

**6.2. International Maritime Standards Bill 2020 –
Clauses considered**

Mr Baker to move.

3655 **The Speaker:** We move on then, Hon. Members, to the International Maritime Standards Bill 2020, and I call on Mr Baker to move.

Mr Baker: Thank you, Mr Speaker.

3660 I would firstly like to thank Members for supporting this Bill at the Second Reading earlier this month. As I have explained before, this Bill has been prepared as part of the Island's interpretation of the International Maritime Organization's Instruments Implementation Code (III Code). The International Maritime Organization (IMO) formally adopted the III Code in 2013 with the aim of providing a global standard for the implementation of certain IMO conventions. The III Code sets out the responsibilities and obligations of Member States and is broken down into flag state, port state and coastal state responsibilities.

3665 On 1st January 2016 the IMO III Code became mandatory. The aim is to ensure a consistent and auditable standard of safety and marine pollution prevention in International Maritime Organization Member States, which currently number 174.

3670 I have previously explained that, as part of the III Code, there is a requirement to ensure that the various conventions to which the contracting governments or parties are signed up to are included in their national laws and regulations.

3675 This Bill will provide for the allocation of specific responsibilities for discharging the Island's obligations under the international conventions which are relevant to the III Code. The Bill will also provide a mechanism by which the extent of the Island's compliance with relevant international conventions may be enhanced. This will be achieved by providing the Chief Secretary with a broad power to assign responsibility for performance specified tasks in respect of flag, port or coastal state obligations. Such tasks must be tasks which the Island is duty bound to perform in fulfilment of its international obligations under the international conventions concerning maritime safety and the prevention and control of marine pollution from ships which we have already committed to observing –

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The Speaker: Mr Baker, this is not Second Reading, this is the clauses stage.

Mr Baker: I appreciate that, Mr Speaker, I was just contextualising the clauses for –

3685 **The Speaker:** Well, I think we do that at Second Reading, Mr Baker.

Mr Baker: Thank you.

I will move straight on to the clauses. (**The Speaker:** Thank you.)

3690 Turning to clause 1, this clause gives the Act resulting from the Bill its short title, Mr Speaker. I beg to move that clause 1 stand part of the Bill.

The Speaker: Thank you.

Mr Callister.

3695 **Mr Callister:** Thank you, Mr Speaker. I beg to second and reserve my remarks.

The Speaker: Thank you. I put the question that clause 1 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2, Mr Baker.

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Mr Baker: Thank you, Mr Speaker.

Clause 2 introduces the details of when the Act will commence.

Mr Speaker, I beg to move that clause 2 stands part of the Bill.

3705 **The Speaker:** Thank you.

Mr Callister.

Mr Callister: Thank you, Mr Speaker. I beg to second.

3710 **The Speaker:** I put the question that clause 2 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3 and Schedules 1, 2 and 3, Mr Baker.

Mr Baker: Thank you, Mr Speaker.

3715 Clause 3 sets out the definitions of key terms that are used in the Bill. Schedule 1 sets out the relevant international conventions to which section 3 of the Bill refers. Schedule 2 sets out the form of the non-legislative public document to which the Bill refers, and Schedule 3 sets out the form of written instructions to the Treasury to which the Bill refers.

Mr Speaker, I beg to move that clause 3 and Schedules 1, 2 and 3 stand part of the Bill.

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The Speaker: Mr Callister.

Mr Callister: Thank you, Mr Speaker. I beg to second.

3725 **The Speaker:** Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

I really appreciate the work that the Department –

3730 **The Speaker:** My apologies, I should have asked Mr Skelly to move his amendments before calling on you to speak.

Mr Skelly.

Mr Skelly: Gura mie eu, Loayreyder.

3735 I thank my hon. colleague for bringing forward such a crucial piece of legislation to this House, it is one I wholeheartedly support. The Isle of Man Ship Registry, which sits in our Department, is an incredibly important asset to the whole of the Island. It is well regarded globally

3740 as a Category 1 register, and in order to maintain this position it is crucial that the Isle of Man is well prepared for the forthcoming audit.

