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## INTERNATIONAL MARITIME STANDARDS BILL 2020

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### Explanatory Memorandum

1. This Bill is promoted by Mr Tim Baker, MHK on behalf of the Department of Infrastructure.
2. *Clauses 1 and 2* deal with the Short Title and Commencement respectively.
3. *Clause 3* sets out definitions of key terms used in the Bill.
4. *Clause 4* gives the Chief Secretary broad power to assign responsibility for performing 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 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. Crucially, any assignment made by the Chief Secretary under this clause must be made by means of a non-legislative public document. 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.
5. *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.
6. *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 in making a suitable assignment.
7. *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.
8. *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 revoke the willingness to receive an assignment that provided the basis for the assignment's having been made. Thereupon, the assignment becomes null and void and payment for work already done must be made to the former assignee. The other categories of assignee, i.e. those who do not have the

option of revoking an expression of willingness, may in appropriate cases furnish 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 the assignment. The assignee must substantiate any claim it makes to being constrained.

9. *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 the 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. The 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.
10. *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.
11. *Clause 11* requires all parties to which the Bill applies to keep written records of any steps taken under the resulting Act.
12. *Clause 12* makes provision aimed at obviating any conflict between existing legislation and an assignment made by the Chief Secretary under clause 3. The Chief Secretary is duty-bound to, among 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.
13. The Bill is not expected to have any human resource implications. However, it does have the potential financial implications, given the provision for the Chief Secretary to respond to a notification of financial constraint by urging the Council of Ministers to direct the Treasury to fund the efforts of an assignee to discharge its responsibilities. At this juncture, the amount of the funding that the Treasury would be required to commit in such a way is impossible to predict. Be that as it may, any such expenditure would be incurred in furtherance of the discharge by the Island of its international obligations related to the maritime industry. The continued attractiveness and viability of the Ship Registry is in large measure dependent on the success of the Island's success in this regard. With this in mind, any financial resources so expended would redound to the overall benefit of the Island.
14. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



*Ellan Vannin*

## INTERNATIONAL MARITIME STANDARDS BILL 2020

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*Ellan Vannin*

## INTERNATIONAL MARITIME STANDARDS BILL 2020

1 **A BILL** to provide for the allocation of specific responsibilities for discharging  
 2 the Island's obligations under international conventions relevant to the IMO  
 3 Instruments Implementation Code; to provide a mechanism by means of which  
 4 the extent of the Island's compliance with relevant international conventions  
 5 may be enhanced; and for connected purposes.

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### 6 **1 Short title**

7 The short title of this Act is the International Maritime Standards Act 2020.

### 8 **2 Commencement**

- 9 (1) This Act (except this section and sections 1 and 3) will come into  
 10 operation on such day or days as the Council of Ministers may by order  
 11 appoint.
- 12 (2) An order under subsection (1) may make such consequential, incidental,  
 13 supplemental and transitional provisions as appear to the Council of  
 14 Ministers to be necessary or expedient for the purposes of the order.

### 15 **3 Interpretation**

- 16 (1) In this Act —
- 17 “**assignee**” means a person to whom an assignment of responsibility is  
 18 made by the Chief Secretary under section 4;
- 19 “**assignment**” means an assignment of responsibility, made by the Chief  
 20 Secretary under section 4;
- 21 “**relevant international conventions**” means the international  
 22 conventions, listed in Schedule 1, which —
- 23 (a) have been duly extended to the Island by the United  
 24 Kingdom and have entered into force for the Island, with  
 25 or without reservations;

- (b) concern maritime safety and the prevention and control of marine pollution from ships; and
- (c) are relevant international conventions for the purposes of —
- (i) Resolution A.1070(28) of the International Maritime Organization (“IMO”), adopted on 4 August 2013; and
- (ii) the IMO Instruments Implementation Code, annexed to the said Resolution A.1070(28),
- and includes any amendments made from time to time, and any Protocols, to any such convention listed in Schedule 1.

- (2) The Council of Ministers may by order amend Schedule 1, Schedule 2 or Schedule 3.

