

MERCHANT SHIPPING BILL, 2021

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SCHEDULE: Private law provisions for St Helena ships

Assented to in Her Majesty's name and on Her Majesty's behalf this day of , 2021.

Philip Rushbrook
Governor



**ST HELENA
NO. OF 2021**

Enacted.....
Date of Commencement.....
Published in the Gazette.....

**A BILL
FOR
AN ORDINANCE**

To regulate merchant shipping; and for connected and incidental purposes.

Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St. Helena.

**PART 1
PRELIMINARY**

Short title and commencement

- (1) This Ordinance may be cited as the Merchant Shipping Ordinance, 2021, and comes into force on a date fixed by the Governor by Order.
- (2) An Order under subsection (1) may—
- (a) appoint different dates for different provisions or for different purposes of the same provision; and
 - (b) contain such transitional or consequential provisions as appear to the Governor to be necessary or convenient.

Interpretation

2. In this Ordinance, unless the context otherwise indicates—

“**accident**”, in respect of a ship, means—

- (a) a collision of ships;
- (b) a stranding;
- (c) any other incident of navigation; and
- (d) any other event (whether on board a ship or not),

that results in material damage to a ship or a ship’s cargo or in an imminent threat of material damage to a ship or a ship’s cargo;

“**aid to navigation**” and “**aid**” means—

- (a) a lighthouse;
- (b) a buoy beacon;
- (c) a radio aid; and
- (d) any other light, signal or mark,

established to aid marine navigation and includes any building, mooring or work associated with an aid to marine navigation;

“**British ship**” has the meaning given to that expression by section 1 of the Merchant Shipping Act, 1995;

“**Consolidated Fund**” means the Fund established by section 98 of the Constitution;

“**company**” means a corporate body that is incorporated under any Ordinance or law and whether the registered office of that corporate body is located in St Helena or elsewhere;

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

“**crew accommodation**” includes—

- (a) sleeping rooms;
- (b) mess rooms;
- (c) sanitary accommodation;
- (d) hospital accommodation;
- (e) recreation accommodation;
- (f) storerooms; and
- (g) catering accommodation,

provided for the use of seafarers that is not also used by or provided for the use of passengers;

“**crew agreement**” means an agreement between a person who employs a person to work on a ship and the person;

“**customs officer**” bears the meaning as assigned in the Customs and Excise Ordinance, 1999;

“**Exclusive Economic Zone**” means that established by proclamation dated 13th July, 2017 and published as LN No. 16 of 2017;

“**fishing vessel**” means a ship used to fish with the intention of fishing for profit, but does not include a ship used wholly to convey a person wishing to fish for pleasure;

“**foreign ship**” means a ship that is not a British ship;

“**harbour authority**” means a person or body of persons empowered by the Ports Ordinance, 2016 to make charges in respect of ships entering a port in St Helena or using facilities therein;

“**Harbour Master**” means the person appointed pursuant to section 3 of the Ports Ordinance, 2016;

“**hazardous pollution**” in respect of an escape from a ship, means an escape of oil or a mixture containing oil or an escape of another substance that is liable or likely—

- (a) to create a hazard to human health;

- (b) to harm living resources and marine life;
 - (c) to damage amenities; or
 - (d) to interfere with other legitimate uses of the sea;
- “**hazardous substance**” includes oil and means—
- (a) any substance which created a hazard to human health, harms living resources or marine life, damages amenities or interferes with the lawful use of the sea; and
 - (b) any substance prescribed under section 78 to be a hazardous substance;
- “**IMO**” means the International Maritime Organization established by a United Nation’s Convention adopted at the United Nations Maritime Conference held in Geneva, Switzerland that entered into force on 17 March 1958;
- “**IMO Convention**” or “**convention**” means a convention, agreement or other suitable instrument drafted by the IMO in accordance with Article 2 of the Convention that established the IMO;
- “**inspector**” means a person appointed to be an inspector under section 100;
- “**management agreement**”, in respect of a ship, means an 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;
- “**master**”, in respect of a ship, means the ship’s captain and a person (except a pilot) having for the time being charge of the ship;
- “**Merchant Shipping Act**” includes the Merchant Shipping Act 1894 and the Merchant Shipping Act 1995 of the United Kingdom as for the time being in force and as the context may require or unless otherwise stated;
- “**oil**” means—
- (a) oil of any description;
 - (b) spirit produced from oil of any description; and
 - (c) coal tar;
- “**owner**”, in relation to ship that is—
- (a) chartered by demise; or
 - (b) managed, either wholly or in part, by a person other than the ship’s owner under the terms of a management agreement,
- and includes the ship’s charterer or manager, as the case may be;
- “**port**” has the same meaning as that prescribed in the Ports Ordinance, 2016;
- “**pollution**” means significant pollution in St Helena, St Helena waters or an area of the sea specified pursuant to section 70;
- “**private law provisions for St Helena ships**” means—
- (a) the provisions set out in the Schedule; and
 - (b) the provisions of the registration regulations made for the purpose of the Schedule;
- “**proper officer**” means a consular officer duly appointed as a public officer in respect of a port outside St Helena as an officer exercising functions like those of a superintendent;
- “**qualifying foreign ship**” means any ship other than—
- (a) a British ship; or
 - (b) a ship which is not registered pursuant to this Ordinance;
- “**receiver**” means a receiver of wreck appointed under section 93(2);
- “**register**” means the register maintained under section 10;
- “**Registrar**” means the person appointed by the Governor to be the Registrar;
- “**registration regulations**” means regulations made under section 16;
- “**risk to safety**” means a risk to the safety of persons, property or anything navigating in or using St Helena waters;
- “**safety regulations**” means regulations made under section 55;

“**Secretary of State**” means the United Kingdom’s Secretary of State concerned with merchant shipping;

“**seafarer**” means a person who is or was employed on a St Helena ship under a crew agreement;

“**serious injury**” includes an injury which is sustained by a person, resulting in incapacitation where the person injured is unable to function normally for a period of more than 72 hours, commencing within 7 days from the date when the injury was suffered;

“**ship**” includes every description of ship used in navigation including a ship’s boat, a life-raft, lighter, barge or like ship;

“**specified**”, when used in respect of regulations or a direction, means specified in the regulations or the direction;

“**St Helena connection**” in relation to a ship, means a connection the ship is required to have under the registration regulations so that the ship is qualified to be registered as a St Helena ship;

“**St Helena ship**” means a ship that is a St Helena ship by virtue of section 5;

“**St Helena waters**” means the sea within the seaward limits of the territorial sea of St Helena;

“**superintendent**” means a mercantile marine superintendent appointed under section 100;

“**surveyor of ships**” means a person appointed under section 100;

“**tonnage regulations**” means regulations to be made under section 17;

“**wages**” includes emoluments;

“**wreck**” means—

- (a) jetsam;
- (b) flotsam;
- (c) lagan;
- (d) derelict; or
- (e) a fishing boat or fishing gear lost or abandoned at sea,

that is found or taken possession of within St Helena waters or beyond St Helena waters and brought within them.

Application to Government ships

3. This Ordinance does not apply to a ship that—
 - (a) forms part of Her Majesty’s Navy; or
 - (b) does not form part of Her Majesty’s Navy but belongs to Her Majesty or is held by a person on behalf of, or for the benefit of, the Crown in right of the United Kingdom.

PART 2 BRITISH AND ST HELENA SHIPS

Part replaces UK Merchant Shipping Acts

4. This Part replaces the provisions of the United Kingdom Merchant Shipping Acts 1894 to 1995 in so far as the provisions relate to the registration of ships as St Helena ships.

St Helena ships

5. (1) A ship is a St Helena ship if, immediately before the commencement of this Part, the ship was a St Helena ship by virtue of any provision of the Merchant Shipping Acts 1894 to 1995 in their application to St Helena.

(2) A ship is also a St Helena ship if the ship is registered under Part 3.

(3) Even though a ship is not a St Helena ship by virtue of registration under Part 3, the ship is still a St Helena ship if—

- (a) the ship is less than 24 metres in length when measured in accordance with the tonnage regulations;
- (b) the ship has a St Helena connection;
- (c) the ship is wholly owned by a person who, under the registration regulations is qualified to be owner of a St Helena ship; and
- (d) the ship is not registered in any jurisdiction.

Flags St Helena ships may fly

6. A St Helena ship may fly—

- (a) the red ensign without defacement or modification;
- (b) colours allowed to be worn in pursuance of a warrant from Her Majesty or the Secretary of State in respect of St Helena ships; or
- (c) the red ensign defaced with the arms of St Helena, if authorised or confirmed by Her Majesty by Order in Council made under section 2 of the Merchant Shipping Act, 1995.

Duty to declare national character of ship

7. (1) A master must in the manner prescribed declare to a customs officer the name of the jurisdiction to which a ship belongs and the customs officer must not grant a clearance or transire for the ship until the master has made the declaration to the customs officer.

(2) The customs officer must enter on the clearance or transire the jurisdiction declared by the master.

(3) If the master fails to declare the name of the jurisdiction, the customs officer may, in the manner prescribed, detain the ship until the declaration is made.

PART 3 REGISTRATION REQUIREMENTS

General

Port of registry for St Helena ships

8. The port of registry for St Helena ships is Jamestown.

Limitation on ship registration

9. A ship may not be registered as a St Helena ship if such a ship would be prohibited from registration under an Order in Council made by Her Majesty under section 18 of the Merchant Shipping Act 1995.

Keeping of register

10. (1) There continues to be a register of ships registered in St Helena and a Registrar whose appointment continues in accordance with the Merchant Shipping Act, 1894 and who continues to have responsibility for maintaining the register of ships.

- (2)** The register of ships must—
 - (a)* be divided into parts so that a clear distinction is made between the registration of different classes of ships; and
 - (b)* include the registration of fishing vessels.
- (3)** The Registrar must maintain the register in accordance with—
 - (a)* the registration regulations; and
 - (b)* the private law provisions for St Helena ships.

(4) The Registrar must make the register available for public inspection during the normal business hours of the office of the Registrar.

Registration of St Helena ships

11. (1) If an application is made for registration the application must be made in accordance with the registration regulations.

(2) The Registrar must register a ship for which an application under subsection (1) is made as a St Helena ship if the requirements of the registration regulations are satisfied.

(3) A ship must not be registered if the ship is prohibited from registration by the registration regulations.

(4) If a ship is registered in a jurisdiction outside St Helena and the owner of the ship registers that ship as a St Helena ship the owner of the ship must take all reasonable steps to secure the de-registration of the ship in the jurisdiction outside St Helena as soon as is practicable after the registration of the ship as a St Helena ship.

(5) A person who contravenes subsection (4) commits an offence.
Penalty: A fine of £2,000.

Status of certificate of registration

12. The certificate of registration of a St Helena ship shall be used only for the lawful navigation of the St Helena ship and shall not be subject to detention to secure any private right or claim.

Tonnage of ships

13. (1) The Registrar must, in the entry in the register for a ship, record the tonnage of the ship as ascertained—

- (a)* under the tonnage regulations for the purpose of the ship's registration; or
- (b)* subsequently following any re-measurement of the tonnage of the ship under the tonnage regulations.

(2) Subject to subsection (3), the tonnage recorded under subsection (1) is the tonnage of the ship.

(3) If an Order in Council is made under section 12 of the Merchant Shipping Act, 1995 in respect of ships of a jurisdiction, the Governor may, by Order, provide that ships of that jurisdiction, without being re-measured in St Helena, are to be treated as being of the tonnage denoted by the certificates of registration of the ships or other national papers of the ships.

Private law provisions for registered ships and liability of owner

14. (1) The Schedule applies with respect to the title to, and the registration of mortgages over, St Helena ships.

(2) The Schedule does not apply in respect of a St Helena ship that is excluded from the application of the Schedule by the registration Regulations.

(3) Where a person is beneficially interested, otherwise than as a mortgagee, in a St Helena ship or in a share in a St Helena ship registered in the name of some other person as the owner of the St Helena ship, the person with a beneficial interest, as well as the registered owner, is liable to any pecuniary penalty imposed on the registered owner by or under this Ordinance or any other Ordinance providing a pecuniary penalty in respect of the owner of a registered ship.

(4) The termination of the registration of a St Helena ship under the registration regulations does not affect an entry made in the register relating to an undischarged registered mortgage of the ship or of a share in the ship.

(5) In subsection (4) “registered mortgage” has the same meaning as that provided in the Schedule.

Offences relating to a ship’s St Helena connection

15. (1) A person must not, in relation to a matter relevant to the St Helena connection of a ship—

- (a) make to the Registrar a statement that the person knows to be false;
- (b) recklessly make a statement that is false to the Registrar; or
- (c) furnish to the Registrar information that is false.

(2) If a change occurs affecting the St Helena connection of a ship, the ship’s owner must notify the Registrar of the change as soon as practicable.

(3) A person must not intentionally alter, suppress, conceal or destroy a document that contains information relating to the St Helena connection of a ship that the person is required to produce to the Registrar pursuant to the registration regulations.

(4) A person who contravenes subsection (1), (2), or (3) commits an offence.

Penalty: A fine not exceeding £15,000 or imprisonment for a term of 2 years, or both.

Regulations

Registration regulations

16. (1) The Governor in Council may make regulations that provide for the registration of ships in St Helena.