Performing well at this audit is important, not only for the Island's maritime industry, but the wider Red Ensign Group, of which we are members, alongside the UK and many others. It is essential that the international obligations contained within the IMO Instruments Implementation Code are met by the Isle of Man. There has been great collaboration between

3745 the Department of Infrastructure and our Department in recent years, working to ensure that we can demonstrate to an IMO auditor that we are indeed satisfactory in meeting our obligations for flag, port and coastal state.

3750 Whilst I am incredibly supportive of this legislation, a number of minor inaccuracies within the Bill have been identified and they should be corrected at this stage. To this end, I am proposing a number of minor amendments to the Bill to rectify what are essentially typographical errors. They do not change the purpose of the Bill, nor do they fundamentally change any of the provisions within it.

3755 The proposed amendment to clause 3 corrects a date referred to in the definition of the relevant international convention. The definition refers to 4th August 2013 as a date on which the IMO resolution was adopted. The date of adoption was in fact 4th December, and this amendment corrects that inaccuracy.

Loayreyder, I beg to move this amendment to the Bill:

Amendment to clause 3:

1. Page 6, line 6, in the definition of “relevant international conventions” in subsection (1), in paragraph (c)(i), for “4 August 2013” substitute «4 December 2013».

Amendments to Schedule 3:

2. Page 16, in the item numbered ‘4.’ in the table, in the second column, for “(in 4)” substitute «(in 3)».

*3. Page 16, in the item numbered ‘4.’ in the table, in the third column, for “Attach.” substitute —
«Provide brief description here, and attach to this form any necessary supporting document(s).».*

4. Page 16, in the item numbered ‘5.’ in the table, in the second column, for “(in 4)” substitute «(in 3)».

5. Page 16, in the item numbered ‘5.’ in the table, in the fourth column, for “(reason to be provided)” substitute «(provide reason here and, if needed, on attached document(s))».

6. Page 16, the item numbered ‘6.’ in the table, in the second column, for “(5)” substitute «(4)».

7. Page 16, in the item numbered ‘7.’ in the table, in the second column, for “(in 4)” substitute «(in 2)».

8. Page 16, in the item numbered ‘8.’ in the table, in the second column, for “(in 1)” substitute «(in 3)».

9. Page 16, in the item numbered ‘9.’ in the table, in the second column, for “(4)” substitute «(3)».

The Speaker: Thank you.

3760 Mr Hooper.

Mr Hooper: Thank you, Mr Hooper. I beg to second the amendment.

The Speaker: Mr Thomas.

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Mr Thomas: Thank you, Mr Speaker.

3770 And again, I congratulate and thank the Department for welcoming me into this debate and for arranging for an appointment with the drafter, with the support of departmental officers, to discuss some concerns, which I am now going to put down on the record in case the Legislative Council wants to take them up, or at least they are there in the future if there is any ambiguity.

3775 The first one is that in section 3, definition of interpretation, there is a section on relevant international conventions, and I will not go through how that is defined, but is defined very precisely. I was concerned that in future years it is surely possible that a relevant international convention is extended to the Island before it is included in Schedule 1, if only through error – and errors do happen, as we have seen with the amendment that has just been moved from the Department for Enterprise – and thus there is a potential difficulty thereafter. However, I have been assured that this possibility is contrary to practice, because the UK consistently follows the practice of asking all Crown Dependencies and Overseas Territories if they wish to have any given convention extended to them and, crucially, that is done before extension of the convention to the Crown Dependency or Overseas Territory.

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3785 The query is accompanied by a demand for the Crown Dependency or Overseas Territory to demonstrate legislative readiness to have the convention extended in the event that the territory wants it to be extended. A demonstration of legislative readiness also has to be made before extension takes place. So, I am informed and then assured that in reality there is no chance that a convention will be extended before a chance has been given to take the necessary preparatory steps. And, in any case, even if that were to happen, there would be no issue because nothing would prevent Tynwald from passing an Act to incorporate that convention into domestic law. Alternatively, the convention may well fall within the scope of an existing enabling power for the relevant provision to be made by regulations.