Tynwald procedure – approval required

#### 4 Power to assign responsibilities

- (1) The Chief Secretary may, by means of a non-legislative public document made and signed by the Chief Secretary, from time to time assign to any person specified in subsection (3) the responsibility to perform any task or series of tasks which the Island has an obligation to perform under a relevant international convention.

This is subject to sections 5, 6 and 12, and to the succeeding provisions of this section.

- (2) An assignment under subsection (1) may —
- (a) be for either a definite or an indefinite period;
- (b) be to a specific person or group of persons; or
- (c) be subject to specified conditions.
- (3) The persons specified for the purposes of subsection (1) are —
- (a) any Department or Statutory Board;
- (b) any body corporate that, despite not being either a Department or a Statutory Board, carries out or assists in carrying out any of the functions of government in the Island; and
- (c) any private person who —
- (i) has, in writing to the Chief Secretary, expressed willingness to perform the task or tasks; and
- (ii) the Chief Secretary is satisfied has the capacity to competently perform the task or tasks.
- (4) For the avoidance of doubt, compliance with the Island’s obligations under relevant international conventions is hereby designated a corporate matter under the delegated authority of the Chief Secretary.

1 **5 Duty to seek advice**

- 2 (1) Before making an assignment, the Chief Secretary must seek and have  
3 received the written advice of the Attorney General regarding —  
4 (a) the suitability of the proposed assignee;  
5 (b) the proposed extent and duration of the assignment;  
6 (c) the terms on which the assignment is to be made; and  
7 (d) any conditions to which the assignment is subject.  
8 (2) It is the duty of the Attorney General to promptly provide, in writing, to  
9 the Chief Secretary any advice the Chief Secretary requests under  
10 subsection (1).  
11 (3) The Chief Secretary must have regard to the Attorney General’s advice.

12 **6 Duty to consult**

- 13 (1) Before making an assignment, the Chief Secretary must consult such  
14 person or persons appearing to the Chief Secretary to have considerable  
15 experience in, and a high level of technical knowledge of, the field of  
16 maritime safety and the prevention and control of marine pollution from  
17 ships.  
18 (2) The Chief Secretary must have regard to the views expressed by the  
19 person or persons whom the Chief Secretary consults in accordance with  
20 subsection (1).

21 **7 Effect of assignment**

- 22 (1) An assignment has the force of law.  
23 (2) The Chief Secretary must impose such administrative sanction as he or  
24 she considers appropriate on an assignee who fails to perform the  
25 assigned task or tasks.  
26 This is subject to section 8.

27 **8 Powers and duties of assignee**

- 28 (1) An assignee must promptly, in writing to the Chief Secretary,  
29 acknowledge the assignment.  
30 (2) An assignee may not refuse an assignment. This is subject to subsection  
31 (3).  
32 (3) Despite subsection (2), —  
33 (a) an assignee may, when complying with subsection (1) or at any  
34 time thereafter, provide the Chief Secretary with a written notice  
35 (a “**notification of constraint**”) detailing any constraint the  
36 person has which the person contends is likely to compromise the

1 person's ability to competently perform the assigned task or tasks,  
2 or to perform it or them in a timely manner; or

3 (b) a private person who, under section 4(3)(c)(i), has expressed  
4 willingness may at any time in writing to the Chief Secretary  
5 revoke that willingness; upon the doing of which —

6 (i) the assignment becomes null and void;

7 (ii) the private person's right to recover payment on a *quantum*  
8 *meruit* basis remains unaffected; and

9 (iii) the right of the Treasury to recover from the private person  
10 any sum of money that the Treasury advanced to the  
11 private person pursuant to the assignment, but which the  
12 private person has not used in the agreed manner or at all,  
13 remains unaffected.

14 (4) Without limiting subsection (3)(a), an assignee must —

15 (a) specify in a notification of constraint any financial resource  
16 constraint it may have; and

17 (b) adequately substantiate the assertion that it has such a constraint.

