



## **ST HELENA**

### **A BILL**

### **FOR**

### **AN ORDINANCE**

**to amend the Merchant Shipping Ordinance, 2021 and to make further provision for the regulation of 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.

#### **Short title, commencement and interpretation**

**1. (1)** This Ordinance may be cited as the Merchant Shipping (Amendment) Ordinance, 2025, and comes into force on a date or dates 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.

**(3)** In this Ordinance, “the principal Ordinance” means the Merchant Shipping Ordinance, 2021.

#### **Substitution of the terms “Governor in Council” and “superintendent”**

- 2.** The principal Ordinance is amended—
- (a)** by repealing the term “Governor in Council” wherever this term appears and substituting the term “Governor on the advice of the Executive Council”; and
  - (b)** by repealing the words “a superintendent” or the words “the superintendent” wherever these words appear and substituting the words “the Maritime Authority”.

#### **Amendment of section 2 - interpretation**

- 3.** The principal Ordinance is amended in section 2 as follows—
- (a)** by inserting after the definition of “customs officer” the following definition—  
“**“dangerously unsafe ship”** means—

- (a) in relation to a ship in port, a ship which is unfit to go to sea without serious danger to human life having due regard to—
  - (i) the condition, or the unsuitability for its purpose, of —
    - (a) the ship or its machinery or equipment; or
    - (b) any part of the ship or its machinery or equipment;
  - (ii) undermanning;
  - (iii) overloading or unsafe or improper loading;
  - (iv) any other matter relevant to the safety of the ship; and
- (b) in relation to a ship at sea, a ship which is unfit to go to sea or to remain at sea without serious danger to human life having due regard to the matters specified in sub-paragraphs (a)(i) to (a)(iv);”;
- (b) by repealing the definition of “inspector” and substituting the following definition—
 

“**“inspector”** means a person appointed as an inspector under section 103C;”;
- (c) by repealing the definition of “owner” and substituting the following definition—
 

“**“owner”** means, in relation to a ship,—

  - (a) the owner of the ship or the owner of a share in a ship whether or not registered as the owner; or
  - (b) any organisation or person such as the manager, or the bareboat charterer, that has assumed the responsibility for the operation of the ship from the owner;”;
- (d) by repealing the definition of “proper officer” and substituting the following definition—
 

“**“proper officer”** means—

  - (a) a consular official appointed by His Majesty’s Government; and
  - (b) in relation to a port in a Crown Dependency or British Overseas Territory other than St Helena, also any person exercising in that port functions similar to that of the Maritime Authority;”;
- (e) by repealing the definition of “ship” and substituting the following definition—
 

“**“ship”**, except where expressly provided otherwise, means a vessel or craft of any type whatsoever operating in the marine environment and includes a fishing vessel, a hydrofoil boat, an air-cushion vessel, a submersible, a floating craft and a fixed or floating platform;”;
- (f) by repealing the definition of “superintendent”; and
- (g) by repealing the definition of “surveyor of ships” and substituting the following definition—
 

“**“surveyor”** means a person appointed or authorised as a surveyor under section 103A;”.

#### **Amendment of section 2A - Maritime Authority**

- 4.** The principal Ordinance is amended in section 2A by inserting after subsection (5) the following subsections—

“(6) Where a function is conferred on the Maritime Authority by this Ordinance or regulations made under the Ordinance, the Maritime Authority may delegate the exercise of the function to a person or body which the Authority considers suitable and qualified to undertake the function.

(7) The Maritime Authority, and any officers, agents, surveyors or inspectors employed, engaged or appointed by the Maritime Authority, shall not be held personally liable for any actions taken or actions omitted when acting in good faith and in the exercise of the functions conferred on the Maritime Authority under this Ordinance and regulations made under the Ordinance.”.

#### **Amendment of section 13 - tonnage of ships**

5. The principal Ordinance is amended in section 13 by inserting after subsection (3) the following subsection—

“(4) Unless tonnage regulations are made under section 17, the tonnage of a ship is to be ascertained in accordance with the rules for measuring the tonnage of a ship contained in the International Convention on Tonnage Measurement of Ships, 1969 (as amended).”.

#### **Amendment of section 20 – application of part**

6. The principal Ordinance is amended by repealing section 20 and substituting the following section—

##### **“Application of Part 4**

20. (1) Subject to subsections (2) and (4), this Part applies to a St Helena ship and to a master of, and a seafarer on, such a ship.

