

INTERNATIONAL MARITIME STANDARDS BILL 2020

N.B. – THIS IS AN UPDATED VERSION INCORPORATING AMENDMENTS MADE IN THE KEYS.

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 may
 5 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 operation
 10 on such day or days as the Council of Ministers may by order appoint.
- 11 (2) An order under subsection (1) may make such consequential, incidental,
 12 supplemental and transitional provisions as appear to the Council of
 13 Ministers to be necessary or expedient for the purposes of the order.

14 3 Interpretation

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

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

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

13 Tynwald procedure – approval required

14 **4 Power to assign responsibilities**

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

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

- 22 (2) An assignment under subsection (1) may –

- 23 (a) be for either a definite or an indefinite period;
24 (b) be to a specific person or group of persons; or
25 (c) be subject to specified conditions.

- 26 (3) The persons specified for the purposes of subsection (1) are –

- 27 (a) any Department or Statutory Board;
28 (b) any body corporate that, despite not being either a Department or
29 a Statutory Board, carries out or assists in carrying out any of the
30 functions of government in the Island; and
31 (c) any private person who –
- 32 (i) has, in writing to the Chief Secretary, expressed willingness
33 to perform the task or tasks; and
- 34 (ii) the Chief Secretary is satisfied has the capacity to
35 competently perform the task or tasks.

- 36 (4) For the avoidance of doubt, compliance with the Island’s obligations
37 under relevant international conventions is hereby designated a corporate
38 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 she
24 considers appropriate on an assignee who fails to perform the assigned
25 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 (a
35 “**notification of constraint**”) detailing any constraint the person
36 has which the person contends is likely to compromise the person’s

1 ability to competently perform the assigned task or tasks, or to
2 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 private
11 person pursuant to the assignment, but which the private
12 person has not used in the agreed manner or at all, remains
13 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 assignment
23 will not take effect unless there is occasion for section 10(1) to be
24 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 constraint,
30 the Chief Secretary may request that the Council of Ministers issue to the
31 Treasury, in the form specified in Schedule 3, a written instruction to
32 provide the assignee with a specified sum of money that the Chief
33 Secretary, following consultation with the assignee, considers adequate to
34 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 the
6 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 instruction**”);
12 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 funds,
19 referred to in subsection (2), must be reduced to writing and be signed by
20 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 records
23 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 —

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

2

RELEVANT INTERNATIONAL CONVENTIONS

3

[Section 3]

4

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

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Dated this ___ day of _____, 20__



Chief Secretary

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]

1.	Financial assistance required to discharge responsibility under which Convention:	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:	
2.	Specific financial request to assist in complying with the obligation:	Specify overarching responsibility and include relevant Convention reference:	

3.	Notification of constraint received from:	Isle of Man Ship Registry DOI Division of Harbours Other (Specify) Date received by Chief Secretary:	
4.	Evidence supplied by body (in 3) 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.	Provide brief description here, and attach to this form any necessary supporting document(s).	
5.	Previous budget bid submitted by body (in 3):	Yes (reference):	No (provide reason here and, if needed, on attached document(s)):
6.	Internal / External advice sought by Council of Ministers to consider (4):	Yes:	No:
7.	Date by which the Body must meet obligations (in 2):	Specify date:	
8.	Date by which the Body (in 3) must formally accept allocation from Council of Ministers:	Specify date:	

9.	Amount of financial assistance to be given from Treasury to body in (3):	Total amount of money:	
10.	Date by which a schedule 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	Specify date:	

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IN THE COUNCIL

INTERNATIONAL MARITIME STANDARDS BILL 2020

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.

MRS MASKA

10 NOVEMBER 2020