## 18 9 Duties arising from submission of notification of constraint

19 (1) Where the Chief Secretary receives a notification of constraint, the Chief  
20 Secretary must give due consideration to its contents and, where  
21 appropriate, —

22 (a) act in accordance with subsection (2), in which case the  
23 assignment will not take effect unless there is occasion for section  
24 10(1) to be complied with;

25 (b) modify the terms or conditions of the assignment, in consultation  
26 with the assignee; or

27 (c) release the assignee from the assignment and assign the task or  
28 tasks in question to another person.

29 (2) Where the notification of constraint alleges a financial resource  
30 constraint, the Chief Secretary may request that the Council of Ministers  
31 issue to the Treasury, in the form specified in Schedule 3, a written  
32 instruction to provide the assignee with a specified sum of money that  
33 the Chief Secretary, following consultation with the assignee, considers  
34 adequate to enable the assignee to perform the assigned task or tasks.

35 (3) Upon receipt of a request from the Chief Secretary under subsection (2),  
36 the Council of Ministers —

37 (a) may seek advice on how to proceed, from any person they  
38 considers competent to advise them; and

39 (b) must carefully consider the request.



- 1 (4) Having complied with subsection (3), the Council of Ministers must  
2 accede to the request if, in all the circumstances of the case, they consider  
3 doing so prudent.
- 4 (5) Following consultation with the Chief Secretary, the Council of Ministers  
5 may at any time amend, supersede or revoke its written instruction to  
6 the Treasury.

## 7 **10 Treasury to act on written instruction**

- 8 (1) The Treasury must —
- 9 (a) in writing to the Chief Secretary and the Council of Ministers,  
10 acknowledge receipt of a written instruction given to it by the  
11 Council of Ministers under section 9(4) (“**the written**  
12 **instruction**”); and
- 13 (b) comply with the written instruction.
- 14 (2) In complying with the written instruction, the Treasury may decide to  
15 disburse the sum of money incrementally, in accordance with a schedule  
16 of work agreed between the Treasury, the assignee and the Chief  
17 Secretary.
- 18 (3) A schedule of work and timescales for incremental disbursement of  
19 funds, referred to in subsection (2), must be reduced to writing and be  
20 signed by the Treasury, the assignee and the Chief Secretary.

## 21 **11 Record keeping**

- 22 The parties to whom this Act applies must ensure that they retain written  
23 records of —
- 24 (a) all documents produced pursuant to this Act; and  
25 (b) the reasons for the production of those documents.

## 26 **12 Effect of assignment on legislation**

- 27 (1) Before making an assignment, the Chief Secretary must consider any  
28 legislation pursuant to which the performance of a task that the Chief  
29 Secretary proposes to assign is already the responsibility of a particular  
30 person.
- 31 (2) Where any legislation to which subsection (1) applies is an Act of  
32 Tynwald, any assignment made by the Chief Secretary must not conflict  
33 with the provisions of that Act.
- 34 (3) Where any legislation to which subsection (1) applies is a statutory  
35 document, the Chief Secretary may, by means of an assignment, amend  
36 that statutory document.
- 37 (4) The Chief Secretary’s power to make an assignment does not affect —

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- (a) the power of the Department for Enterprise under —
  - (i) section 1 of the *Merchant Shipping Act 1985*; or
  - (ii) section 14 of the *Oil Pollution Act 1986*; or
- (b) the power of the Department of Infrastructure under section 6 of the *Oil Pollution Act 1986*.

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**SCHEDULE 1**

2

**RELEVANT INTERNATIONAL CONVENTIONS**

3

[Section 3]

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1. International Convention for the Safety of Life at Sea 1974, as amended (“SOLAS 1974”)

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2. International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, and as further modified by the Protocol of 1997, as amended (“MARPOL”)

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3. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (“STCW 1978”)

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4. International Convention on Load Lines, 1966

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5. International Convention on Tonnage Measurement of Ships, 1969 (“Tonnage 1969”)

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6. Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (“COLREGS 1972”)

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**SCHEDULE 2**

**FORM OF NON-LEGISLATIVE PUBLIC DOCUMENT**

[Section 3(2)]