(2) With the exception of the sections listed in subsection (3), this Part does not apply to a domestic vessel and to a master of, and a seafarer employed on, such a vessel.

(3) The sections are—

- (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);
- (h) section 43 (concerted disobedience and neglect of duty).

(4) The Governor on the advice of the Executive Council may by regulations provide that the Maritime Authority may exempt domestic vessels from the application of the sections listed in subsection (3) or regulations made under them.

(5) In this section—

- “domestic vessel” means a St Helena ship which—
- (a) is under 24 metres in length;

- (b) is not engaged on international voyages; and
  - (c) is not operated outside the Exclusive Economic Zone;
- and

“**international voyage**” means a voyage between a port in St Helena and a port in a state or territory outside St Helena.”

#### **Amendment of section 34 - crew accommodation regulations**

7. The principal Ordinance is amended in section 34(2)(e) by repealing the words “surveyor of ships” and substituting the word “surveyor”.

#### **Amendment of section 42 – conduct endangering ships, structure or individuals**

8. The principal Ordinance is amended in section 42(1)(b) by repealing the words “to or from a berth” and substituting the words “to or from a port”.

#### **Amendment of sections 60 and 61- dangerously unsafe ships regulations**

9. The principal Ordinance is amended by repealing sections 60 and 61, and substituting the following sections—

“ *Unsafe ships*

##### **Power to detain dangerously unsafe ship**

**60A. (1)** This section applies to a ship which is—

- (a) in a port in St Helena; or
- (b) at sea in St Helena waters.

(2) Where an inspector is of the opinion that a ship is a dangerously unsafe ship, the inspector may detain the ship.

(3) Subject to subsection (4), the power of detention conferred by subsection (1) is exercisable in relation to foreign ships as well as ships registered in St Helena.

(4) The power of detention conferred by subsection (1)(b) is not exercisable in relation to a qualifying foreign ship while the ship is exercising—

- (a) the right of innocent passage; or
- (b) the right of transit passage through straits used for international navigation.

(5) The inspector detaining the ship must serve on the owner and master of the ship a detention notice which must—

- (a) state that the inspector is of the opinion that the ship is a dangerously unsafe ship;
- (b) specify the grounds which, in the inspector’s opinion, make the ship a dangerously unsafe ship; and
- (c) require the ship to comply with the terms of the notice until it is released by the Maritime Authority.

(6) In the case of a foreign ship (which is not a British ship) the inspector detaining the ship must send a copy of the detention notice as soon as practicable to the nearest consular officer for the country in which the ship is registered.

##### **Owner and master liable in respect of dangerously unsafe ship**

- 60B. (1)** If a ship which—  
(a) is in a port in St Helena; or  
(b) is registered in St Helena and is in any other port;

is a dangerously unsafe ship, then, subject to subsections (2) and (3), the master and the owner of the ship each 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.

**(2)** It is a defence in proceedings for an offence under this section for the person to prove that at the time of the alleged offence —

- (a) arrangements had been made which were appropriate to ensure that before the ship went to sea it was made fit to do so without serious danger to human life by reason of the matters specified in the charge; or  
(b) it was reasonable for such arrangements not to have been made.

**(3)** It is also a defence in proceedings for an offence under this section for an accused to prove—

- (a) that, under the terms of a charter-party or management agreement entered into by the person, the responsibilities of the owner with respect to the ship's safety had at the time of the alleged offence been wholly assumed by another person party to the charter or the agreement; and  
(b) that in all the circumstances the person—  
(i) took such steps to secure the proper discharge of those responsibilities for the period during which the responsibilities had been assumed by that other person as it was reasonable to take; and  
(ii) exercised such diligence as it was reasonable to exercise.

**(4)** For the purposes of subsection (3)(b), in determining whether the person had taken such steps and exercised such diligence, regard must be had in particular to the following—

- (a) whether prior to the time of the alleged offence the person was, or in all the circumstances ought reasonably to have been, aware of any deficiency in the discharge of the relevant responsibilities; and  
(b) the extent to which, in the event of any such deficiency, the person was or was not able, under the terms of the charter-party or management agreement—  
(i) to terminate it; or  
(ii) to intervene in the management of the ship;  
and whether it was reasonable for the person to do so.

