



INTERNATIONAL MARITIME STANDARDS BILL 2020

EXPLANATORY NOTES

*These Notes have been produced for the assistance of Members
with the approval of the Member in charge of the Bill,
the Hon Tim Baker MHK*

INTRODUCTION

1. These Explanatory Notes relate to the International Maritime Standards Bill 2020. They have been prepared by the Department of Infrastructure ("DoI") in order to assist readers of the Bill. They do not form part of the Bill and have not been endorsed by the House of Keys.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. *Ipsa facto*, where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Bill has been prepared as part of the Island's interpretation of the International Maritime Organization (IMO) Instruments Implementation (III) Code in respect of flag, port and coastal State obligations. It is a Bill to provide for the allocation of specific responsibilities for discharging the Island's obligations under international conventions relevant to the IMO III Code and to provide a mechanism by means of which the extent of the Island's compliance with relevant international conventions may be enhanced.
4. In the opinion of the Member moving it the Bill's provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

FINANCIAL IMPLICATIONS

5. The Bill does have the potential for 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.

SUMMARY AND STRUCTURE OF THE BILL

6. The Bill is in 1 Part, the principal provisions being addressed below.

PRINCIPAL PROVISIONS

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

8. The details of when the Act will commence are set out in *Clause 2*.

9. *Clause 3* sets out definitions of key terms used in the Bill.

10. *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.

11. *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.

12. *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.

13. *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.

14. *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.

15. *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.

16. *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.

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

18. *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.

CONSULTATION

19. The Bill has been prepared in collaboration with both Cabinet Office and the Chief Secretary who is fully supportive of the provisions within the Bill.

20. The Department for Enterprise has also been consulted as the Bill contains provisions to assign responsibilities to it as the Department responsible for flag and port State obligations under the IMO Instruments Implementation Code. The Department for Enterprise is fully supportive of the Bill.

21. There is no requirement to undertake formal consultation as part of this process as the proposed legislation is in response to the international obligations to which the Island is a signatory (as per para 1.8 of the Council of Ministers Public Engagement and consultation principles, October 2017). The Department previously agreed to this exemption (Ministerial Decision 74-19 based on the Amendment Bill originally being pursued).

Affected Acts

22. Nothing in this Act will impact on the provisions contained within the Merchant Shipping Act 1985 or the Oil Pollution Act 1986.
