply to the Falkland Islands)

(section 310(2))

Chapter or number	Title
Chapter 60 of 1894	Merchant Shipping Act 1894
Chapter 32 of 1900	Merchant Shipping (Liability of Shipowners and Others) Act 1900
Chapter 48 of 1906	Merchant Shipping Act 1906
Chapter 28 of 1921	Merchant Shipping Act 1921
Chapter 62 of 1958	Merchant Shipping Act 1958
Chapter 47 of 1965	Merchant Shipping Act 1965
Chapter 36 of 1970	Merchant Shipping Act 1970
Chapter 39 of 1979	Merchant Shipping Act 1979
Chapter 10 of 1981	Merchant Shipping Act 1981
Chapter 21 of 1995	Merchant Shipping Act 1995
Chapter 48 of 1985	Food and Environment Protection Act 1985
Chapter 60 of 1971	Prevention of Oil Pollution Act 1971

[s49/Ord.14/2019/w.e.f. 26.09.2019]

Part C -
UK Statutory Instruments

(section 310(3))

Number	Title
SR & O 1935/837	Merchant Shipping (Helm Order) Order 1935
SI 1963/1631	Merchant Shipping (Registration of Colonial Government Ships) Order 1963
SI 1963/1632	Shipowners' Liability (Colonial Territories) Order 1963
SI 1971/383	Merchant Shipping (Tonnage) (Overseas Territories) Order 1971
SI 1981/424	Merchant Shipping Act 1979 (Falkland Islands) (Amendment) Order 1981
SI 1980/1093	Merchant Shipping (Prevention of Pollution)(Intervention) Order 1980
SI 1980/1513	Merchant Shipping Act 1979 (Falkland Islands) Order 1980
SI 1982/841	Merchant Shipping (Tonnage) Regulations 1982
SI 1982/1664	Carriage of Goods by Sea (Overseas Territories) Order 1982
SI 1982/1666	Merchant Shipping (Prevention of Pollution)(Intervention) (Overseas Territories) Order 1982
SI 1982/1669	Prevention of Oil Pollution (Shipping Casualties) (Overseas Territories) Order 1982
SI 1982/1668	Prevention of Oil Pollution Act 1971 (Overseas Territories) Order 1982
SI 1983/708	Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1983
SI 1983/762	Merchant Shipping (Distress Signals and Prevention of Collisions)

	(Overseas Territories) Order 1983
SI 1987/1827	Merchant Shipping (Confirmation of Legislation) (Falkland Islands) Order 1987
SI 1988/1084	Environment Protection (Overseas Territories) Order 1988
SI 1988/1085	Merchant Shipping (Tonnage) (Overseas Territories) Order 1988
SI 1988/1086	Merchant Shipping Act 1970 (Overseas Territories) Order 1988
SI 1989/1798	Merchant Shipping (Distress Signals and Prevention of Collision) Regulations 1989
SI 1989/2400	Merchant Shipping Act 1979 (Overseas Territories) Order 1989
SI 1989/845	Merchant Shipping (Confirmation of Legislation) (Falkland Islands) Order 1989
SI 1992/1717	Merchant Shipping (Confirmation of Legislation) (Falkland Islands) Order 1992
SI 1993/1786	Merchant Shipping Act 1979 (Overseas Territories) (Amendment) Order 1993
SI 1997/1748	Environment Protection (Overseas Territories) (Amendment) Order 1997
SI 1997/2578	Merchant Shipping (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) (Overseas Territories) Order 1997
SI 1997/2586	Merchant Shipping (Salvage Convention) (Overseas Territories) Order 1997
SI 1997/2584	Merchant Shipping (Oil Pollution) (Falkland Islands) Order 1997
SI 2003/1877	Merchant Shipping (Confirmation of Legislation) (Falkland Islands) Order 2003
SI 2003/2559	The Merchant Shipping (Oil Pollution Compensation Limits) Order 2003

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