### **Owner and master liable for unsafe operation of ship**

- 60C. (1)** This section applies to any ship—  
(a) registered in St Helena; or  
(b) which—  
(i) is registered under the law of any country outside St Helena; and  
(ii) is within St Helena waters while proceeding to or from a port in St Helena, unless the ship is within St Helena waters as a result of weather conditions or any other unavoidable circumstances.

(2) The owner and master of a ship must take all reasonable steps to secure that the ship is operated in a safe manner.

(3) An owner or master of a ship who contravenes subsection (2), commits an offence.

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

#### **Use of unsafe lighters, etc.**

**60D.** (1) A person who uses or causes or permits to be used in navigation any lighter, barge or like vessel which is so unsafe for a reason set out in subsection (2) that human life is endangered, commits an offence.

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

(2) The reasons are—

- (a) the defective condition of its hull or equipment;
- (b) overloading or improper loading; or
- (c) undermanning.

(3) This section does not affect the liability of the owners of any lighter, barge or like vessel in respect of loss of life or personal injury caused to any person carried in the vessel.”.

#### **Amendment of section 62 - temporary exclusion zone regulations**

**10.** The principal Ordinance is amended by repealing section 62 and substituting the following sections—

##### **“Power to establish temporary exclusion zones.**

**62A.** (1) Subsection (2) below applies where a ship, structure or other thing—

- (a) is in St Helena waters or the Exclusive Economic Zone; and
- (b) is wrecked, damaged or in distress;

and in this section and section 62B “**the relevant casualty**” means that ship, structure or other thing.

(2) The Governor may by direction identify an area to which access is to be restricted (“**a temporary exclusion zone**”), if it appears to the Governor—

- (a) that significant harm will or may occur as a direct or indirect result of the relevant casualty being wrecked, damaged or in distress; and
- (b) that if access to an area around the relevant casualty were restricted significant harm, or the risk of such harm, would be prevented or reduced.

(3) In this section “**significant harm**” means—

- (a) significant pollution in St Helena, St Helena waters or in the Exclusive Economic Zone; or
- (b) significant damage to persons or property.

(4) A temporary exclusion zone may not include any area which is neither within St Helena waters nor within the Exclusive Economic Zone.

(5) If it appears to the Governor at any time after a temporary exclusion zone is established that the zone is larger than is needed for the purpose of preventing or reducing significant harm, or the risk of such harm, the Governor must by direction vary the direction establishing the zone accordingly.

(6) Subject to subsections (4) and (5), a temporary exclusion zone may be identified by reference to the position of the relevant casualty from time to time.

(7) If it appears to the Governor at any time after a temporary exclusion zone is established that the zone is not needed for the purpose of preventing or reducing significant harm, or the risk of such harm, the Governor must by direction revoke the direction establishing the zone.

(8) Where the Governor gives a direction under this section, the Governor must—

- (a) as soon as practicable, publish it in such manner as the Governor considers appropriate for bringing it to the attention of persons likely to be affected by it; and
- (b) within the period of 24 hours from the giving of the direction, send a copy of it to the International Maritime Organization.

(9) Subsection (2) does not apply to the site of any protected wreck listed in the Schedule to the Protection of Wrecks and Marine Archaeological Heritage Ordinance, 2014 as a restricted area.

#### **Temporary exclusion zones: offences**

**62B. (1)** If a direction establishing a temporary exclusion zone contains a statement of a description mentioned in subsection (2), then, subject to subsection (4), a ship must not enter or remain in the zone.

(2) The statement is one to the effect that the direction is given for the purpose of preventing or reducing significant pollution, or the risk of significant pollution, in St Helena, in St Helena waters or the Exclusive Economic Zone.

(3) If a direction establishing a temporary exclusion zone does not contain a statement of a description mentioned in subsection (2), then, subject to subsections (4) and (5)—

- (a) a ship must not enter or remain in any part of the zone that is in St Helena waters; and
- (b) a St Helena ship must not enter or remain in any part of the zone that is in the Exclusive Economic Zone.

(4) A ship may enter or remain in a temporary exclusion zone or a part of such a zone if it does so—

- (a) in accordance with the direction establishing the zone;
- (b) with the consent of the Governor; or
- (c) in accordance with regulations made by the Governor for the purposes of this section.