- (2)** Regulations made under subsection (1) may prescribe—
- (a)* the persons who are qualified to be owners of a St Helena ship and the extent of their ownership required for registration;
 - (b)* requirements designed to secure that, taken into account with the ownership requirements, only a ship that has a St Helena connection may be registered;
 - (c)* the manner in which a person may apply for the registration of a ship;
 - (d)* the information and evidence to be provided for the registration of a ship;
 - (e)* the shares in the property in, and the permitted number of owners (including joint owners) of, a ship;
 - (f)* when a certificate of registration is required to be produced or surrendered;
 - (g)* the names that may or must not be used for a St Helena ship;
 - (h)* the marks to be displayed on a St Helena ship;
 - (i)* the period for which the registration of a St Helena ship remains effective without renewal;
 - (j)* the production to the Registrar in respect of a St Helena ship of a declaration of a St Helena connection or other information relating to that connection at specified intervals or at the Registrar's request;
 - (k)* the surveys and inspections to be undertaken in respect of a St Helena ship or a ship to be registered as a St Helena ship;
 - (l)* the records to be kept of the tonnage of a St Helena ship as ascertained, or re-ascertained, under the tonnage regulations;
 - (m)* when and the circumstances under which the registration of a ship may be refused;
 - (n)* when the registration of a St Helena ship may be suspended or terminated and the course of action to be taken if the St Helena ship is suspended or terminated;
 - (o)* when the registration of a St Helena ship expires and the course of action to be taken when the registration expires; and
 - (p)* the method to be used to transfer the registration of a ship to and from the register from and to a register or a corresponding record in another jurisdiction.
- (3)** Registration regulations—
- (a)* may make provision for the registration of any class or description of ships which are excluded from the application of the private law provisions for St Helena ships and may regulate the transfer, transmission or mortgaging of ships of the class or description so excluded; and
 - (b)* must make provision which precludes notice of a trust from being entered in the register or being receivable by the Registrar, except as respects specified classes or descriptions of ships or in specified circumstances.

Tonnage regulations

17. (1) The Governor in Council may make regulations prescribing how the tonnage of a ship is to be ascertained.

- (2)** Regulations made under subsection (1) may—

- (a) provide for the measurement and survey of ships to be undertaken in specified circumstances by a person appointed by the Governor;
- (b) provide for the issue, by the Governor or by a person appointed by the Governor, of a certificate of—
 - (i) the registered tonnage of a ship; or
 - (ii) the tonnage that is to be taken for a specified purpose as the tonnage of a ship;
- (c) provide for the cancellation and delivery up of a certificate in specified circumstances;
- (d) make a regulation dependent on compliance with a condition evidenced in a specified manner; and
- (e) prohibit or restrict the carriage of goods stored in spaces not included in the registered tonnage.

Bareboat charter regulations

18. (1) The Governor in Council may make regulations in respect of bareboat charters.

- (2) Regulations made under subsection (1) apply to a ship if—
 - (a) the ship is registered under the law of a jurisdiction other than St Helena;
 - (b) the ship is chartered on a bareboat charter to a charterer who is a person qualified under the registration regulations to own a St Helena ship; and
 - (c) the ship is chartered in circumstances where the conditions of entitlement to registration prescribed under section 16(2)(b), read with the requisite modifications, are satisfied in respect of the charterer and the ship.

(3) “Requisite modifications” for the purpose of subsection (2)(c) mean 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.

Supplemental

Disclosure of information relating to registration

19. (1) An obligation as to secrecy or other restriction on the disclosure of information, however imposed, does not preclude—

- (a) a Government department or public officer from disclosing information, for purpose of the performance of a statutory function, to—
 - (i) the Maritime and Coastguard Agency of the United Kingdom;
 - (ii) the Governor;
 - (iii) the Registrar; or
 - (iv) a public officer authorised by the Governor to request or receive the information;
- (b) the disclosure of information in accordance with arrangements made between the Governor and the Secretary of State for the purpose of an Order in Council made by Her Majesty under section 18 of the Merchant Shipping Act, 1995; or
- (c) disclosure by a person pursuant to any law.

(2) A person must not disclose to another person information obtained in accordance with subsection (1).

(3) A person who contravenes subsection (2) commits an offence.
Penalty: A fine of £5,000.

- (4) It is not an offence under subsection (2) if a disclosure was made—
(a) to a person to whom the information could lawfully be disclosed; or
(b) for legal proceedings arising out of this Part.

PART 4 EMPLOYMENT IN ST HELENA SHIPS

Application of Part

Application of Part

20. (1) Each provision of this Part applies to a St Helena ship that is sea-going and to a master of, and a seafarer on, such a ship.

(2) The following provisions apply to a St Helena ship and to a master of, and a seafarer employed on, such a ship—

- (a) section 34 - crew accommodation regulations;
- (b) section 37 - application of sections 38 and 39;
- (c) section 38 - manning regulations;
- (d) section 39 - crew's English knowledge regulations;
- (e) section 40 - unqualified persons going to sea as qualified officers or seafarers;
- (f) section 41 - young persons' regulations;
- (g) section 42 - conduct endangering ships, structures or individuals; and
- (h) section 43 - concerted disobedience and neglect of duty.

Interpretative provisions

21. (1) References in this Part to going to sea, includes going to sea from a country outside St Helena.

(2) In this Part, a seafarer is discharged from a ship when the seafarer's employment on the ship is terminated.

(3) In this Part, a seafarer discharged from a ship in a country and left in the country is considered to have been left behind even if the ship remains in the country.

Engagement and discharge of crews

Crew agreement regulations

22. (1) The Governor in Council may make regulations in respect of crew agreements.

- (2) Regulations made under subsection (1) may prescribe—
(a) the form of a crew agreement;
(b) how and by whom a crew agreement is to be entered into;
(c) the places where and when a crew agreement is to be entered into;

- (d) how a person may be added to a crew agreement; and
 - (e) when a crew agreement must be or need not be carried on a ship.
- (3) Regulations made under subsection (1) may also—
- (a) require a specified notice to be given to a superintendent or proper officer before a crew agreement is made;
 - (b) require a crew agreement to be delivered to a superintendent, to a proper officer or to the Registrar;
 - (c) require a copy of, or an extract from, a crew agreement to be posted in a ship;
 - (d) require a copy of, or an extract from, a crew agreement be provided to a crew member if requested; and
 - (e) require that a document carried on a ship in pursuance of this Ordinance be produced to a customs officer.

(4) If a master in St Helena attempts to take the ship to sea in contravention of regulations made under this section, the ship may be detained.

Discharge of seafarers regulations

23. (1) The Governor in Council may make regulations prescribing the procedure to be followed in connection with the discharge of a seafarer from a St Helena ship.

- (2) Regulations made under this subsection (1) may—
- (a) require that notice of a discharge be given, at a specified time, to the superintendent or proper officer at a specified place;
 - (b) require a discharge to be recorded by entries in the crew agreement and a discharge book or otherwise; and
 - (c) require copies of any such entry to be given to a superintendent, a proper officer or to the Registrar.

(3) Regulations made under subsection (1) may also apply, with such modifications as appear to the Governor to be appropriate, to a seafarer who is left behind outside St Helena otherwise than on being discharged from the ship.

(4) For the purpose of the regulations made under this section, a seafarer is considered to be discharged from a St Helena ship if the ship ceases to be a St Helena ship.

Wages, etc.

Wages regulations

24. (1) The Governor in Council may make regulations in respect of the wages of a seafarer who leaves a St Helena ship on being discharged from the St Helena ship.

(2) Regulations may provide the manner in which wages are to be paid to a seafarer when a seafarer leaves a ship and which circumstances apply and how circumstances may affect the manner in which wages are to be paid.

(3) Regulations under subsection (1) may also provide for a seafarer to receive additional payments, which may include interest, if wages or other payments are not paid to the seafarer when due.

(4) The Governor may also make regulations in respect of the wages of a seafarer who leaves a St Helena ship otherwise than on being discharged from the St Helena ship.

Account regulations

25. (1) The Governor in Council may make regulations requiring the provision of an account in respect of the wages of a seafarer and the manner in which the account is to be provided.

- (2) Regulations made under subsection (1) may—
- (a) prescribe when and how the account is to be provided to the seafarer;
 - (b) require the account to show the wages due to the seafarer and any deduction subject to which the wages are payable;
 - (c) require the account to indicate if the amount stated in the account is subject to any further adjustments that may be found necessary;
 - (d) provide how the account is to be provided to the seafarer if the seafarer was employed on more than one St Helena ship under a crew agreement; and
 - (e) provide how an account is to be provided to a seafarer if the seafarer leaves a St Helena ship otherwise than on being discharged from the St Helena ship.

Breach of crew agreement regulations

26. The Governor in Council may make regulations that—
- (a) authorise a deduction (in addition to any otherwise authorised) to be made from the wages due to a seafarer if a breach of the seafarer's obligations under a crew agreement is proved; and
 - (b) specify how any amount deducted under paragraph (a) is to be dealt with.

Dispute settlement regulations

27. (1) The Governor in Council may make regulations prescribing the procedure to be followed if there is a dispute relating to the wages payable to a seafarer.

- (2) Regulations made under subsection (1) may—
- (a) establish the person or authority to whom a dispute may be submitted;
 - (b) provide the manner and form in which a dispute is submitted and determined; and
 - (c) provide the procedure for the hearing and settlement of a dispute.

(3) A decision regarding a dispute decided in accordance with regulations made under subsection (2) is final.

Restriction on assignment of and charge upon wages

28. (1) The wages due or accruing to a seafarer may not be made subject to attachment.

(2) 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 despite any previous assignment or charge.

(3) A power of attorney or authority for the receipt of the wages of a seafarer is not irrevocable.

(4) Nothing in this section affects an allotment under section 29.

Allotment regulations

29. (1) The Governor in Council may make regulations that provide the manner in which a seafarer may allot to a person part of the wages to which the seafarer will become entitled in the course of the seafarer's employment on a St Helena ship.

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

- (a) provide how and when an allotment may be made by a seafarer;
- (b) specify the person to whom an allotment may be made;
- (c) limit the circumstances in which an allotment may be made;
- (d) limit the part of the wages that may be allotted (whether by reference to an amount or by reference to a proportion);
- (e) prescribe the method by which that part of the wages is to be calculated;
- (f) limit the number of persons to whom an allotment may be made; and
- (g) prescribe the times and the intervals at which payments under an allotment are to be made.

(3) A person to whom a seafarer has allotted part of the seafarer's wages—

- (a) may recover the part allotted in the name of the person; and
- (b) has, for that purpose, the same remedies as the seafarer.

(4) In proceedings brought by a person in respect of an allotment, a presumption may be made, unless the contrary is shown—

- (a) that the seafarer is entitled to the wages allotted; and
- (b) that the allotment has not been varied or cancelled.

Right to wages in certain circumstances

30. The Governor in Council may make regulations that provide for the entitlement to wages if a seafarer is terminated before the date contemplated in a crew agreement due to the ship—

- (a) being wrecked or lost;
- (b) being sold while outside St Helena; and
- (c) ceasing to be registered in St Helena.

Claims for maintenance regulations

31. (1) A sea farer may be liable for expenses incurred by a responsible authority for the benefit of a dependant of the seafarer during the seafarer's employment on a St Helena ship.

(2) The Governor in Council may make regulations to provide the manner in which liability under subsection (1) is established and such Regulations may specify—

- (a) the types of expenses for which a seafarer may be liable;
- (b) the manner in which—
 - (i) a claim may be made to have liability established; and

- (ii) liability may be determined;
- (c) the conditions which must be satisfied before the wages of a seafarer may be retained in respect of the liability for which the seafarer is responsible;
- (d) the manner in which notice in respect of the retention of a seafarer's wages is to be served;
- (e) the form of the notice under paragraph (d);
- (f) the responsible authority which may make a claim in respect of a seafarer's liability;
- (g) the way in which the claim may be made;
- (h) the percentage of the seafarer's wages that may be made subject to the claim; and
- (i) the way in which the claim may be enforced.

Remedies of master for remuneration, disbursements and liabilities

32. The master of a St Helena ship has the same lien for the master's remuneration and for any disbursements or liabilities properly made or incurred by the master on account of the ship, as a seafarer has for wages.

Safety, health and welfare

Obligation of a ship owner as to seaworthiness

- 33. (1)** This section applies to—
- (a) a contract of employment between the owner of a St Helena ship and the master of a St Helena ship; and
 - (b) a crew agreement in relation to a St Helena ship.

(2) It is an implied provision of the contract or agreement under subsection (1) that the owner of a ship will ensure that a person to whom subsection (3) applies will use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences and to keep the ship in a seaworthy condition during the voyage.

(3) Subsection (2) applies to the owner of the ship, the ship's master and each agent charged with—

- (a) loading the ship;
- (b) preparing the ship for sea; and
- (c) sending the ship to sea.

(4) This section applies despite any agreement to the contrary.

Crew accommodation regulations

34. (1) The Governor in Council may make regulations with respect to the crew accommodation to be provided on a St Helena ship.

- (2)** Regulations made under subsection (1) may—
- (a) prescribe the minimum space that must be provided to a seafarer for the seafarer's sleeping accommodation;
 - (b) prescribe the maximum number of seafarers by whom a specified part of the sleeping accommodation of the ship may be used;

- (c) regulate the position on the ship where the crew accommodation or any part of the crew accommodation may be located;
- (d) specify the standards to be observed in the construction, equipment and furnishing of crew accommodation;
- (e) require the submission to a surveyor of ships of plans and specifications of any works proposed to be carried out for the provision or alteration of crew accommodation;
- (f) authorise the surveyor to inspect such works;
- (g) provide for the maintenance and repair of crew accommodation;
- (h) prohibit or restrict the use of accommodation for a purpose other than the purpose for which the accommodation is designed; and
- (i) require the master or a seafarer authorised by the master to carry out specified inspections of the ship's crew accommodation.

Provisions and water complaints regulations

35. (1) The Governor in Council may make regulations which deal with any complaint made by a seafarer alleging that the provisions or water provided for seafarers employed on a St Helena ship is of bad quality, unfit for use, or is deficient in quantity.

- (2) Regulations made under subsection (1) may provide—
 - (a) that the seafarer may complain to the master;
 - (b) that the master must investigate the complaint; and
 - (c) for the course of action that the seafarer may take if the seafarer is dissatisfied with the investigation conducted by the master or if the master does not address the seafarer's complaint.

Medical treatment, etc. regulations

36. (1) The Governor in Council may make regulations that provide for the course of action to be taken if a seafarer requires surgical, medical, dental, or optical treatment, including the repair or replacement of an appliance, that cannot be postponed without impairing efficiency.

(2) The Governor in Council may make regulations that provide for the course of action to be taken if a seafarer dies while in the employ of a St Helena ship or while on board a St Helena ship.