3790 The point is that the failure to include a convention in the Schedule to the resulting Act will not be fatal. There are other perfectly acceptable routes available for ensuring that there is a domestically enforceable duty to comply with the obligations under that convention. So accordingly, once again, I am assured by the drafters that there is absolutely no need for the amendment that I was trying to have drafted.

3795 I hope that Legislative Council can review this later, because I only had a chance to discuss the matter with a few lawyers, who seemed to think my point had at least some merit, and should be considered further. So with that, I will vote for the amendment and call on Legislative Council to review it slightly.

3800 **The Speaker:** Mr Skelly to respond to the debate on the amendments.

Mr Skelly: Loayreyder, really I have very little to say to that.

I fully respect the Hon. Member's views on investigating that particular issue. He clearly engaged with officers to understand that and that could be explored further by LegCo, and I welcome that opportunity.

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The Speaker: Mr Baker, to sum up.

Mr Baker: Thank you very much, Mr Speaker.

3810 Whilst I am on my feet could I clarify that the amendments that have been moved have been both to clause 3 and the Schedule as well?

The Speaker: Yes, that is why it covers all of the amendments because they all relate to either the clause or the Schedules that are moved under that clause.

3815 **Mr Baker:** Thank you, that has set my mind at rest.

I would like to thank Mr Skelly for raising those amendments, which I do support. I would like to thank Mr Thomas for his engagement with the Department and the drafter. His comments are in line with the advice that the Department has received so we concur that no amendments are required but clearly Mr Thomas has lodged his concerns for the benefit of *Hansard* and they can be picked up by Legislative Council, should they so wish.

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With that, Mr Speaker, I beg to move. Thank you.

The Speaker: Putting to Hon. Members first the amendments in the name of Mr Skelly, that is amendments 1 to 9 on the back of the Order Paper. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Putting to you then clause 3 and Schedules 1, 2 and 3, as amended, those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 4, Mr Baker.

3830 **Mr Baker:** Thank you, Mr Speaker.

3835 Clause 4 gives the Chief Secretary broad power to assign responsibility for performance specified tasks. Such tasks must be tasks which the Island is duty bound to perform in fulfilment of its international obligations under any international convention falling within it within a defined group. This group contains solely conventions concerning maritime safety and the prevention and control of marine pollution from ships.

The Chief Secretary may make an assignment to any Department or Statutory Board, any Government company, or any private person who has beforehand indicated a willingness to accept such assignments.

3840 Crucially, any assignment made by the Chief Secretary under this clause must be made by means of a non-legislative public document included in Schedule 1. For completeness, the clause expressly designates compliance with the Island's obligations under relevant international conventions a corporate matter under the delegated authority of the Chief Secretary.

Mr Speaker, I beg to move that clause 4 stands part of the Bill.

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The Speaker: Mr Callister.

Mr Callister: Thank you, Mr Speaker. I beg to second.

3850 **The Speaker:** Mr Thomas.

Mr Thomas: Thank you, Mr Speaker.

3855 Again, after very helpful and productive discussions with the Minister and his officers, I talked with legislative drafters and suggested that it might be helpful to amend section 4 so that what is described as a non-legislative public document could be changed in its description so that it can be laid before Tynwald, as I think it would be in any case if a question was asked to make this happen, as happened during the emergency powers, when I got the public documents laid before Tynwald, I wrote, 'Okay, this is a document directed to an assignee but surely it affects others given it is to do with standards and regulation, and surely those affected have the right to know the identity of the assignee?'

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I am informed that the focus of this entire Act is the fulfilment of obligations on the international plane. It has to do with international obligations that impose duties solely on the Crown, not on a third party. In the UK, for matters like this they do not even make domestic legislation to transform the obligations into domestic law, given that no third party rights are involved and they have the concept of indivisibility of the Crown. There is therefore little point in making legislation telling themselves to do what they already know they have to do. Here, we do not have indivisibility, but have several bodies corporate through which the functions of government are carried out. It follows that there needs to be a mechanism for formally assigning responsibilities. However, the fact remains that the international obligations concerned do not confer rights on individuals. They only impose duties on the Crown. My concern therefore, seems to be lacking in real substance.