(5) Subject to subsection (6), the master of a ship which enters or remains in a temporary exclusion zone or a part of such a zone in contravention of subsection (1) or (3), commits an offence.

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

(6) It is a defence for a master of a ship charged with an offence under this section to prove that the existence or area of the temporary exclusion zone was not, and would not on reasonable enquiry have become, known to them.”.

**Amendment to section 84 - ships to which section 76, 77 and 78 applies**

- 11.** The principal Ordinance is amended in section 84 as follows—
- (a) in subsection (1) by repealing paragraph (a)(ii) and substituting the following paragraph—  
“(ii) is in St Helena waters or the Exclusive Economic Zone”; and
  - (b) in subsection (4) by repealing paragraph (b) and substituting the following paragraph—  
“(b) is not in St Helena waters or the Exclusive Economic Zone.”.

**Amendment to sections 100 to 103 - appointment of enforcement officers and their powers and functions**

**12.** The principal Ordinance is amended by repealing sections 100 to 103 and substituting the following sections—

**“Appointment of surveyors**

**103A. (1)** The Governor, on the advice of the Executive Council, may by Notice in the Gazette appoint, either generally or for specific purposes, a suitably qualified person to be a surveyor for the purposes of this Ordinance and any regulations made under it.

(2) Subject to such conditions as the Governor or Maritime Authority may impose, the Governor or Authority may, by Notice in the Gazette, authorise a corporation or society for the survey and classification of ships recognised by the Secretary of State to undertake the functions of a surveyor for the purposes of this Ordinance and any regulations made under it.

(3) A person appointed or authorised as a surveyor under this section may be appointed as a ship surveyor, an engineer surveyor or as both.

**Powers of surveyors**

**103B. (1)** For the purpose of exercising a function in this Ordinance or any regulations made under it, a surveyor may at all reasonable times go on board a St Helena ship to survey—

- (a) the ship and its equipment or any part of the ship or its equipment;
- (b) any article on board; or
- (c) any document carried in the ship in pursuance of this Ordinance or any regulations made under it.

(2) A person who intentionally obstructs a surveyor exercising the power under 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.

(3) For the purpose of exercising a function in this Ordinance or any regulations made under it, a surveyor may require—



- (a) the owner, master, or any of the crew of a ship to produce any official log-books or other documents relating to the crew or any member of the crew in their possession or control;
  - (b) the master of a ship to produce a list of all persons on board, and take copies of or extracts from the official log-books or other such documents;
  - (c) the crew to muster; or
  - (d) the master to appear and give any explanation concerning the ship or its crew or the official log-books or documents produced or required to be produced.
- (4)** A person who, on being required under subsection (3)—
- (a) to produce a log-book, document or list—
    - (i) fails to produce the log-book, document or list; or
    - (ii) refuses to allow the log-book or document to be inspected or copied;
  - (b) to muster the crew—
    - (i) fails to muster the crew; or
    - (ii) impedes the muster; or
  - (c) to give any explanation, refuses or neglects to give the explanation or knowingly misleads or deceives the surveyor;

commits an offence.

Penalty: A fine of £2,500 on summary conviction and on indictment, an unlimited fine.

### **Appointment of inspectors**

**103C. (1)** The Governor, on the advice of the Executive Council, may by Notice in the Gazette, appoint a suitably qualified person as an inspector—

- (a) to undertake the functions conferred on an inspector by this Ordinance and any regulations made under it; and
  - (b) to report to the Governor or the Maritime Authority—
    - (i) upon the nature and causes of any accident or damage which any ship has or is alleged to have sustained or caused;
    - (ii) whether any requirements, restrictions or prohibitions imposed by or under this Ordinance have been complied with or (as the case may be) contravened by a ship;
    - (iii) whether the hull and machinery of a ship are sufficient and in good condition; or
    - (iv) what measures have been taken to prevent the escape of oil or mixtures containing oil.
- (2)** A surveyor may be appointed as an inspector.
- (3)** A proper officer—
- (a) is considered to be an inspector in respect of a St Helena ship calling at a port for which he is the proper officer; and
  - (b) has the powers of an inspector under section 103D.