Manning, qualifications, training and uniform

Application of sections 38 and 39

- 37.** Section 38 and 39 applies to—
 - (a) a St Helena ship; and
 - (b) any other ship that carries passengers between places in St Helena or on a voyage that begins and ends at the same place in St Helena, if the ship calls at no place outside St Helena.

Manning regulations

38. (1) The Governor in Council may make regulations specifying the number of qualified officers, qualified doctors, qualified cooks, and other qualified persons that are required to be carried on board a ship.

(2) Regulations made under subsection (1) may prescribe the standards of competence to be attained and other conditions to be satisfied by qualified officers, qualified doctors, qualified cooks, and other qualified persons.

(3) Regulations made under subsection (1) may also provide for—

- (a)** the manner in which the attainment of a standard or the satisfaction of a condition is to be evidenced;
- (b)** the conduct of examinations, the conditions for admission to examinations and the appointment and remuneration of examiners; and
- (c)** the issue, form and recording of certificates and other documents.

(4) Regulations made under subsection (1) may also make provision for a person who is employed on a ship and who holds a certificate or other document as evidence of the person's qualifications, to produce the certificate for inspection if required to do so by a specified person.

(5) The owner or master must not permit the ship to go to sea or to attempt to go to sea unless the ship is carrying the qualified officers and other seafarers that are required to be carried on board by virtue of this section.

(6) A person who contravenes subsection (5) commits an offence.

Penalty: A fine of £20,000 on summary conviction and on indictment, an unlimited fine.

(7) A ship that is not in compliance with subsection (5) may be detained if the ship is in St Helena.

Crew's English knowledge regulations

39. (1) The Governor in Council may make regulations specifying the course of action that may be taken if the crew of a ship consists of or includes a person who may not understand orders given to them in the course of their duty because of their insufficient knowledge of the English language.

(2) Regulations under subsection (1) may provide that a ship that is in St Helena that is not in compliance with a requirement under the regulations, may be detained.

Unqualified persons going to sea as qualified officers or seafarers

40. (1) A person must not purport to be a qualified officer, qualified doctor, qualified cook, or other qualified person that is required to be carried on board a ship without having the qualifications necessary for an officer, doctor, cook, or other person that is required to be carried on board a ship in accordance with the regulations made under section 38.

(2) A person who contravenes subsection (1) commits an offence.

Penalty: A fine of £20,000 on summary conviction and on indictment, an unlimited fine.

(3) In this section “**qualified**” means qualified for the purpose of section 38.

Young persons’ regulations

41. The Governor in Council may make regulations that prescribe the circumstances in which and the conditions subject to which—

(a) a person under school-leaving age may be employed on a St Helena ship; and

(b) a person over school leaving age but under 18 may be employed on a St Helena ship.

Offences by masters and persons employed on ships

Conduct endangering ships, structures or individuals

42. (1) This section applies to the master of, or a person employed on—

(a) a St Helena ship; or

(b) any other ship that is in within St Helena waters while proceeding to or from a berth.

(2) The master or person must not, while on board the ship or in the ship’s immediate vicinity, do or omit to do anything that causes or is likely to cause—

(a) the loss or destruction of, or serious damage to, the machinery, navigational equipment or safety equipment of the ship or of another ship or to a structure; or

(b) the death of or serious injury to a person.

(3) A person who contravenes subsection (2) commits an offence.

Penalty: A fine of £20,000 or imprisonment for 2 years, or both on summary conviction and on indictment, an unlimited fine or imprisonment for 2 years, or both.

Concerted disobedience and neglect of duty

43. (1) A seafarer must not combine with other seafarers—

(a) to disobey a lawful command that is required to be obeyed at a time while the ship is at sea;

(b) to neglect a duty that is required to be discharged at such a time; or

(c) to impede, at such a time, the progress of a voyage or the navigation of the ship.

(2) A seafarer who contravenes subsection (1) commits an offence.

Penalty: A fine of £20,000 or imprisonment for 2 years, or both on summary conviction and on indictment, an unlimited fine or imprisonment for 2 years, or both.

Disciplinary offences

Codes of conduct regulations

44. (1) The Governor in Council may make regulations necessary to maintain discipline on board St Helena ships.

(2) Regulations made under subsection (1) may make provision for the hearing on shore in St Helena, by a disciplinary body, of a complaint instituted by the master or owner of a St Helena ship against a seafarer alleging that during the seafarer's employment on board the ship the seafarer contravened a provision of a code of conduct approved by the Governor.

(3) The alleged contravention under subsection (2) may be one that took place—

- (a)* on or off the ship; or
- (b)* in St Helena or elsewhere.

(4) Regulations made under this section may—

- (a)* provide for—
 - (i)* the composition, jurisdiction and procedures of a disciplinary body; and
 - (ii)* the disciplinary action the disciplinary body may take;
- (b)* provide for an aggrieved person to appeal against any disciplinary action taken by a disciplinary body; and
- (c)* provide for proceedings to be conducted in the absence of the seafarer to whom the proceedings relate.

Disqualifications and inquiries

Fitness or conduct of qualified officers' regulations

45. (1) The Governor in Council may make regulations that provide for the procedure to be followed if an allegation is made that an officer—

- (a)* is unfit to discharge the qualified officer's duties, whether by reason of incompetence, misconduct or otherwise;
- (b)* was seriously negligent in the discharge of the qualified officer's duties; or
- (c)* has failed to comply with section 38.

(2) Regulations made under subsection (1) may provide—

- (a)* for an inquiry to be held into the allegation by one or more persons, appointed for that purpose, by the Governor;
- (b)* for the course of action the person or persons appointed under paragraph *(a)* may recommend to the Governor to be taken in respect of the officer if the allegation is found to be substantiated; and
- (c)* for an aggrieved person to appeal against any recommendation in respect of the officer made by the person or persons appointed under paragraph *(a)*.

Disqualification of holder of certificates - other than officer

46. (1) The Governor in Council may make regulations that provide for the procedure to be followed if an allegation is made that the holder of a certificate is unfit to hold the certificate, whether by reason of incompetence, misconduct or otherwise.

- (2)** Regulations made under subsection (1) may provide—
- (a)** for the Governor to cause an inquiry to be made into the allegation;
 - (b)** for the course of action the Governor may take if the Governor finds an allegation is substantiated; and
 - (c)** for an aggrieved person to appeal against any course of action taken by the Governor after an inquiry.

(3) This section applies to a certificate issued under section 38 other than one certifying that a person is qualified as an officer.

Inquiries and appeals regulations

- 47.** Regulations made under sections 45 and 46 may—
- (a)** in respect of an inquiry or appeal, provide for—
 - (i)** the appointment and summoning of assessors;
 - (ii)** the manner in which any facts may be proved;
 - (iii)** the persons allowed to appear; and
 - (iv)** the notices to be given to persons affected;
 - (b)** provide for the person holding an inquiry or hearing an appeal under either of those sections to—
 - (i)** by summons, in respect of a matter in question at the inquiry or on the appeal, require a person—
 - (aa)** to attend the inquiry at a time and place stated in the summons; or
 - (bb)** to give evidence or to produce a document in the person's custody or under the person's control; and
 - (ii)** take evidence on oath and for the purpose of the inquiry and administer oaths or require the person examined to make a solemn affirmation; and
 - (c)** provide that in specified circumstances the person or persons holding an inquiry or hearing the appeal may—
 - (i)** issue a warrant to arrest and bring a person before the inquiry or appeal hearing at a time and place specified in the warrant; and
 - (ii)** commit a person to custody.

Civil liability of seafarers for offences

Relief and return of a person regulations

48. The Governor in Council may make regulations to provide for the course of action to be taken if a seafarer, who became employed on a St Helena ship under a crew agreement entered into—

- (a)** in St Helena—
 - (i)** is left behind in a country outside St Helena; or
 - (ii)** is taken to such a country on being shipwrecked; or
- (b)** outside St Helena—
 - (i)** is left behind in St Helena; or

- (ii) is taken to St Helena on being shipwrecked.

Documentation

Official logbook regulations

49. (1) The Governor in Council may make regulations to require a St Helena ship to have on board an official logbook.

- (2)** Regulations made under subsection (1) may—
- (a) prescribe the particulars to be entered in a logbook;
 - (b) prescribe the persons by whom the entries in the logbook are to be made, signed or witnessed;
 - (c) prescribe the procedure to be followed in the making of the entries and in the amendment or cancellation of the entries; and
 - (d) require the production or delivery of an official logbook in specified circumstances.

Crew list regulations

50. (1) The Governor in Council may make regulations to require the master of a St Helena ship to make and maintain a list of the ship's crew.

- (2)** Regulations made under subsection (1) may—
- (a) specify the particulars to be entered in the list;
 - (b) limit the time for which a list remains in force;
 - (c) provide for the maintenance of the list by a specified person;
 - (d) provide for the notification to the person maintaining the list of any change in the list;
 - (e) provide for the display of a copy of the list in a specified place including, if specified, on the ship;
 - (f) provide for the production of the list in specified circumstances;
 - (g) provide for the delivery to a superintendent or a proper officer in specified circumstances of the list or a copy of the list; and
 - (h) provide for the notification to a specified person of any changes in the list.

St Helena seafarer's card regulations

51. (1) The Governor in Council may make regulations to provide for a St Helena seafarer's card and for seafarers to apply for the card.

- (2)** Regulations made under subsection (1) may—
- (a) provide for the issue of St Helena seafarer's cards;
 - (b) prescribe the particulars of the holder of a St Helena seafarer's card and other particulars to be specified in the St Helena seafarer's card;
 - (c) require the holder of a St Helena seafarer's card to produce the card to specified persons in specified circumstances; and
 - (d) provide for the surrender of St Helena seafarer's cards in specified circumstances.

Discharge book regulations

52. (1) The Governor in Council may make regulations to require a seafarer to have a discharge book.

(2) The Governor may also make regulations to require a person with St Helenian status who is or was employed on ships, other than St Helena ships, under a crew agreement to have a discharge book.

(3) Regulations made under this section may—

- (a)* provide for the issue of a discharge book;
- (b)* specify the particulars a discharge book must contain;
- (c)* require the holder of a discharge book to produce the discharge book in specified circumstances; and
- (d)* require the surrender of a discharge book in specified circumstances.

Handing over of documents by master

53. If a person ceases to be the master of a St Helena ship during a voyage, the person must deliver to the person's successor the documents relating to the ship or the ship's crew that are in the person's custody and a person who fails to comply with this section without reasonable excuse commits an offence.

Penalty: A fine of £1,000.

PART 5 SAFETY

Safety and health on ships

Chapter V of the Annex to the SOLAS Convention regulations

54. (1) The Governor in Council may make regulations to give effect to Chapter V of the Annex to the International Convention for the Safety of Life at Sea, 1974.

(2) Regulations made under subsection (1) may require a specified person to put measures in place with respect to the provision of—

- (a)* navigational warnings;
- (b)* meteorological information services, which may include a service to warn ships;
- (c)* search and rescue services;
- (d)* lifesaving signal
- (e)* hydrographic services;
- (f)* a ship routeing system;
- (g)* ship reporting systems;
- (h)* a vessel traffic service;
- (i)* aids to navigation, which may include their operation; and
- (j)* coordination in distress situations.

Safety and health regulations

55. (1) The Governor in Council may make regulations—

- (a)* to secure the safety of St Helena ships:

- (b) to secure the health and safety of persons on St Helena Ships;
 - (c) to secure the safety of other ships while those ships are within St Helena waters; and
 - (d) to secure the health and safety of persons on ships under paragraph (c).
- (2) Safety regulations may—
- (a) provide for the design, construction, maintenance, repair, alteration, inspection, surveying and marking of ships and their machinery and equipment;
 - (b) make provision for 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) detail the execution of any operation involving a ship;
 - (d) provide for the use of the machinery and equipment of a ship and of anything on a ship which is not cargo, machinery or equipment;
 - (e) provide for 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) provide arrangements for ensuring communication between persons in different parts of a ship and between persons on the ship and other persons;
 - (g) make provision for the access of persons of any description to, their presence in and egress from a ship and different parts of a ship;
 - (h) provide for the ventilation, temperature and lighting of different parts of a ship;
 - (i) provide 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) provide the steps to be taken to prevent, detect and deal with outbreaks of fire on a ship;
 - (k) provide 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;
 - (l) provide for 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;
 - (m) provide 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;
 - (n) include provisions to prevent collisions—
 - (i) between seaplanes on the surface of water; and
 - (ii) between ships and seaplanes;
 - (o) provide that in specified cases a ship may be detained; and
 - (p) prescribe the course of action that may be taken if dangerous goods are sent or carried, or attempted to be sent or carried, on board a ship—
 - (i) without being marked as required by safety regulations;
 - (ii) without any notice having been given as required by the regulations made under this section;
 - (iii) under a false description; or
 - (iv) with a false description of their sender or carrier.

Submersible and supporting apparatus regulations

56. (1) The Governor in Council may make regulations in respect of submersible or supporting apparatus—

- (a) operated within St Helena waters; or
- (b) launched or operated from, or comprising, a St Helena ship.

(2) In this section—

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

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

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

Special provisions

Dangers to navigation regulations

57. The Governor in Council may make regulations with respect to a person who is in charge of a station for wireless telegraphy that is capable of receiving the signal specified in safety regulations relating to dangers to navigation.

Assistance at sea

Duty of ship to assist the other in case of collision

58. (1) This section applies to—

- (a) St Helena ships; and
- (b) foreign ships in St Helena waters.

(2) If ships collide, the master of each ship must, if and in so far as the master can do so without danger to the ship under the master’s control, the ship’s crew and any passengers—

- (a) render to the other ship, the ship’s master, crew and any passengers such assistance as may be practicable, and as may be necessary to save them from any danger caused by the collision;
- (b) stay by the other ship until the master has ascertained that the ship has no need of further assistance; and
- (c) give to the master of the other ship the name of the ship under the master’s control and also the names of the ports from which the ship sailed and to which the ship is bound.

(3) The master who fails, without reasonable excuse, to comply with subsection (2) commits an offence.

Penalty: A fine of £20,000 or imprisonment for 2 years, or both on summary conviction and on indictment, an unlimited fine or imprisonment for 2 years, or both.