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The second point that was made to me was that the Interpretation Act 2015 makes a distinction between public documents, which may be legislative or non-legislative, and statutory documents, which are closely related to public documents, but are invariably legislative in character. The statutory documents, therefore, are the only ones to which the Tynwald procedures outlined in Division 2, Part 3 of the Legislation Act 2015 apply.

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3880 The documents in question in the Bill are clearly stated to be non-legislative public documents, precisely because the intention is that this mechanism be administrative in character. It is therefore not possible for the Tynwald procedure to be applied to a document that patently does not constitute legislation. Therefore there will be no legal basis on which a non-legislative public document can be subjected to a procedure that is restricted to legislative instruments. So, like I did last time, I hope Legislative Council will have the time to revisit this matter,

3885 I also suggested that it might be helpful to include in section 4, in respect of capacity, something to the effect that the Chief Secretary needs to be cognisant of separating 'operational' from 'regulatory' responsibility when he is assigning responsibility.

3890 This was not strongly resisted but both the drafter and myself ran out of time, because we did not really have a lot of time, and in submitting drafting instructions I had to clearly define what was operational and what was regulatory. But to me, it is clearly relevant that we would not want the assignment to regulate compliance with the same person that was marketing the Island's capacity in respect of that function, I feel.

So I hope that Legislative Council can consider this further and can consider whether it would be helpful to put into section 4 something to do with being cognisant of the need to make sure that others when they look in will see operations as being separated from regulations.

3895 Finally, Hon. Members should also be cognisant of the fact that it appears that in this clause:

compliance with the Island's obligations under relevant international conventions is hereby designated a corporate matter under the delegated authority of the Chief Secretary

– appears for the first time, I believe, in Manx legislation and therefore is *very* important. It is a move towards a new type of thinking of government, and I wanted to welcome that. And more generally to say that the idea of having a designated corporate matter is very exciting and I want to congratulate the Minister for having put that into this legislation for the first time, I believe.

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The Speaker: Mover to reply.

Mr Baker: Thank you very much, Mr Speaker.

3905 I am pleased that Mr Thomas has engaged with the Department on this. I thank him for his comments.

Again, very similar to the previous clause, his comments that he did not make an amendment to this is entirely consistent with the advice that the Department received, and with that I beg to move.

3910 **The Speaker:** I put to you the question that clause 4 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5, Mr Baker.

Mr Baker: Thank you, Mr Speaker.

3915 Clause 5 requires the Chief Secretary to seek the advice of the Attorney General before making an assignment under clause 4. The Attorney General is required to, in writing, honour any such request for advice. In turn, the Chief Secretary is required to have regard to the Attorney General's advice.

Mr Speaker, I beg to move that clause 5 stand part of the Bill.

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The Speaker: Mr Callister.

Mr Callister: Thank you, Mr Speaker. I beg to second.

3925 **The Speaker:** I put the question that clause 5 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 6, Mr Baker.

Mr Baker: Thank you, Mr Speaker.

3930 Clause 6 requires the Chief Secretary to consult and have regard to the advice given to him or her by industry experts. This must be done before an assignment is made and is intended to assist the Chief Secretary when making a suitable assignment.

Mr Speaker, I beg to move that clause 6 stand part of the Bill.

3935 **The Speaker:** Mr Callister.

Mr Callister: Thank you, Mr Speaker. I beg to second.

3940 **The Speaker:** I put the question that clause 6 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 7.

Mr Baker: Thank you, Mr Speaker.

3945 Clause 7 provides that an assignment made by the Chief Secretary under clause 4 has the force of law. On this basis, clause 7 empowers the Chief Secretary to impose suitable administrative sanctions in the event an assignment is not complied with.

Mr Speaker, I beg to move that clause 7 stand part of the Bill.

The Speaker: Mr Callister.

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Mr Callister: Thank you, Mr Speaker. I beg to second.