### **Powers of inspectors**

**103D. (1)** The powers conferred by this section may be exercised in relation to—

- (a) any premises in St Helena;

- (b) any St Helena ship wherever it may be; or
- (c) any other ship which is present in St Helena or in St Helena waters.

(2) An inspector appointed under section 103C—

- (a) may, where the inspector has reason to believe that it is necessary to do so, at any reasonable time (or, in a situation which in the inspector's opinion is or may be dangerous, at any time)—
  - (i) enter any premises; or
  - (ii) board any ship;
- (b) may, on entering any premises or on boarding a ship by virtue of paragraph (a), be accompanied by any other person authorised for the purpose by the Governor and any equipment or materials the inspector requires;
- (c) may make such examination and investigation as the inspector considers necessary;
- (d) may direct that the premises or ship or any part of the premises or ship or anything in the premises or ship or such a part must be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under paragraph (c);
- (e) may take such measurements and photographs and make such recordings as the inspector considers necessary for the purpose of any examination or investigation under paragraph (c);
- (f) may take samples of any articles or substances found in the premises or ship and of the atmosphere in or in the vicinity of the premises or ship;
- (g) may, in the case of any article or substance in the premises or ship and which appears to the inspector to have caused or to be likely to cause danger to health or safety, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is in the circumstances necessary);
- (h) may, in the case of any such article or substance as is mentioned in paragraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes—
  - (i) to examine it and do to it anything which the inspector has power to do under that paragraph;
  - (ii) to ensure that it is not tampered with before the inspector's examination of it is completed;
  - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Ordinance or any regulations made under it;
- (i) may require any person who the inspector has reasonable cause to believe is able to give any information relevant to any examination or investigation under paragraph (c)—
  - (i) to attend at a place and time specified by the inspector;
  - (ii) to answer such questions as the inspector thinks fit to ask;
  - (iii) to sign a declaration of the truth of their answers;
- (j) may require the production of, and inspect and take copies of or of any entry in—

- (i) any books or documents which by virtue of any provision of this Ordinance or regulations made under it are required to be kept; and
- (ii) any other books or documents which the inspector considers it necessary to see for the purposes of any examination or investigation under paragraph (c);
- (k) may require any person to afford the inspector such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable the exercise any of the powers conferred on the inspector by this subsection.

(3) The powers conferred by this section are, in relation to a St Helena ship, also exercisable outside St Helena waters.

(4) A person exercising powers under this section must not unnecessarily detain or delay a ship but may, if that person 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 its hull or machinery.

(5) The powers conferred by subsection (2) to require the production of any document and copy it include power to require the master to certify the copy as a true copy.

(6) The powers conferred by subsection (2) to inspect premises are also exercisable in relation to any apparatus used for transferring oil.

(7) The powers conferred by subsection (2)(a), (c) and (j) are also exercisable, in relation to a ship in a harbour in St Helena, by the harbour master or other persons appointed by the Governor for the purpose, for the purpose of ascertaining the circumstances relating to an alleged discharge of oil or a mixture containing oil from the ship into the harbour.

(8) Nothing in the preceding provisions of this section authorises a person unnecessarily to prevent a ship from proceeding on a voyage.

(9) The Governor may by regulations make provision as to the procedure to be followed in connection with the taking of samples under subsection (2)(f) and subsection (10) and provision as to the way in which such samples are to be dealt with.

(10) Where an inspector proposes to exercise the power conferred by subsection (2)(g) in the case of an article or substance found in any premises or ship, the inspector must, if so requested by a person who at the time is present in and has responsibilities in relation to the premises or ship, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of that person.

(11) Before exercising the power conferred by subsection (2)(g), an inspector must consult such persons as appear to the inspector appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which it is proposed to do under that power.

**(12)** Where under the power conferred by subsection (2)(h) an inspector takes possession of any article or substance found in any premises or ship—

- (a) the inspector must issue a notice giving particulars of the article or substance sufficient to identify it and stating that the inspector has taken possession of it under that power and leave that notice either with—
  - (i) a person responsible for the premises or ship; or
  - (ii) if that is impracticable, fixed in a conspicuous position; and
- (b) the inspector must, before taking possession of any such substance, if it is practicable to do so—
  - (i) take a sample of the substance; and
  - (ii) give to a person responsible for the premises or ship a portion of the sample marked in a manner sufficient to identify it.