Duty to assist persons in danger and to respond to distress calls

59. (1) This section applies to—

- (a) St Helena ships; and
- (b) foreign ships in St Helena waters.

(2) If a ship at sea receives a signal from any source that another ship or aircraft is in distress, the master must, unless the master considers it unreasonable or unnecessary in the special circumstances of the case, ensure that the ship proceeds with all speed to the assistance of the ship or aircraft in distress, informing the ship or aircraft, if possible, that ship at sea is proceeding to the ship or aircraft in distress to offer assistance.

(3) The master who fails to comply with subsection (2) commits an offence.

Penalty: A fine of £20,000 or imprisonment for 2 years, or both on summary conviction and on indictment, an unlimited fine or imprisonment for 2 years, or both.

(4) It is not an offence under subsection (3) if the master can prove that the master—

(a) was unable to comply with subsection (2) in the special circumstances of the case;

(b) is released from the obligation under subsection (2)—

(i) by virtue of being informed by the persons in distress that assistance is no longer required; or

(ii) by virtue of being informed by the master of any ship that has reached the persons in distress that assistance is no longer required.

Unsafe ships

Dangerously unsafe ships regulations

60. (1) The Governor in Council may make regulations in respect of dangerously unsafe ships in St Helena waters.

(2) Regulations made under subsection (1) may provide—

(a) for an inspector to detain a dangerously unsafe ship;

(b) the basis upon which an inspector may determine that a ship is dangerously unsafe and must be detained;

(c) the requirement that an inspector may only detain a dangerously unsafe ship on notice to the master or owner of the ship;

(d) the requirement that an inspector must specify the reasons for why, in the opinion of the inspector, the inspector concludes that a ship is dangerously unsafe;

(e) that the inspector may only detain a dangerously unsafe ship by serving notice on the master or owner of the ship specifying the reasons why the inspector thinks that the ship is dangerously unsafe

(f) that a notice served under paragraph (e) must contain the terms that must be complied with until the ship is released;

(g) that a ship must comply with the terms in a notice issued in accordance with paragraph (f);

(h) that a person may appeal the decision of an inspector in respect of the inspector's reasons for detention of a ship or the requirements in the notice issued in respect of the detained ship; and

(i) that an appeal under paragraph (h) may be initiated by an application for arbitration.

(3) For the purpose of the regulations made under this section, a ship is dangerously unsafe if, having regard to the nature of the service for which the ship is being used or is intended to be used and for matters relevant to the ship's safety, the ship is—

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

- (b) remain at sea without serious danger to human life.

Master liable for unsafe operation of ships

61. A master must ensure that a ship in St Helena waters is operated in a safe manner and a master who fails to comply with this section commits an offence.

Penalty: A fine of £20,000 or imprisonment for 2 years, or both on summary conviction and on indictment, an unlimited fine or imprisonment for 2 years, or both.

Temporary exclusion zones

Temporary exclusion zone regulations

62. (1) The Governor in Council may make regulations providing for the procedure to be applied if a ship, structure or other thing in St Helena waters or in St Helena's Exclusive Economic Zone is wrecked, damaged or in distress.

(2) Regulations under subsection (1) may provide for the Governor to identify a specified area to which access is prohibited or restricted.

Offences in connection with passenger ships

Offences in connection with passenger ships

63. (1) This section applies in respect of a ship for which there is in force a Passenger Ship Safety Certificate or Passenger Certificate issued under or recognised by the safety regulations.

(2) A person commits an offence, in relation to a ship to which this section applies, if the person—

- (a) while being drunk and disorderly and for being drunk and disorderly the person is refused admission onto the ship by the ship's owner or a seafarer and having had the person's fare returned or tendered to the person (if applicable), persists in attempting to enter the ship;
- (b) while being drunk and disorderly and for being drunk and disorderly the person is requested to leave the ship by the ship's owner or a seafarer at a place in St Helena at which the person can conveniently leave the ship and having had the person's fare returned or tendered to the person (if applicable), does not comply with the request to leave the ship;
- (c) while on board the ship and after having been warned by the master or a seafarer in respect thereof, molests or continues to molest any passenger;
- (d) on account of the ship being full the person is refused admission onto the ship by the ship's owner or a seafarer and having had the person's fare returned or tendered to the person (if applicable), persists in attempting to enter the ship;
- (e) having gone on board the ship at a place and on account of the ship being full the person is requested to leave the ship before the ship has left the place by the ship's owner or a seafarer and having had the person's fare returned or tendered to the person (if applicable), does not comply with the request to leave the ship;

- (f) on arriving on the ship at a point to which the person has paid the person's fare the person knowingly and intentionally refuses or neglects to leave the ship; and
- (g) while on board the ship and when requested, by the master or other seafarer, to show the person's ticket or other receipt, if any, showing the payment of the person's fare, as is usually given to persons travelling by and paying their fare for the ship, fails to show such ticket or other receipt.

Penalty: A fine of £500.

(3) A person's liability in respect of an offence under subsection (2) shall not prejudice the recovery of any fare payable by the person.

(4) A person commits an offence if, while on board any ship to which this section applies the 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 member of the crew, in the navigation or management of the ship, or otherwise in the execution of the crew member's duty on or about the ship.

Penalty: A fine of £500.

(5) The master or other seafarer to which this section applies, and all persons called by the master or other seafarer to the master's or other seafarer's assistance, may, without any warrant, detain any person and deliver that person to a constable —

- (a) who commits an offence under subsection (2) or (3); or
- (b) whose name and address are unknown to the master or seafarer.

(6) A person commits an offence under subsection (2) or (3) if when asked by the master, or a seafarer, to provide the person's name and address, the person refuses to give the person's name and address, or the person gives a false name or address.

Penalty: A fine of £250.

Stowaways

64. (1) A person must not go to sea or attempt to go to sea on a St Helena ship without the consent of the ship's master or of another person authorised to give such consent.

(2) A person who contravenes subsection (1) commits an offence.

Penalty: A fine of £1,000.

(3) A court in St Helena has the jurisdiction to hear an offence under this section if the offence occurred on a St Helena ship, whether or not—

- (a) the offence was committed outside St Helena; or
- (b) the person who is alleged to have committed the offence is not from St Helena.

Unauthorised presence on board ship

65. (1) This section applies to—

- (a) a St Helena ship; or
- (b) a ship registered in any other country that is in St Helena waters.

(2) A person, who is not authorised by law, must not—

- (a) go on board a ship without the consent of the ship's master or of another person authorised to give consent; or
 - (b) remain on board a ship after being requested to leave by the ship's master, a police officer or a customs officer.
- (3) A person who contravenes subsection (2) commits an offence.
Penalty: A fine of £5,000.

Master may put person under restraint

66. The master of a St Helena ship may put a person on board the ship under restraint if it appears to the master to be necessary or expedient and the person may be kept under restraint for as long as the master considers it necessary and expedient to do so in the circumstances—

- (a) in the interest of safety; or
- (b) for the preservation of good order or discipline on board the ship.

Unauthorised persons: offences relating to safety

67. If a person goes to sea on a ship without the consent of the ship's master or of another person authorised to give consent, section 42 and 43 applies as if the person were a seafarer.

Return to be furnished by masters of ships as to passengers

68. The Governor in Council may make regulations—
- (a) to specify the manner in which information in respect of a return is to be provided;
 - (b) to specify to whom information under paragraph (a) is to be provided; and
 - (c) to require the master to make a return in respect of the ship's passengers for a ship carrying passengers to or from St Helena.

Returns of births and deaths in ships, etc.

69. (1) The Governor in Council may make regulations to require the master of a St Helena ship to make a return of any birth or death of a person occurring on the ship outside St Helena.

(2) The Governor in Council may make regulations to require the master of a ship that is not a St Helena ship which calls at St Helena in the course of or at the end of a voyage to make a return of a birth or death which occurred on the ship during the voyage of the ship to St Helena.

(3) A return made under subsection (2) may only be made in respect of the birth or death of a British citizen, a British Overseas Territories citizen or a British Overseas citizen.

(4) In this section “British citizen”, “British Overseas Territories citizen” and “British Overseas citizen” have the same meanings as in the British Nationality Act 1981 of the United Kingdom.

PART 6
PREVENTION OF POLLUTION

Chapter 1
Pollution Generally

Prevention of pollution from ships regulations

70. (1) This section applies if any of the following extend to St Helena; or are extended to St Helena by an order made under section 128(1) of the Merchant Shipping Act, 1995—

- (a) the International Convention for the Prevention of Pollution from Ships (including its protocols, annexes and appendices) that 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 that constitutes attachment 2 to the final act previously mentioned;
- (c) the Protocol relating to the Convention that 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; and
- (e) any international agreement not mentioned in paragraphs (a) to (d) that relates to the prevention, reduction or control of pollution of the sea or other waters by matter from ships.

(2) In subsection (1)(e) the reference to an agreement includes an agreement that provides for the modification of another agreement, including the modification of an agreement mentioned in subsection (1)(a) to (c).

(3) This section also applies if there is extended to St Helena any provision made by Her Majesty by Order in Council to give effect in the United Kingdom 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.

(4) The Governor in Council may make regulations to give effect to the Convention, Protocol, international agreement or provision.

(5) Regulations made under subsection (4) may provide that a contravention of the regulations is an offence punishable by a fine of £250,000, by imprisonment for 5 years or by both.

Transfers between ships in St Helena waters regulations

71. (1) The Governor in Council may make regulations in respect of the transfer of cargo, stores, bunker fuel or ballast between ships while within St Helena waters.

- (2)** Regulations made under subsection (1) may make provisions to prevent—
 - (a) pollution;

- (b) danger to health or to navigation; or
- (c) hazards to the environment or to natural resources.

Chapter 2

Waste reception facilities

Use of waste reception facilities regulations

72. (1) The Governor in Council may make regulations in respect of the use of waste reception facilities for the reception of waste from ships.

(2) Regulations made under subsection (1) must take into account the need to give effect to any provision that is contained in any international agreement mentioned in section 70 in so far as the international agreement relates to the use of waste reception facilities.

(3) Regulations made under this section may also require the master in specified circumstances to deposit waste carried by the ship, or specified waste, in a waste reception facility.

Chapter 3

Oil Pollution

General provisions

Discharge or escape of oil from ships

73. (1) The master must ensure that oil is not discharged or does not escape from a ship into St Helena waters.

(2) The master in St Helena waters must immediately report to the Harbour Master any discharge or escape of oil from the ship of oil into St Helena waters.

(3) The master to or from which oil is being transferred must ensure that oil is not discharged or does not escape into St Helena waters.

(4) The occupier of a place to or from which oil is being transferred from or to a ship must ensure that oil is not discharged or does not escape into St Helena waters.

(5) A master who fails to comply with subsection (1), (2) or (3) and a person who fails to comply with subsection (4) commits an offence.

Penalty: A fine of £20,000 on summary conviction and on indictment, an unlimited fine.

(6) The Harbour Master may detain a ship if the Harbour Master has reasonable grounds to believe that the master is committing or has committed an offence under this section.

(7) In this section—
“oil” includes a mixture containing oil; and
“transfer” means transfer in bulk.

Restrictions on transfer of oil at night

74. (1) A master must not, without the approval of the Harbour Master, transfer oil to or from a ship in St Helena waters between sunset and sunrise.

(2) The occupier of a place on land must not, without the approval of the Harbour Master, transfer oil to or from a ship in St Helena waters between sunset and sunrise.

(3) A master who fails to comply with subsection (1) and a person who fails to comply with subsection (2) commits an offence.

Penalty: A fine of £5,000.

(4) In this section—

“oil” includes a mixture containing oil;

“place on land” includes—

(a) anything resting on the bed or shore of St Helena waters; and

(b) anything afloat (other than a ship) anchored or attached to the bed or shore of St Helena waters; and

“transfer” means transfer in bulk.

Defence of person charged with offence under section 73 or 74

75. (1) It shall be a defence for a person charged with an offence under section 73 or 74 to prove—

(a) that oil was discharged from a ship for the purpose of—

(i) securing the safety of a ship;

(ii) preventing damage to a ship or cargo; or

(iii) saving life,

unless the court making the determination as to the person’s guilt is satisfied that the discharge of oil was not necessary for the purpose specified at subparagraph (i), (ii), or (iii) or was not a reasonable step to take in the circumstances;

(b) that oil 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 where the escape of oil could not be prevented, for stopping or reducing, the escape of oil; or

(c) that oil escaped by reason of leakage, that neither the leakage nor any delay in discovering the leakage was due to any want of reasonable care, and that as soon as practicable after the escape of oil was discovered all reasonable steps were taken for stopping or reducing the escape of oil.

(2) In this section “oil” includes a mixture containing oil.

Shipping casualties

Directions in respect of shipping casualties

76. (1) The Governor may give a direction under this section in respect of a ship if in the Governor’s opinion—

(a) an accident has occurred to or on the ship;

(b) the accident under paragraph (a) has created a risk to safety or a risk of pollution by a hazardous substance; and

- (c) the direction is necessary to remove or reduce the risk under paragraph (b).
- (2)** The direction under subsection (1)—
- (a) may be given orally and must as soon as is practicable thereafter be confirmed in writing;
 - (b) may be given to—
 - (i) the owner of the ship;
 - (ii) a person in possession of the ship;
 - (iii) the master;
 - (iv) the owner of a hazardous substance on the ship;
 - (v) a person in charge of salvage operations in possession of the ship;
 - (vi) a person who is the servant or agent of a person in charge of salvage operations in possession of the ship and who is in charge of the salvage operation; and
 - (vii) the harbour authority or the Harbour Master where the ship is in, or has been directed to move into, waters which are regulated or managed by a harbour authority; and
 - (c) may require the person to whom the direction is given—
 - (i) to take or refrain from taking any specified action in relation to—
 - (aa) the ship;
 - (bb) anything which is or was on the ship;
 - (cc) anything which forms or formed part of the ship;
 - (dd) anything which is or was being towed by the ship; and
 - (ee) a person on the ship; and
 - (ii) in particular, to ensure—
 - (aa) that a ship or other thing is moved or not moved;
 - (bb) that a ship or other thing is moved or not moved to or from a specified place or area or over a specified route;
 - (cc) that cargo is or is not unloaded or discharged;
 - (dd) that a substance is or is not unloaded or discharged;
 - (ee) that specified salvage measures are taken or not taken; and
 - (ff) that a person is put ashore or on board a ship.