The Speaker: I put the question that clause 7 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

3955 Clause 8, Mr Baker.

Mr Baker: Thank you, Mr Speaker.

3960 Clause 8 sets out the duties of an assignee. The assignee must acknowledge the assignment in writing and may not refuse it. The qualification to this stipulation is that where the assignment is made to a private person, that person may at any time determine that they are unwilling to receive an assignment. At this point, the assignment becomes null and void and payment for work already done must be made to the former assignee.

3965 The other categories of assignee, for example, those who do not have the option of revoking an expression of willingness may, in appropriate cases, provide the Chief Secretary with a notification of constraint in which the assignee sets out the constraints that it believes will hamper it in its bid to satisfactorily discharge its responsibilities under this assignment. The assignee must substantiate any claim it makes to being constrained.

Mr Speaker, I beg to move that clause 8 stand part of the Bill.

3970 **The Speaker:** Mr Callister.

Mr Callister: Thank you, Mr Speaker. I beg to second.

3975 **The Speaker:** I put the question that clause 8 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

3980 **Mr Baker:** Clause 9 specifies the steps the Chief Secretary must take upon receipt of a notification of constraint. He or she must have due regard to it and, where necessary, either modify the assignment in consultation with the assignee or revoke the assignment and assign their responsibilities to another person instead. If the constraint is financial, the clause specifies

steps the Chief Secretary may take to secure the required funding from the Treasury. Steps consist of writing to the Council of Ministers to request that the Council of Ministers, in writing, instruct the Treasury to provide the required funding. Until this funding has been provided by the Treasury, the assignment cannot be enforced.

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Mr Speaker, I beg to move that clause 9 stand part of the Bill.

The Speaker: Mr Callister.

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Mr Callister: Thank you, Mr Speaker. I beg to second.

The Speaker: Mrs Barber.

Mrs Barber: Thank you, Mr Speaker.

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It is only a very minor typographical error in subsection (3)(a), which I must confess I just forgot to put in as an amendment, but 'considers' should be 'consider', and I would be grateful if you could pick it up in Legislative Council.

The Speaker: I call on the mover to reply. You may want to take advice as to whether that might be covered by the slip rule.

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Mr Baker: I will take your advice on that, Mr Speaker! *(Laughter)*

The Speaker: In which case, I put the question that clause 9 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Clause 10, Mr Baker.

Mr Baker: Thank you, Mr Speaker.

Clause 10 obliges the Treasury to comply with a written instruction given to it by the Council of Ministers and gives the Treasury options with respect to disbursement of the funds and the imposition of conditions subject to which disbursement will be made.

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Mr Speaker, I beg to move that clause 10 stand part of the Bill.

The Speaker: Mr Callister.

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Mr Callister: Thank you, Mr Speaker. I beg to second.

The Speaker: I put the question that clause 10 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

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Clause 11, Mr Baker.

Mr Baker: Thank you, Mr Speaker.

Clause 11 requires all parties to which the Bill applies to keep written records of any steps taken under the resulting Act.

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Mr Speaker, I beg to move that clause 11 stand part of the Bill.

The Speaker: Mr Callister.

Mr Callister: Thank you, Mr Speaker. I beg to second.

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The Speaker: I put the question that clause 11 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 12, Mr Baker.

Mr Baker: Thank you, Mr Speaker.

4035 Clause 12 makes provision aimed at obviating any conflict between existing legislation and an assignment made by the Chief Secretary under clause 4. Please accept my apologies that there is a misnumbering identified in the explanatory memorandum and explanatory notes that states clause 3 here, it is in fact clause 4, as I have just advised.

4040 The Chief Secretary, is duty bound to, amongst other things, have due regard to existing legislation when making an assignment. It is further provided that an assignment does not affect existing powers legislatively conferred on either the Department of Infrastructure or the Department for Enterprise.

Mr Speaker, I beg to move that clause 12 stand part of the Bill.

4045 **The Speaker:** Mr Callister.

Mr Callister: Thank you, Mr Speaker. I beg to second.

4050 **The Speaker:** I put the question that clause 12 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.