**(13)** No answer given by a person in pursuance of a requirement imposed under subsection (2)(i) is admissible in evidence against that person in any proceedings except proceedings in respect of a statement in, or a declaration relating to, the answer.

**(14)** A person required to attend a place to answer questions under subsection (2)(i) may nominate another person—

- (a) to accompany them to that place;
- (b) to be present when questions are asked; and
- (c) to make representations to the inspector on behalf of the person who is required to attend.

#### **Provisions supplementary to section 103D.**

**103E. (1)** A person commits an offence if the person—

- (a) intentionally obstructs an inspector in the exercise of any power under section 103D;
- (b) without reasonable excuse, does not comply with a requirement imposed in pursuance of section 103D or prevents another person from complying with such a requirement; or
- (c) makes a statement or signs a declaration which the person knows is false, or recklessly makes a statement or signs a declaration which is false, in purported compliance with a requirement made in pursuance of subsection (2)(i) of section 103D.

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.

**(2)** Nothing in section 103D compels the production by any person of a document of which that person would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the Supreme Court.

**(3)** A person who complies with a requirement imposed by an inspector in pursuance of section 103D(2)(i),(j) or (k) is entitled to recover from Maritime Authority such sums in respect of the expenses incurred in complying with the requirement as are prescribed by regulations made by the Governor, on the advice of the Executive Council.”

### **Amendment to section 104 - improvement notices**

**13.** The principal Ordinance is amended in section 104 by repealing subsection (4) and substituting the following subsection—

“(4) In this section “**relevant statutory provision**” means a section or regulation under this Ordinance imposing a duty imposed on a person in respect of a ship.”.

### **Amendment to section 107 - investigation of marine accident regulations**

**14.** The principal Ordinance is amended by repealing section 107 and substituting the following section—

#### **“Investigation of marine accidents**

**107. (1)** The Governor, on the advice of the Executive Council, must, for the purpose of investigating accidents involving ships—

- (a) appoint such number of persons as the Governor may determine to be investigators of marine accidents; and
- (b) appoint one of the persons appointed under paragraph (a) as Chief Marine Accident Investigator.

**(2)** The Governor on the advice of the Executive Council may make regulations to provide for the investigation of accidents involving ships which may—

- (a) define an accident for the purposes of this section and the regulations;
- (b) impose requirements to report an accident involving a ship;
- (c) prohibit, pending investigation, access to or interference with a ship involved in an accident;
- (d) authorise any person, so far as may be necessary for the purpose of determining whether an investigation should be carried out, to have access to, examine, remove, test, take measures for the preservation of, or otherwise deal with, any such ship or boat or any other ship or ship's boat;
- (e) specify, with respect to the investigation of accidents, the functions of the Chief Marine Accident Investigator (which may include the function of determining whether, and if so by whom, particular accidents should be investigated), the functions of other investigators, and the manner in which any such functions are to be discharged;
- (f) specify the persons who may carry out investigations, or persons with special qualifications or experience in the investigation of an accident involving a ship who may conduct or assist with the conduct of a marine safety investigation, and specify the qualifications or experience required of such persons;
- (g) specify the powers of a person carrying out an investigation or who may conduct or assist with the conduct of an investigation;
- (h) specify the procedures to be followed to investigate an accident involving a ship; and
- (i) provide for the submission to and publication by the Governor or Maritime Authority of a report following an investigation into an accident involving a ship.”.

## **Amendment to section 115 - detention of ship regulations**

**15.** The principal Ordinance is amended by repealing section 115 and substituting the following section—

“ *Detention of ships*

### **Enforcing detention of ships**

**115. (1)** This section applies where a detention notice is issued in respect of a ship—

- (a) under section 60A (power to detain dangerously unsafe ship); and
- (b) any regulations made under this Ordinance, except where the regulations make express provision to the contrary.

**(2)** Where a ship is to be or may be detained any of the following persons may detain the ship—

- (a) an inspector;
- (b) the Maritime Authority;
- (c) any commissioned naval or military officer; or
- (d) any officer of customs and excise.

**(3)** A notice of detention—

- (a) may include a direction that the ship—
  - (i) must remain in a particular place; or
  - (ii) must be moved to a particular anchorage or berth; and
- (b) if it includes a direction pursuant to paragraph (a), may specify circumstances relating to safety or the prevention of pollution in which the master may move the ship from that place, anchorage or berth.