**Allocation of responsibilities by Chief Secretary**

1.	Allocation of responsibilities to:	Body	Tick
		Isle of Man Ship Registry	
		DOI Division of Harbours	
		Other (Specify)	
2.	Allocation Reference Number:		
3.	<b>Allocation under which Convention:</b>	The International Convention for the Safety of Life at Sea 1974, as amended (“SOLAS 1974”)	
		The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, and as further amended by the Protocol of 1997, as amended (“MARPOL”)	
		The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (“STCW 1978”)	
		The International Convention on Load Lines, 1966	
		The International Convention on Tonnage Measurement of Ships, 1969 (“Tonnage 1969”)	
		The Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (“COLREGS 1972”)	
		Other – please specify:	



4.	<b>Specific allocation:</b>	<b>Specify overarching responsibility and include relevant Convention reference:</b>	
5.	<b>Date by which the Body must meet obligations:</b>	<b>Specify date:</b>	
6.	<b>Date by which the Body must formally accept allocation:</b>	<b>Specify date:</b>	
7.	<b>Date by which first update report is required to be submitted to Chief Secretary</b>	<b>Specify date:</b>	
8.	<b>Sanctions to be employed by Chief Secretary is allocations are not being fulfilled</b>	<b>Specify sanctions:</b>	
9.	<b>Date of review by Chief Secretary of progress</b>	<b>Specify date (not later than 12 months from initial allocation):</b>	

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Dated this \_\_\_ day of \_\_\_\_\_, 20\_\_

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Chief Secretary



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7**SCHEDULE 3****FORM OF WRITTEN INSTRUCTION TO THE TREASURY**

[Sections 3(2) and 9(2)]

**Council of Ministers' Written Instruction to the Treasury**

[Issued under section 9 of the International Maritime Standards Act 2020]

<b>1.</b>	<b>Financial assistance required to discharge responsibility under which Convention:</b>	The International Convention for the Safety of Life at Sea 1974, as amended ("SOLAS 1974")	
		The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, and as further amended by the Protocol of 1997, as amended ("MARPOL")	
		The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended ("STCW 1978")	
		The International Convention on Load Lines, 1966	
		The International Convention on Tonnage Measurement of Ships, 1969 ("Tonnage 1969")	
		The Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended ("COLREGS 1972")	
		Other – please specify:	
<b>2.</b>	<b>Specific financial request to assist in complying with the obligation:</b>	<b>Specify overarching responsibility and include relevant Convention reference:</b>	

3.	<b>Notification of constraint received from:</b>	Isle of Man Ship Registry DOI Division of Harbours Other (Specify) Date received by Chief Secretary:	
4.	<b>Evidence supplied by body (in 4) to adequately substantiate the assertion that it has such a financial constraint (s8(4)): This evidence must include low, medium and high costs (where possible) to discharge obligation and risks associated with each.</b>	<b>Attach.</b>	
5.	<b>Previous budget bid submitted by body (in 4):</b>	<b>Yes (reference):</b>	<b>No (reason to be provided):</b>
6.	<b>Internal / External advice sought by Council of Ministers to consider (5):</b>	<b>Yes:</b>	<b>No:</b>
7.	<b>Date by which the Body must meet obligations (in 4):</b>	<b>Specify date:</b>	
8.	<b>Date by which the Body (in 1) must formally accept allocation from Council of Ministers:</b>	<b>Specify date:</b>	
9.	<b>Amount of financial assistance to be given from Treasury to body in (4):</b>	<b>Total amount of money:</b>	
10.	<b>Date by which a schedule</b>	<b>Specify date:</b>	





	<b>of works and timescales to disburse the sum of money incrementally must be agreed between Treasury, the assignee and the Chief Secretary (S10(2,3)) – if appropriate</b>		
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IN THE KEYS

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**INTERNATIONAL MARITIME STANDARDS BILL 2020**

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A **BILL** to provide for the allocation of specific responsibilities for discharging the Island's obligations under international conventions relevant to the IMO Instruments Implementation Code; to provide a mechanism by means of which the extent of the Island's compliance with relevant international conventions may be enhanced; and for connected purposes.

Leave to introduce in the Keys given by the Council of Ministers on 18 June 2020.

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MR BAKER

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30 JUNE 2020