Direction following accident: person in control of land

- 77. (1)** The Governor may give a direction under this section in respect of a ship if in the Governor’s opinion—
- (a) an accident has occurred to or on the ship;
 - (b) the accident under paragraph (a) has created a risk to safety or a risk of pollution by a hazardous substance; and
 - (c) the direction is necessary to remove or reduce the risk under paragraph (b).
- (2)** For the purpose of this section—
- (a) a person is in charge of land or premises if the person is wholly or partly able to control the use made of the land or premises; and
 - (b) “**coastal**” means adjacent to or accessible from St Helena waters over which the public is permitted to navigate.

- (3)** The direction under subsection (1)—
 - (a)* must be given in writing and where it is not reasonably practicable to give the direction in writing, must as soon as is reasonably practicable thereafter be confirmed in writing;
 - (b)* may be given to a person in charge of coastal land or premises;
 - (c)* may require the person to whom the direction is given, to grant access or facilities to or in relation to the ship or any person or thing which is or was on the ship; and
 - (d)* in particular, may require a person to—
 - (i)* permit persons to land;
 - (ii)* make facilities available for the undertaking of repairs or other works; and
 - (iii)* make facilities available for the landing, storage and disposal of cargo or of other specified thing.

Other directions and orders

78. (1) The Governor may give a direction in respect of a ship if in the Governor's opinion the direction is necessary for the purpose of—

- (a)* securing the safety of the ship or of other ships;
- (b)* securing the safety of persons or property; and
- (c)* preventing or reducing pollution.

(2) The direction under subsection (1)—

- (a)* may be given to—
 - (i)* the owner of the ship;
 - (ii)* a person in possession of the ship; and
 - (iii)* the master; and
- (b)* may require the person to whom the direction is given to ensure that—
 - (i)* the ship is moved or not moved from a specified place or area in St Helena waters;
 - (ii)* the ship is moved or not moved to a specified place or area in St Helena waters;
 - (iii)* the ship is moved or not moved over a specified route in St Helena waters; or
 - (iv)* the ship is removed from St Helena waters.

(3) The Governor may by Order prescribe a substance to be a hazardous substance.

Action in lieu of direction

79. (1) Subject to subsection (2) the Governor—

- (a)* may take such action as appears to the Governor necessary or expedient for the purpose for which the direction is given; and
- (b)* in particular, may—
 - (i)* authorise a person to enter land or make use of facilities;
 - (ii)* do or authorise a person to do anything which the Governor could require a person to do by a direction;
 - (iii)* authorise a person to assume control of a ship; and
 - (iv)* make arrangements or authorise the making of arrangements for the sinking or destruction of a ship.

(2) Subsection (1) applies where the Governor—

- (a) thinks that circumstances exist which would entitle the Governor to give a direction under section 76, 77 or 78 but that the giving of a direction would not be likely to achieve a sufficient result; and
- (b) has given a direction under section 76, 77 or 78 but in the Governor's opinion the direction has not achieved a sufficient result.

Enforcement

- 80. (1)** A person to whom a direction is given under section 76, 77 or 78—
- (a) must comply with the direction; and
 - (b) must try to comply with the direction in a manner which avoids risk to human life.
- (2)** It is a defence for a person charged with an offence under subsection (3)(a) to prove—
- (a) that the person tried as hard as the person could to comply with the direction given to the person; or
 - (b) that the person reasonably believed that compliance with the direction would involve a serious risk to human life.
- (3)** A person commits an offence—
- (a) if the person contravenes subsection (1); or
 - (b) if the person intentionally obstructs a person who is—
 - (i) acting on behalf of the Governor in connection with the giving of a direction under section 76, 77 or 78;
 - (ii) complying with a direction under section 76, 77 or 78; or
 - (iii) acting by virtue of section 79.
- Penalty: A fine of £20,000 on summary conviction and on indictment, an unlimited fine.

Variation, revocation and issue of direction

81. (1) A direction given under section 76, 77 or 78 must be varied or revoked as soon as is reasonably practicable if the Governor thinks that the direction is wholly or partly no longer necessary for the purpose for which the direction was given.

(2) Consideration must be given to representations made by a person to the Governor regarding the variation or revocation of a direction where the person making representations is the subject of the direction made by the Governor under section 76, 77 or 78.

(3) Before a direction is given to a person under section 77 in respect of land or premises, unless the Governor thinks that it is not reasonably practicable—

- (a) the person must be given an opportunity to make representations to the Governor; and
- (b) consideration must be given to the representations made under paragraph (a).

Unreasonable loss and damage

82. (1) Subject to subsection (2) the Governor, in the manner prescribed, must pay compensation to any person who—

- (a) suffered loss or damage as a result of the remedial action (whether the action was taken by the person or someone else); and
- (b) applies, in the manner prescribed, to the Governor for compensation.

(2) Subsection (1) applies where action taken in accordance with a direction under section 76, 77 or 78 or by virtue of section 79 (“remedial action”)—

- (a) was not reasonably necessary for the purpose for which the direction was given; or
- (b) caused loss or damage which could not be justified by reference for the purpose for which the direction was given.

(3) In considering what is reasonably necessary or justifiable for the purpose of subsection (2) account shall be taken of—

- (a) the extent of the risk to safety or threat of pollution which the direction was intended to address;
- (b) the likelihood of the remedial action being effective; and
- (c) the extent of the loss or damage caused by the remedial action.

Expenses

83. (1) This section applies where—

- (a) a direction is given to a person in respect of a ship under section 77; or
- (b) the Governor relies on section 79 to take or authorise action in respect of a ship in lieu of a direction under section 77.

(2) The person to whom a direction is given is entitled to recover the costs of the person’s compliance with the direction from the owner of the ship.

(3) A person in charge of coastal land or premises is entitled to recover from the owner of the ship costs incurred by the person as a result of action taken by virtue of section 79 in relation to that land or premises.

(4) The Governor, in the manner prescribed, may make payments to a person on account of sums recoverable by that person under subsection (2) or (3).

(5) The Governor, in the manner prescribed, is entitled to recover from the owner of the ship—

- (a) costs incurred in connection with the giving of a direction;
- (b) costs incurred in connection with action taken under section 79; and
- (c) costs incurred under subsection (4).

(6) A right under subsection (2), (3) or (5) permits the recovery of costs only in so far as the costs are not recoverable—

- (a) under another law;
- (b) by virtue of an agreement; or
- (c) under the law relating to salvage.

(7) The Governor in Council may by regulation prescribe the manner in which and the procedure by which, pursuant to this section—

- (a) an application may be made for costs;
- (b) costs may be awarded; and
- (c) payments may be made.

Ships to which section 76, 77 and 78 applies

84. (1) A direction under section 76 or 77, in so far—

- (a) as the direction relates to a risk of pollution, may have effect in respect of a ship only if the ship—
 - (i) is a St Helena ship; or
 - (ii) is in St Helena waters or an area of the sea specified pursuant to section 70; and
- (b) as the direction relates to a risk to safety, may have effect in respect of a ship only if the ship is in St Helena waters and—
 - (i) the ship is not a qualifying foreign ship; or
 - (ii) the ship is a qualifying foreign ship which in the Governor's opinion is exercising neither the right of innocent passage nor the right of transit passage through straits used for international navigation.

(2) A direction under section 78 may have effect in respect of a ship only if the ship is in St Helena waters and—

- (a) the ship is not a qualifying foreign ship; or
- (b) the ship is a qualifying foreign ship which in the Governor's opinion is exercising neither the right of innocent passage nor the right of transit passage through straits used for international navigation.

(3) A direction may not be given under section 78 (2)(b)(iv) in respect of a St Helena ship.

(4) The Governor may by Order provide that a direction under section 76 or 77, in so far as the direction relates to a risk of pollution, may have effect in respect of a ship which—

- (a) is not a St Helena ship; and
- (b) is not in St Helena waters or an area of the sea specified in accordance with section 70.

(5) An Order under this subsection (4)—

- (a) may be expressed to apply generally or only in specified circumstances;
- (b) may make different provision for different circumstances;
- (c) may provide for section 76 to 83 and subsection (1) to (4) and subsection (6) to have effect in cases to which the Order applies with specified modifications; and
- (d) may contain transitional or consequential provisions.

(6) A direction may not be given under section 76(2)(b)(i) to (iv) or (c)(i) in respect of—

- (a) a ship of Her Majesty's Navy; or
- (b) a Government ship.

Enforcement

Oil records

- 85. (1)** The Governor in Council may make regulations to require—
- (a) oil record books to be carried in specified St Helena ships; and
 - (b) the master of a St Helena ship under paragraph (a) to record specified information in oil record books.

(2) The Governor in Council may make regulations to require records to be kept of the transfer of oil to and from ships while in St Helena waters.

Enforcement of Conventions relating to oil pollution

86. (1) The Governor may appoint a person to go on board a Convention ship in St Helena waters and require the production of any oil record book required to be carried by the ship in accordance with the Convention for inspection and enforcement purposes.

(2) In this section—

“the Convention” means a Convention—

- (a) that was accepted by Her Majesty’s Government in the United Kingdom in so far as the Convention relates to the prevention of pollution of the sea by oil; and
- (b) that was extended to St Helena;

“Convention ship” means a ship registered in a country that is a party to the Convention or a territory of such a country.

Miscellaneous and supplementary

Exemptions

87. (1) The Governor may exempt a ship or a class of ships from being subject to any provisions of this Chapter, absolutely or subject to conditions.

(2) The Governor may exempt a discharge of oil or of a mixture containing oil from being subject to any provisions of this Chapter, absolutely or subject to conditions.

PART 7 AIDS TO NAVIGATION

Establishment and management of aids to navigation

88. The Governor or an agency of Government designated by the Governor must establish within the coastal areas of St Helena aids to navigation necessary to facilitate safe navigation of St Helena waters.

Nautical publications, charts and other information

89. (1) The Governor in Council may make regulations to specify charts, directions or information necessary or expedient for the safe operation of ships.

(2) Regulations made under subsection (1) may require St Helena ships or a specified description of ships to carry and use specified charts, copies of directions or information at all times or on specified voyages.

(3) The Harbour Master may—

- (a) publish information on aids to navigation that are within the coastal areas of St Helena; and
- (b) declare any published information and any other publications, to be approved nautical publications.

(4) In legal proceedings, the production of an approved nautical publication authenticated by the Harbour Master is evidence of the matters appearing in it.

Offences relating to aids to navigation

90. (1) A person must not wilfully, negligently or without lawful authority—

- (a) damage, destroy or allow a ship to foul an aid to navigation;
- (b) do anything that causes the view of an aid to navigation to be obstructed in a manner that lessens the efficiency of the aid to navigation; or
- (c) interfere with an aid to navigation in a way that hinders the effective use of the aid to navigation.

(2) A person must not trespass on, or without lawful excuse be in or on, an aid to navigation, or on land upon which an aid to navigation is situated.

(3) A person who contravenes subsection (1) or (2) commits an offence.

Penalty: A fine of £2,500.

(4) A court that convicts a person of an offence under this section may, in addition to imposing a fine, order the person to pay to the Governor or to the agency responsible for the aid any expenses of making good damage caused by the offence.

Detention of ships

91. The Harbour Master, or the agency responsible for an aid to navigation under section 88, may detain a ship that has damaged, destroyed or fouled an aid to navigation, until the cost of repairing or replacing the aid to navigation or rendering the aid to navigation effective again is paid or secured.

Fire or lights detrimental to navigation

92. (1) A person must not show a light, including light from a fire, in a place or manner that misleads or is likely to mislead ships navigating in the coastal areas of St Helena and a person who contravenes this subsection commits an offence.

Penalty: A fine of £5,000.

(2) The Harbour Master may—

- (a) by notice require a person to extinguish the fire or light immediately or within a specified time;
- (b) serve a notice on the person requiring the person to extinguish the fire or light immediately or within a specified time; and

(c) cause the fire or light to be extinguished if the person served with a notice under paragraph (a) fails to comply with the notice.

(3) A person authorised by the Harbour Master may enter the place where the fire or light is situated and extinguish it.

(4) A person must not hinder or obstruct a person acting in accordance with subsection (2) or (3) and a person who contravenes this subsection commits an offence.

Penalty: A fine of £2,500.

PART 8 WRECK

Administration

Functions of Governor as to wreck

93. (1) The Governor has the general superintendence of matters relating to a wreck.

(2) The Governor may, by notice in the Gazette, appoint a person to be the receiver of wreck.

(3) The receiver is entitled to receive the expenses properly incurred by the receiver in the discharge of the receiver's functions.

(4) The Governor may determine any dispute as to the amount payable to the receiver in respect of expenses and any such determination is final.

Ships in distress

Ships in distress

94. (1) This section applies if a ship is wrecked, stranded, or in distress in St Helena waters.

(2) In respect of a ship to which subsection (1) applies a receiver must—

(a) immediately proceed to the location of the ship which is wrecked, stranded, or in distress;

(b) take command of the persons present; and

(c) assign duties and give directions to each person as the receiver thinks fit to preserve the ship and the lives of shipwrecked persons.

(3) Notwithstanding subsection (2) the receiver must not interfere with the relationship between the master and crew of the ship in respect of the management of the ship unless requested to do so by the ship's master.

(4) A person must not intentionally disobey a direction of the receiver and a person who contravenes this subsection commits an offence.

Penalty: A fine of £2,500.

(5) The receiver may, in order to preserve shipwrecked persons or the ship, the ship's cargo and equipment, require—

- (a) a person to assist the receiver;
- (b) the master near at hand to give assistance with the master's crew, or ship; and
- (c) a person to provide the use of any vehicle near at hand.

(6) A person must not refuse, without reasonable excuse, to comply with a requirement under subsection (5) and a person who contravenes this subsection commits an offence.

Penalty: A fine of £2,500.

(7) A person may pass and repass over adjoining land without being subject to interruption by the land's owner or occupier and deposit on the land cargo or other article recovered from a ship in order to—

- (a) render assistance to the ship;
- (b) save the lives of shipwrecked persons; or
- (c) save the cargo or equipment of the ship.

(8) The right to pass and repass under subsection (7) is a right of passage with or without vehicles, but a right of passage is not conferred by this section if there is an equally convenient public road.

(9) Damage sustained by an owner or occupier of land as a result of the exercise of the rights conferred by this section is a charge on the ship, cargo or articles in respect of or by which the damage is caused.

(10) The owner or occupier of land must not—

- (a) impede or hinder a person in the exercise of the rights conferred by this section;
- (b) impede or hinder the deposit on the land of cargo or other article recovered from the ship; or
- (c) prevent or attempt to prevent cargo or other articles recovered from the ship from remaining deposited on the land for a reasonable time until the cargo or other articles can be removed to a safe place.

(11) A person who contravenes subsection (10) commits an offence.

Penalty: A fine of £2,500.

Liability for damage in case of plundered ship

95. The Governor in Council may make regulations to govern the payment of compensation if any part of the cargo or equipment of a ship that is wrecked, stranded, or in distress in St Helena waters is plundered, damaged or destroyed by persons in circumstances in which the persons commit the offence of riot.

Dealing with wreck

Wreck regulations

96. (1) The Governor in Council may make regulation to provide for the course of action to be taken if a person finds or takes possession of wreck in St Helena waters or finds or takes possession of wreck elsewhere and brings the wreck within St Helena waters.

- (2) Regulations made under subsection (1) may provide for—
- (a) notice to be given to the receiver;
 - (b) the course of action the receiver must take;
 - (c) the delivery of wreck to the receiver;
 - (d) the giving of notices by the receiver;
 - (e) the claims that may be made in respect of wreck;
 - (f) the sale of wreck by the receiver;
 - (g) the disposal of the proceeds from the sale of wreck; and
 - (h) the fees to be paid to the receiver.

(3) The Government is entitled to all unclaimed wreck found in St Helena or in St Helena waters.

Offences in respect of wreck

Wreck offences

97. (1) A person must not take into a foreign port and sell—
- (a) a ship stranded, derelict or otherwise in distress found in St Helena waters;
 - (b) a part of the cargo or equipment of, or anything belonging to, such a ship; or
 - (c) wreck found within St Helena waters.

(2) A person, other than the receiver, or a person lawfully acting by command of the receiver, must not without the permission of the master, board or attempt to board the ship that is wrecked, stranded or in distress in St Helena waters.

- (3) A person must not impede or hinder or attempt to impede or hinder the saving of—
- (a) a ship stranded or in danger of being stranded, or otherwise in distress, on or near St Helena waters;
 - (b) a part of the cargo or equipment of a ship under paragraph (a); or
 - (c) any wreck.

- (4) A person must not—
- (a) conceal a wreck; or
 - (b) deface or obliterate a mark on a ship.

- (5) A person must not wrongfully carry away or remove—
- (a) any part of a ship stranded or in danger of being stranded, or otherwise in distress, in St Helena waters;
 - (b) a part of the cargo or equipment of a ship under paragraph (a); or
 - (c) any wreck.

(6) A person who contravenes subsection (2) commits an offence.
Penalty: A fine of £2,500.

(7) A person who contravenes subsection (1), (3), (4) or (5) commits an offence.
Penalty: A fine of £5,000 or imprisonment for 5 years, or both.

Powers of entry, etc.

98. (1) A receiver may apply to a Justice of the Peace for a search warrant if the receiver reasonably believes that—

- (a) wreck is being concealed by or is in the possession of a person who is not the owner of the wreck; or
- (b) wreck is being otherwise improperly dealt with.

(2) If a search warrant is granted in accordance with subsection (1), the receiver may—

- (a) enter a house, or other place, wherever situated, or a ship; and
- (b) search for, seize and detain any wreck found there.

(3) The receiver may act in compliance with subsection (2) with assistance and may use force to gain entry if necessary.

Removal of dangerous wrecks

Powers of Harbour Master in respect of dangerous wrecks

99. (1) This section applies if a ship is sunk, stranded or abandoned in St Helena waters.

(2) If the Harbour Master believes that a ship to which subsection (1) applies is, or is likely to become, an obstruction or danger to navigation the Harbour Master may—

- (a) take possession of, and raise, remove or destroy the whole or any part of the ship;
- (b) light or buoy the ship or part of the ship until the ship is raised, removed or destroyed;
- (c) raise or remove the ship or part of the ship; and
- (d) be reimbursed, out of the proceeds of the sale, for the expenses incurred prior to and in respect of the sale.

(3) The Harbour Master must hold any surplus of the proceeds of a sale on trust for a person entitled to the surplus for one year and, if the surplus is not claimed within that year, must pay the surplus into the Consolidated Fund.

(4) A ship or part of the ship must not be sold until at least seven days' notice of the intended sale is given by a means that, in the opinion of the Harbour Master, is likely to bring the notice to the attention of those with an interest in the ship.

(5) At any time before the ship or any part of the ship is sold, the ship's owner is entitled to claim and remove the ship on payment of any expenses incurred or to be incurred by the Harbour Master.

(6) If the proceeds of sale are insufficient to reimburse the expenses incurred by the Harbour Master prior to and in respect of the sale, the outstanding amount is a debt due to the Government from the owner of the ship.

PART 9
ENFORCEMENT OFFICERS AND THEIR POWERS

Enforcement Officers

Appointment of a person to administer the Ordinance

100. (1) The Governor may, by notice in the Gazette—

- (a) appoint a person to be a superintendent;
- (b) appoint a person to be an inspector; and
- (c) appoint a person to be a surveyor.

(2) A person appointed as a surveyor may be appointed either as a ship surveyor or as an engineer surveyor or as both.

Powers and functions

Functions of inspector

101. (1) An inspector must report to the Governor regarding—

- (a) the nature and causes of an accident or damage that a ship has or is alleged to have sustained or caused;
- (b) whether a requirement, restriction or prohibition imposed by or under this Ordinance is complied with or contravened;
- (c) whether the hull and machinery of a ship are sufficient and in good condition; and
- (d) what measures have been taken to prevent the escape of oil or mixtures containing oil.

(2) The Governor in Council may make regulations to specify the powers of an inspector to carry out the inspector's functions which may include—

- (a) the power to enter premises or ships in specified circumstances, with equipment and accompanied by other persons;
- (b) the power to make an examination or an investigation;
- (c) the power to direct that the premises or ship or any part of them or anything in them be left undisturbed for as long as is reasonably necessary for the purpose of an examination or investigation;
- (d) the power to take measurements and photographs and make recordings in relation to an examination or an investigation;
- (e) the power to take samples of articles or substances found in any premises or ship and of the atmosphere in or in the vicinity of them;
- (f) the power to require the production of a book or document that by virtue of this Ordinance are required to be kept;
- (g) the power to require a person to afford to the inspector facilities and assistance;
- (h) the procedure to be followed in connection with the taking of samples; and
- (i) the way in which samples under paragraph (h) are to be dealt with.

Powers to require production of ships' documents

102. (1) A customs officer or a superintendent may in respect of a St Helena ship—

- (a) require the ship's owner, master, or seafarer to produce an official logbook or other documents relating to the crew or a member of the ship's crew that is in the possession of the crew or under the control of the crew;
- (b) take copies of or extracts from the ship's official logbook or other documents;
- (c) require the master to produce a list of the persons on board the ship;
- (d) muster the ship's crew; and
- (e) require the master to appear and give an explanation concerning the ship or the ship's crew or the official logbook or documents produced or required to be produced.

(2) In accordance with subsection (1) a person, when required, must—

- (a) produce a logbook or a document;
- (b) allow a logbook or a document to be inspected or copied;
- (c) muster the crew or impede the muster; and
- (d) must give an explanation concerning the ship or the ship's crew or the official logbook or documents produced or required to be produced.

(3) If, in accordance with subsection (1), a person is required by a customs officer or a superintendent to comply with this section, the person must not knowingly mislead or deceive the officer or the superintendent.

(4) A person who contravenes subsection (2) or (3) commits an offence.

Penalty: A fine of £2,500.

Powers to inspect ships and their equipment, etc.

103. (1) To ensure that this Ordinance and the terms of approvals, licences, consents, directions or exemptions given under this Ordinance are complied with, a surveyor or superintendent may go on board a ship in St Helena waters and inspect—

- (a) the ship and the ship's equipment or any part of the ship, and any articles on board the ship; and
- (b) any document carried on the ship in pursuance of this Ordinance.

(2) If the ship is a St Helena ship, a proper officer may exercise the powers conferred by this section outside St Helena waters.

(3) A surveyor, superintendent or proper officer exercising powers under this section must not unnecessarily detain or delay a ship, but may, if the surveyor, superintendent or proper officer 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 the ship's hull or machinery.

(4) A person must not obstruct a surveyor, superintendent or proper officer in the exercise of the surveyor, superintendent or proper officer's powers under this section.

(5) A person who contravenes subsection (4) commits an offence.

Penalty: A fine of £20,000 or imprisonment for 2 years, or both on summary conviction and on indictment, an unlimited fine or imprisonment for 2 years, or both.

Improvement notices and prohibition notices

Improvement notices

104. (1) An inspector may serve an improvement notice on a person if the inspector has reasonable grounds to believe that a person is contravening a relevant statutory provision in circumstances that make it likely that the contravention will continue or be repeated.

(2) An improvement notice must—

- (a)* specify the provision in respect of which the inspector has reasonable grounds to believe; and
- (b)* require the person to remedy the contravention before a specified date.

(3) A person must not fail to comply with a requirement imposed by an improvement notice and a person who contravenes this subsection commits an offence.

Penalty: A fine of £20,000 or imprisonment for 2 years, or both on summary conviction and on indictment, an unlimited fine or imprisonment for 2 years, or both.

(4) In this section “**relevant statutory provision**” means any of the following sections and regulations having effect under any of those sections:

- (a)* section 33 - obligation of shipowners as to seaworthiness;
- (b)* section 35 - provisions and water complaints regulations;
- (c)* section 38 - manning regulations;
- (d)* section 39 - crew’s English knowledge regulations;
- (e)* section 56 - submersible and supporting apparatus regulations; and
- (f)* section 73 - discharge or escape of oil from ships.

Prohibition notices

105. (1) An inspector may serve a prohibition notice on a person if the inspector believes that a relevant activity that is taking place on board a ship under the control of the person involves a risk of a serious injury to a person or serious pollution of St Helena waters.

(2) A prohibition notice must—

- (a)* state that the inspector is of the belief;
- (b)* specify the activity which the inspector believes gives rise to the risk; and
- (c)* specify any course of action required to be taken.

(3) A prohibition notice under subsection (2) must also direct that the activity must cease and that the ship must not go to sea unless any required course of action is taken.

(4) A direction contained in a prohibition notice takes effect on the date specified in the direction, which may be immediately.

(5) A person must not fail to comply with a prohibition notice and a person who contravenes this subsection commits an offence.

Penalty: A fine of £20,000 or imprisonment for 2 years, or both on summary conviction and on indictment, an unlimited fine or imprisonment for 2 years, or both.

- (6) In this section—
“**relevant activity**” means an activity in respect of which a relevant statutory provision applies; and
“**relevant statutory provision**” means a provision set out in section 104(4).

Arbitration regulations

106. (1) The Governor in Council may make regulations to specify the course of action to be taken if a question arises as to whether—

- (a) the belief of an inspector specified in an improvement notice under section 104 or a prohibition notice under section 105 had a valid basis; or
- (b) a requirement included in such a notice was reasonable.

(2) Regulations made under subsection (1) may provide for the question to be referred to an arbitrator for a decision.

PART 10 ACCIDENT INVESTIGATIONS AND INQUIRIES

Marine accident investigations

Investigation of marine accidents regulations

107. The Governor in Council may make regulations to provide for the investigation of accidents involving ships which may—

- (a) impose a requirement to report an accident involving a ship;
- (b) prohibit, pending investigation, access to or interference with a ship involved in an accident;
- (c) specify the persons who are to carry out an investigation involving a ship;
- (d) specify the procedure to be followed to investigate an accident involving a ship; and
- (e) provide for the submission to and the publication by the Governor of a report following an investigation involving a ship.

Inquiries into and reports on deaths and serious injuries

Inquiries into serious injury, deaths of crew members and others

108. (1) The Governor in Council may make regulations to prescribe the procedure to be followed if—

- (a) the master of or a person employed on a St Helena ship is seriously injured or dies outside St Helena; or
- (b) any other person is seriously injured or dies on a St Helena ship.

(2) Regulations made under subsection (1) may provide for an inquiry into the cause of the death to be held by a specified person in St Helena or at the next port where the ship calls after the death.

(3) Regulations made under this section may also provide for the course of action to be taken if a person—

- (a) may have died on a St Helena ship involved in an accident; or

(b) having been lost from a St Helena ship may have died as a result of being lost.

(4) The person conducting an inquiry must, following the conclusion of the inquiry, report to the Governor and may make recommendations.

PART 11 LEGAL PROCEEDINGS

Offences by a company

109. (1) This section applies if an offence under this Ordinance is committed by a company.

(2) Where a company commits an offence under this Ordinance, and it is proved that the offence was committed with the consent or connivance of, or was attributable to wilful default on the part of an officer concerned in the management of the company, the officer commits the same offence and is liable to the same penalty as the company.

(3) In this section, “officer” includes—

(a) a director, secretary, partner, or other similar officer of the company;

(b) a person purporting to act as a director, secretary, partner or other similar officer of the company;

(c) a member or council member of the company, if the affairs of the company are managed by its members or council members; and

(d) the master of a ship that is owned or operated by a company.

Accessories and abettors

110. A person who knowingly or wilfully aids, abets, counsels, causes, procures or commands the commission of an offence under this Ordinance may be dealt with, tried and punished as a principal offender.

Jurisdiction

Jurisdiction in respect of offences

111. (1) To confer jurisdiction on a court, an offence under this Ordinance is to be taken to have been committed in a place in St Helena where the offender may for the time being be.

(2) For the same purpose, any matter of complaint under this Ordinance is to be taken to have arisen in a place in St Helena where the person complained against may for the time being be.

Jurisdiction in case of offences on board ship

112. (1) Subsection (3) applies if a person who has St Helena status and who is in St Helena, is charged with having committed an offence under this Ordinance—

(a) on board a St Helena ship whilst the St Helena ship was on the high seas or in a foreign port or harbour; or

(b) on board a foreign ship to which the person does not belong.

(2) Subsection (3) also applies if a person who does not have St Helena status and is in St Helena, is charged with having committed an offence on board a St Helena ship whilst the St Helena ship was on the high seas.

(3) A court has jurisdiction to try an offence in relation to subsection (1) and (2) as if the offence had been committed on board a St Helena ship within the limits of the court's ordinary jurisdiction.

Offences committed by St Helena seafarers

113. (1) An act in respect of property or a person done in or at a place (ashore or afloat) outside St Helena by the master of, or seafarer on, a St Helena ship which, if done in St Helena, would be an offence under the law of St Helena—

- (a) is an offence under that law; and
- (b) is to be treated for the purpose of jurisdiction and trial, as if the act had been done within the Admiralty jurisdiction of the Supreme Court.

(2) Subsection (1) also applies in respect of a person who had been employed in accordance with subsection (1) within the period of 3 months expiring at the time when the act was done.

(3) This section applies to omissions as they apply to acts.

Return of offenders

Return of offenders regulations

114. (1) The Governor in Council may make regulations to prescribe the powers of a proper officer if a complaint is made to the proper officer in respect of—

- (a) any offence against property or persons was committed at a place (ashore or afloat) outside St Helena by a person who at the time when the offence was committed, or within three 3 before that time, was the master of, or a seafarer on, a St Helena ship; or
- (b) any offence on the high seas was committed by the master of, or a seafarer on, a St Helena ship.

(2) Regulations made under subsection (1) may give the proper officer power—

- (a) to inquire into the case upon oath;
- (b) to take steps to place the alleged offender under restraint; and
- (c) to send the offender in safe custody to St Helena for proceedings to be taken against the offender.

Detention of ship and distress on ship

Detention of ship regulations

115. (1) The Governor in Council may make regulations to provide for the procedure to be followed in respect of a ship detained under this Ordinance.

(2) Regulations made under subsection (1) may provide that the ship may be detained by—

- (a) an inspector;
- (b) a customs officer;
- (c) a proper officer; and
- (d) the Harbour Master.

(3) Regulations made under this section may also provide for a notice of detention to be served on a master and for the notice to contain directions with which the master is required to comply.

Enforcement of fines, costs and wage payments

116. (1) A court may direct distress to be levied on a ship and the ship's equipment if an amount outstanding remains unpaid in respect of—

- (a) a fine imposed by a court in proceedings against the owner or master for an offence under this Ordinance; and
- (b) any costs or expenses ordered by the court to be paid by the owner or master are not paid, within the period specified by the court.

(2) A court that made an order under subsection (1) may direct distress to be levied on the ship and the ship's equipment in respect of the amount outstanding if—

- (a) the court made an order directing payment to be made for wages, fines or other sums of money to a seafarer;
- (b) the person directed to pay is the master or owner of the ship; and
- (c) the money directed to be paid is not paid in accordance with the order.

Special evidential provisions

Admissibility in evidence of certain documents

117. (1) The Governor in Council may make regulations in respect of the admissibility as evidence in the course of legal proceedings—

- (a) of a deposition previously made by a person at a place outside St Helena in respect of the same subject matter if it is proved that that person cannot be found in St Helena; and
- (b) of documents, including copies thereof, that are in the custody of the Registrar or are open to public inspection.

(2) Regulations made under subsection (1) may provide that the following documents are open to public inspection—

- (a) documents purporting to be submissions to or decisions by superintendents or proper officers;
- (b) the official logbook of a ship;
- (c) crew agreements, lists of crews and notices given of additions to or changes in crew agreements and lists of crews; and
- (d) returns or reports under section 70.

Service of documents

Service of documents

118. (1) A document authorised or required to be served on a person may be served on the person by—

- (a) delivering the document to the person;
- (b) leaving the document at the person's proper address; or
- (c) sending the document by post to the person at the person's proper address.

(2) A document required to be served on the master may be served, if there is a master, by leaving the document for the master on board the ship with a person appearing to be in command or charge of the ship.

(3) If there is no master, the document may be served on—

- (a) the ship's owner;
- (b) an agent of the ship's owner; or
- (c) by leaving a copy of the document firmly fixed to the mast of the ship.

(4) A document authorised or required to be served on any person may—

- (a) in the case of a body corporate, be served on its secretary; 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.

(5) A notice authorised or required to be served on the Governor may be served by post.

(6) A notice authorised to be given to an inspector may be given by delivering the notice to the inspector or by leaving the notice at, or sending the notice by post to, the inspector's office.

(7) A document authorised or required to be served on the registered owner of a St Helena ship is to be treated as duly served on the owner if served in a manner specified in the registration regulations.

(8) In this section the proper address of a person is the person's last known address, except that—

- (a) in the case of a body corporate or the secretary of a body corporate the proper address is the address of the registered or principal office of the body; and
- (b) in the case of a partnership or a person having the control or management of the partnership business, the proper address is the principal office of the partnership.

(9) In subsection (8), the principal office of a company registered outside St Helena or of a partnership carrying on business outside St Helena is its principal office in St Helena.

(10) If the person to be served with a notice has specified an address in St Helena, other than the person's proper address, as the one at which the person or someone on the person's behalf will accept notices of the same description as that notice and the specified address is to be treated as the person's proper address.

(11) If the owner of a ship is a company or other corporate body and the company or other corporate body cannot be served in St Helena with any document required under this Ordinance to be served on the owner of a ship, the document required to be served under this Ordinance may be served on the master and, if served in the foregoing manner, is considered to have been served on the owner of the ship.

(12) A person may—

- (a) board a ship for the purpose of serving a direction under section 76, 77 or 78;
- (b) enter land or premises for the purpose of serving a direction under section 76, 77 or 78.

PART 12 GENERAL PROVISIONS

Administration

119. (1) The Governor has the general superintendence of all matters relating to shipping and seafarers.

(2) The Governor may exempt a ship from a specified requirement of this Ordinance or regulations made under the Ordinance on such terms as the Governor may specify.

(3) The Governor may dispense with the observance of a specified requirement in respect of a ship if satisfied that—

- (a) the requirement was substantially complied with or that compliance with the specified requirement is unnecessary; and
- (b) the course of action taken, or provision made as respects the subject-matter of the requirement, is as effective as, or more effective than, compliance with the requirement.

Returns, etc. to Governor

120. (1) The Governor may require a superintendent to make and send to the Governor returns or reports on a matter relating to St Helena ships or seafarers on St Helena ships.

(2) The Governor may require a superintendent to produce to the Governor logbooks and other documents that are delivered to the superintendents under this Ordinance.

(3) The Governor may require a surveyor of ships to make returns to the Governor with respect to—

- (a) the build, dimensions, draught, burden, speed and room for fuel of ships surveyed by the surveyor; and
- (b) the nature and particulars of machinery and equipment of the ships.

(4) A surveyor, the owner, master and engineer of a ship being surveyed—

- (a) must provide the surveyor with information or assistance requested by the surveyor required to comply with the requirements of subsection (3); and
- (b) who contravenes paragraph (a) commits an offence.

Penalty: A fine of £2,500.

Application of Ordinance to certain structures

121. The Governor in Council may make regulations to provide for a thing designed or adapted for use at sea is to be treated as a ship for the purpose of this Ordinance.

Proceedings on forfeiture of a ship

122. The Governor in Council may make regulations to prescribe the procedure to be followed if a ship or a share in a ship may be forfeited under this Ordinance, which may—

- (a) provide for a person to take possession of the ship or the share in the ship;
- (b) provide for adjudication before the Supreme Court; and
- (c) provide for a ship or a share in a ship to be forfeited to the Government.

Notices and forms

123. (1) The Governor may publish notices to regulate navigation in St Helena waters.

(2) A person must not contravene a notice published under subsection (1) and a person who contravenes this subsection commits an offence.

Penalty: A fine of £1,500.

(3) The Governor in Council may make regulations in respect of the forms, book, instruments, notices or papers required under this Ordinance.

Regulations – general provisions

124. Regulations made under this Ordinance—

- (a) may make different provisions for different classes or descriptions of ships and for different circumstances;
- (b) may provide for exemptions and dispensations from specified requirements of the regulations, subject to any conditions the Governor or any other specified person may think fit to impose;
- (c) may make transitional, incidental or supplementary provision;
- (d) may authorise investigations and confer powers of inspection on specified persons;
- (e) may create offences punishable by a fine not exceeding £50,000 or by imprisonment for a term not exceeding 6 months or, or by both;
- (f) may provide for the approval of forms or other matters by the Governor or by any other specified person;
- (g) may provide for the discharge of specified functions by a specified authority or person;
- (h) may provide for any of the provisions of the regulations to extend to places outside St Helena;
- (i) may provide for the regulations to apply to a non-St Helena ship and to the master of and a person employed on such a ship;
- (j) may provide for the payment of fees and charges by a person that may be enforced as a debt;
- (k) may provide for the award of costs against any other person that may be enforced as a debt;
- (l) may provide for the award of compensation payable by any other person that may be enforced as a debt;

- (m) may provide for the award of compensation payable by the Government that is payable out of the Consolidated Fund without further appropriation;
- (n) may provide for the award of costs against the Government payable out of the Consolidated Fund without further appropriation; and
- (o) may include provisions necessary or convenient to give effect to this Ordinance, that are additional to those provided for by any other provision of this Ordinance.

SCHEDULE

Private Law Provisions for St Helena (Section 14)

General

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 the power to dispose of the ship or of the share in the ship, provided the disposal is made in accordance with this Schedule and the registration regulations.

(2) Sub-paragraph (1) 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 as consideration on any disposal of the ship or share.

Transfers, etc. of St Helena ships

Transfers, etc. of St Helena ships

2. (1) A 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 St Helena connection.

(2) If any such ship or share is transferred in accordance with sub-paragraph (1), 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 St Helena connection and that the Registrar would not refuse to register the ship.

(3) If an application under sub-paragraph (2) 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 the bills of sale are produced to the Registrar for the purpose of registration.

Registration of transfer

3. (1) Where a registered ship, or a share in a registered ship, is transmitted to a person by a lawful means other than a transfer under paragraph 2 and the ship continues to have a St Helena 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 St Helena connection and that the Registrar 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.

Supreme Court may order sale

4. (1) If property in a St Helena ship, or a share in a St Helena ship, is transmitted to a person by a lawful means other than a transfer under paragraph 2 and as a result of the transmission the ship no longer has a St Helena connection, the Supreme Court may, on application by or on behalf of the person, order a sale of the property transmitted and direct that the proceeds of sale, after deducting the expenses of the sale, must be paid to the person or otherwise as the Court directs.

(2) The Court may require any evidence in support of the application the Court thinks requisite and may make the order on any terms and conditions the Court considers 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)** The ship or share transmitted shall be liable to forfeiture if—
- (a) such an application is not made within the time allowed by or under sub-paragraph (3); or
 - (b) the Court refuses an order for sale.

Name to be included in order for sale

5. (1) If a court (whether under paragraph 4 or otherwise) orders the sale of a St Helena ship, or a share in a St Helena ship, the order of the court must contain a declaration vesting in some named person the right to transfer the ship or share.

(2) A person named pursuant to subsection (1) is entitled to transfer the ship or the share in the St Helena ship in the same manner and to the same extent as if the person were the registered owner of the ship or the share.

(3) The Registrar must deal with any application relating to the transfer of the ship or the share made by the person named pursuant to subsection (1) as if the person were the registered owner.

Court may prohibit dealing in ship

6. (1) The Supreme Court may, if the Supreme Court thinks fit (without prejudice to the exercise of any other power), on the application of an 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 the Court thinks just, or may refuse to make the order, or may discharge the order when made (with or without costs) 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 the Registrar was made a party to the proceedings.

Mortgages of St Helena ships

Mortgages of St Helena ships

7. (1) A St Helena ship, or share in a St Helena 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 the registration regulations.

(3) If a mortgage executed in accordance with sub-paragraph (2) 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 the mortgages are produced to the Registrar for the purpose of registration.

Priority of registered mortgages

Priority of registered mortgages

8. (1) If 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), be determined by the order in which the mortgages were registered (and not by reference to any other matter).

(2) The 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

Registered mortgagee's power of sale

9. (1) Subject to sub-paragraph (2), every registered mortgagee has power, if the mortgage money or any part of the mortgage money is due, to sell the ship or share in respect of which the registered mortgagee is registered, and to give effectual receipts for the purchase money.

(2) If 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

Protection of registered mortgagees

- 10.** If a ship or a share in a ship is subject to a registered mortgage, then—
- (a)** except so far as is necessary for making the ship or the share available as security for the mortgage debt, the mortgagee must not by reason of the mortgage be treated as owner of the ship or the share; and
 - (b)** the mortgagor must be treated as not having ceased to be owner of the ship or share.

Transfer of registered mortgage

Transfer of registered mortgage

11. (1) A registered mortgage may be transferred by an instrument made in the form prescribed by or approved under the registration regulations.

(2) If 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. If the interest of a mortgagee in a registered mortgage is transmitted to a person by a lawful means other than by a transfer under paragraph 11, 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

Discharge of registered mortgage

13. If a registered mortgage is 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 is discharged.

Definitions

Definitions

14. In this Schedule—
“**mortgage**” must be construed in accordance with paragraph 7(2);
“**prescribed**” means prescribed in the registration regulations; and
“**registered mortgage**” means a mortgage registered under paragraph 7(3).

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

This Bill would provide for the regulation of St Helena ships and ships in St Helena waters, the safe operation of such ships and the safety of passengers travelling aboard such ships and seafarers.

Clause 1 would provide the short title and commencement of the Bill and make provision for the manner in which the Ordinance would come into force.

Clause 2 would provide the meanings of specified words and terms used in the Bill.

Clause 3 would specify that this Bill does not apply to ships belonging to Her Majesty’s Crown or Navy.

Clause 4 would replace the provisions of the United Kingdom Merchant Shipping Acts 1894 to 1995 in respect of the application of these Acts to the registration St Helena ships.

Clause 5 would make provision for what is to be considered to be a St Helena ship.

Clause 6 would specify the standards that may be flown on St Helena ships.

Clause 7 would place an obligation on the master to make a declaration as to the name of the jurisdiction to which a ship belongs and provide the procedure to be followed by a customs officer in respect of the declaration made.

Clause 8 would specify the port for the purpose of registering ships in St Helena to be Jamestown.

Clause 9 would specify the criteria to be used to make a determination as to whether a ship may be registered as a St Helena ship.

Clause 10 would continue the register of ships and the appointment of the Registrar in St Helena. This Clause would detail the manner in which the register of ships is to be maintained and make provision for the register to be inspected by the public.

Clause 11 would provide for the process for application for registration to be placed in regulations and specify the conditions to be satisfied before a ship can be registered. This clause would also provide that if a ship registered in St Helena is registered in another territory, then the ship must be de-registered in that other territory. This clause would also create an offence and penalty for the contravention of the provision relating to de-registration.

Clause 12 would prohibit the use of the certificate of registration of a ship to secure a private right or claim.

Clause 13 would make provision for the Registrar to record the tonnage of a ship and the manner in which same is to be recorded. This clause would also make provision for the tonnage denoted.

Clause 14 would provide for the Schedule of the Bill which makes provision for mortgages in relation to ships. This clause would also provide that the owner of a ship and a person with a beneficial interest in a ship are

both liable in respect of a pecuniary penalty imposed on the registered owner of a ship and that the termination of the registration of a ship would not affect a registered undischarged mortgage of the ship.

Clause 15 would create an offence in relation to supplying false information to the Registrar and provide the penalty for such an offence.

Clause 16 would provide for regulations in respect of the registration of ships to be made and the contents of such regulations.

Clause 17 would provide for regulations to be made relating to the determination of the tonnage of a ship.

Clause 18 would provide for regulations to be made in respect of bareboat charters (agreements dealing with the hire of vessels without crew or provisions).

Clause 19 would prescribe the circumstances under which a person is permitted to disclose confidential information and would prohibit a person from disclosing information obtained pursuant to such circumstances.

Clause 20 would detail the application of Part 4 of the Bill.

Clause 21 would explain certain terms used in Part 4.

Clause 22 would enable the Governor in Council to make regulations to manage crew agreements.

Clause 23 would enable the Governor to make regulations to manage the process regarding how a seafarer is discharged from a St Helena ship.

Clause 24 would enable the Governor in Council to make regulations to manage the wages of a seafarer who leaves a St Helena ship or who is discharged from a St Helena ship.

Clause 25 would enable the Governor in Council to make regulations to manage the accounts kept in respect of the wages of a seafarer.

Clause 26 would enable the Governor in Council to make regulations to authorise deductions from the wages of a seafarer who breaches the seafarer's obligations under a crew agreement.

Clause 27 would enable the Governor in Council to make regulations to detail the procedure to be followed regarding disputes over the wages of a seafarer.

Clause 28 would prevent the wages of a seafarer from being subject to attachment.

Clause 29 would enable the Governor in Council to make regulations to manage the way in which a seafarer may allot the seafarer's wages to a person.

Clause 30 would enable the Governor in Council to make regulations to ensure the entitlement of a seafarer to wages if the seafarer is terminated due to no fault of the seafarer and the circumstances to which such regulations would apply.

Clause 31 would enable the Governor in Council to make regulations to ensure that a seafarer is liable for claims for financial support for the dependents of a seafarer.

Clause 32 would provide that the master has the same lien as a seafarer in respect of his wages.

Clause 33 would provide that a ship's owner, the master and an agent responsible for loading a ship, preparing a ship and sending a ship to sea must use all reasonable means to ensure the seaworthiness of the ship.

Clause 34 would enable the Governor in Council to make regulations to ensure that the crew of a ship is provided with appropriate accommodation on board the ship.

Clause 35 would enable the Governor in Council to make regulations to provide for how complaints made by seafarers in respect of provisions or water provided on board a ship are dealt with.

Clause 36 would enable the Governor in Council to make regulations to manage the medical treatment of a seafarer and the course of action to be taken if a seafarer dies.

Clause 37 would provide for the application of clauses 38 and 39.

Clause 38 would enable the Governor in Council to make regulations specifying the professionals that are required to operate a ship.

Clause 39 would enable the Governor in Council to make regulations to provide for the course of action to be taken in the event that a member of the crew of a ship does not speak or understand the English language.

Clause 40 would prohibit a person who is not a professional who is required to be on board a ship from purporting to have qualifications that such a person does not possess.

Clause 41 would enable the Governor in Council to make regulations to provide for the employment of a person under 18 years of age on a St Helena ship.

Clause 42 would provide for the conduct of a person on board a ship and how that conduct endangers the ship, machinery used on the ship or individuals.

Clause 43 would prohibit a seafarer from disobeying lawful commands or neglecting the duties of a seafarer or doing anything that would impede the progress or navigation of a ship.

Clause 44 would enable the Governor in Council to make regulations to ensure that discipline on board a ship is maintained.

Clause 45 would enable the Governor in Council to make regulations for the procedure that would obtain if an officer on a ship is unfit for duty.

Clause 46 would enable the Governor in Council to make regulations to provide for the procedure to be followed regarding any allegations made as to the fitness of a person to function in a capacity in which that person is certificated.

Clause 47 would detail the contents of regulations to be made under clause 45 and 46.

Clause 48 would enable the Governor in Council to make regulations to provide relief for persons left behind or shipwrecked.

Clause 49 would enable the Governor in Council to make regulations to specify the manner in which the official logbook of a St Helena ship is to be maintained.

Clause 50 would enable the Governor in Council to make regulations regarding the manner in which a record of the crew of a St Helena ship is to be kept.

Clause 51 would enable the Governor in Council to make regulations to provide for a seafarer's card, the particulars to be detailed on the card and the issue and surrender of such card.

Clause 52 would enable the Governor in Council to make regulations to provide for a seafarer's discharge book.

Clause 53 would require the master to hand over documents in hand relating to a ship or the ship's crew to the master's successor and would provide a penalty for non-compliance with this requirement.

Clause 54 would enable the Governor in Council to make regulations to give effect to the SOLAS Convention.

Clause 55 would enable the Governor in Council to make regulations to provide for safety at sea with respect to the operation of ships and lives of persons on such ships.

Clause 56 would enable the Governor in Council to make regulations to make provisions for the operation of submersible apparatus.

Clause 57 would enable the Governor in Council to make regulations to specify the responsibilities of a person in charge of a wireless telegraphy station.

Clause 58 would place an obligation on the master to provide assistance to another ship in the case of a collision and would provide a penalty for non-compliance with this obligation.

Clause 59 would place an obligation on the master to provide assistance to another ship in distress and would provide a penalty for non-compliance with this obligation.

Clause 60 would enable the Governor in Council to make regulations for the management of ships considered to be dangerously unsafe.

Clause 61 would require the master to operate a ship in a safe manner and would provide a penalty for non-compliance with this requirement.

Clause 62 would enable the Governor in Council to make regulations to provide the procedure to be followed if a ship, structure or other thing is wrecked, damaged or falls into distress in St Helena waters or Exclusive Economic Zone.

Clause 63 would detail the offences that may be committed by a person in relation to a passenger ship.

Clause 64 would prohibit a person from going to sea without consent and would provide a penalty for non-compliance with this prohibition.

Clause 65 would prohibit a person from going on board a ship without consent and would provide a penalty for non-compliance with this prohibition.

Clause 66 would enable the master to restrain a person for safety reasons or for the preservation of good order or discipline on a ship.

Clause 67 would further detail the application of section 42 and 43.

Clause 68 would enable the Governor in Council to make regulations to provide for returns to be made in respect of passengers on a ship.

Clause 69 would enable the Governor in Council to make regulations to provide returns to be made by the master in respect of births and deaths occurring on a ship.

Clause 70 would detail the application of specified conventions to St Helena and would enable the Governor in Council to make regulations to give effect to the conventions.

Clause 71 would enable the Governor in Council to make regulations to provide for the transfer of specified cargo between ships within St Helena waters and the Exclusive Economic Zone of St Helena.

Clause 72 would enable the Governor in Council to make regulations to provide for the use of waste reception facilities and would require the regulations to be in compliance with a convention referred to in clause 70.

Clause 73 would detail the responsibilities of the master in respect of and oil spill and would provide a penalty for non-compliance.

Clause 74 would prohibit the transfer of oil to or from a ship at night and would provide a penalty for the contravention of this prohibition.

Clause 75 would detail the circumstances under which the contravention of clause 74 would be considered justified.

Clause 76 would enable the Governor to give directions in the event of an accident to prevent hazardous pollution or the risk of hazardous pollution .

Clause 77 would enable the Governor to give directions to a person in control of coastal land or premises directions in the event of an accident to avoid or reduce pollution.

Clause 78 would enable to Governor to give directions in addition to the directions provided for in clause 76 and 77 to secure the safety of a ship, a person or property or to prevent or reduce the risk of pollution. This clause would also enable the Governor to prescribe a substance to be a hazardous substance.

Clause 79 would enable the Governor to take additional steps to ensure the execution of a direction.

Clause 80 would place an obligation on a person to whom a direction is given under clause 76, 77 or 78 to comply with the direction and would establish a penalty for non-compliance.

Clause 81 would require a direction to be varied or revoked when the need for the direction no longer exists and would enable a person to whom a direction is given to make representations to the Governor in respect of the direction.

Clause 82 would enable a person who suffers loss or damage as a result of complying with a direction to apply for compensation for such loss or damage and would provide the circumstances under which such loss or damage could be claimed.

Clause 83 would enable a person incurs expense as a result of complying with a direction to be reimbursed for such expense.

Clause 84 would specify the ships in respect of which a direction under clause 76, 77 or 78 may be given and the ships in respect of which a direction may not be given.

Clause 85 would enable the Governor in Council to make regulations detailing how records are to be kept in respect of the transfer of oil.

Clause 86 would enable the Governor to appoint a person to board ship to obtain the oil record book for the ship.

Clause 87 would enable the Governor to exempt a ship from the requirements of Part 6.

Clause 88 would require aids to navigation to be established in St Helena waters.

Clause 89 would enable the Governor in Council to make regulations to specify charts, directions or information necessary for the safe operation of ships.

Clause 90 would prohibit a person from unlawfully destroying or altering an aid to navigation.

Clause 91 would enable the Harbour Master or an agency under section 83 to detain a ship which caused damage to an aid to navigation until the cost for repairs is settled.

Clause 92 would prohibit a person from using light to mislead a ship and would provide a penalty for contravention of the foregoing.

Clause 93 would enable the Governor to appoint a receiver of wreck and would provide that the receiver of wreck is entitled to recover expenses incurred by the receiver.

Clause 94 would detail the duties of the receiver of wreck and would prohibit a person from refusing to comply with an instruction from the receiver. The clause would provide a penalty for non-compliance with an instruction from the receiver.

Clause 95 would enable the Governor in Council to make regulations to manage the payment of compensation for damage caused by riot to the cargo or the equipment of a ship.

Clause 96 would enable the Governor in Council to make regulations to manage the procedure as to what would obtain if wreck was discovered in St Helena waters.

Clause 97 would detail the offences with respect to the recovery of wreck.

Clause 98 would enable a receiver to apply for a search warrant to locate wreck that is being concealed.

Clause 99 would enable the Harbour Master to take possession of a ship sunk, stranded or abandoned in St Helena waters.

Clause 100 would enable the Governor to appoint a superintendent, inspector, or surveyor.

Clause 101 would detail the functions of an inspector.

Clause 102 would enable a customs officer to request to see the official logbook containing details of the crew of a ship.

Clause 103 would enable a surveyor or superintendent to board a ship for inspection purposes.

Clause 104 would enable an inspector to serve an improvement notice.

Clause 105 would enable an inspector to serve a prohibition notice.

Clause 106 would enable the Governor in Council to make regulations to provide for the process by which an improvement notice or a prohibition notice may be queried.

Clause 107 would enable the Governor in Council to make regulations to provide for the investigation of accidents in respect of a ship.

Clause 108 would enable the Governor in Council to make regulations to provide the procedure to be followed for inquiring into the death of a master, person employed on a St Helena ship.

Clause 109 would make provision for specified officers of a company to also be culpable if a company commits an offence.

Clause 110 would provide that that a person who wilfully assists with the commission of an offence may be tried as a principal offender.

Clause 111 would provide for the jurisdiction of the court when dealing with offences.

Clause 112 would provide for the jurisdiction of the court when dealing with offences which occur on a ship in specified circumstances.

Clause 113 would provide for the jurisdiction of the court for offences occurring outside of St Helena.

Clause 114 would enable the Governor in Council to make regulations to provide a proper officer with the authority to investigate complaints. Please note that this is **NOT** a proper officer under the Port and Aerodrome (Health) Ordinance, 2018.

Clause 115 would enable the Governor in Council to make regulations to provide the procedure to be followed if a ship is detained.

Clause 116 would provide for distress to be levied against a ship and the equipment of a ship for unpaid fines or costs.

Clause 117 would enable the Governor in Council to make regulations to provide for depositions made outside St Helena and for the inspection of records in the Registrar's custody.

Clause 118 would provide for the service of documents.

Clause 119 would provide that the Governor has the general superintendence of matters relating to shipping and seafarers.

Clause 120 would enable the Governor to require a superintendent to provide returns in respect of seafarers or ships.

Clause 121 would enable the Governor in Council to make regulations to make provision for adapted vessels to be treated as ships for the purpose of this Bill.

Clause 122 would enable the Governor in Council to make regulations to provide for forfeiture under the Bill.

Clause 123 would enable the Governor to publish notices to regulate navigation and would provide a penalty for contravention of the notices.

Clause 124 would enable the Governor in Council to make regulations to give effect to the Bill.