**(4)** If a ship in respect of which a notice of detention has been served proceeds to sea, otherwise than in accordance with such a notice before it is released by the Maritime Authority, the master of the ship 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.

**(5)** If a ship in respect of which a notice of detention has been served fails to comply with a direction given under subsection (3)(a), the master of the ship 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)** The owner of a ship, and any person who sends to sea a ship, in respect of which an offence is committed under subsection (4) or (5), who is party or privy to the offence, also 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.

**(7)** Subsection (8) applies where—

- (a) a ship—
  - (i) proceeds to sea in contravention of a detention notice; or
  - (ii) fails to comply with a direction given under subsection (3); and
- (b) a person authorised by subsection (2) to detain the ship or a surveyor—
  - (i) is on board the ship in the execution of that person’s duty; and
  - (ii) is carried away without the person’s consent.

- (8) Where the circumstances in subsection (7) apply, the owner and master of the ship—
- (a) are each liable to pay all expenses of and incidental to the person or surveyor being so carried away; and
  - (b) each commit 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.”.

### **Insertion of sections 116A and 116B - references to arbitration**

**16.** The principal Ordinance is amended by inserting after section 116 the following sections—

“ *Arbitration*

#### **References to arbitration**

**116A. (1)** This section applies where—

- (a) a survey is carried out in respect of a ship under this Ordinance or any regulations made under it and the owner is dissatisfied with the outcome of the survey;
- (b) a detention notice is issued in respect of a ship—
  - (i) under section 60A (power to detain dangerously unsafe ship); or
  - (ii) any regulations made under this Ordinance;
- (c) a prohibition notice is issued in respect of a ship under section 105; or
- (d) an improvement notice is issued in respect of a ship under section 104.

(2) Subject to any express provision in regulations to the contrary, an owner who is dissatisfied with the outcome of a survey carried out in respect of a St Helena ship may, within 21 days of receiving notice of that outcome, serve a written notice on the responsible person—

- (a) stating there is a dispute in relation to the survey; and
- (b) requesting that the dispute be referred to a single arbitrator.

(3) Subject to any express provision in regulations to the contrary, an owner or master upon whom a detention notice, prohibition notice or improvement notice is served may, within 21 of receiving the notice, serve a written notice on the Maritime Authority requiring that the issue of the notice or any dispute about a matter contained in the notice be referred to a single arbitrator.

(4) The arbitrator to whom a dispute or notice is referred under this section is to be—

- (a) appointed by agreement between the owner or master and the responsible person or Maritime Authority (as the case may be); or
- (b) in the absence of agreement, appointed by the Governor.

(5) A person is not qualified for appointment as an arbitrator under this section unless the person—

- (a) holds a certificate of competency as a master mariner or as a marine engineer officer class 1 (issued by the Maritime Authority), or a person holding a certificate equivalent to any such certificate;
- (b) is a qualified naval architect;
- (c) falls within subsection (6); or

- (d) has special experience of shipping matters, of the fishing industry, or of activities carried on in ports.
- (6) A person falls within this subsection if —
  - (a) the person is the Chief Justice or any other judge or acting judge of the Supreme Court; or
  - (b) the person is—
    - (i) listed in rule 2 of the Courts (Rights of Audience and Enrolment) Rules, 1992 as a person entitled to appear and be heard as an advocate before the Supreme Court; and
    - (ii) has experience of shipping matters, of the fishing industry, or of activities carried on in harbours and ports.
- (7) An arbitrator appointed under this section has the powers conferred on an inspector by section 103D.
- (8) The rules for arbitration set out in Merchant Shipping Notice M1613 issued by the Secretary of State apply to an arbitration under this section unless alternative arrangements are agreed between the parties to the arbitration before the commencement of arbitration proceedings.
- (9) A reference under subsection (3) will not suspend the operation of the detention notice, prohibition notice or improvement notice unless, on the application of the person requiring the reference, the arbitrator so directs.
- (10) In the case of a referral of a dispute in relation to a survey, the arbitrator may—
  - (a) make any decision or reach any opinion that the surveyor has the power to make or reach; and
  - (b) issue or cancel any certificate that could have been issued or cancelled following that survey.
- (11) In the case of a referral in relation to a detention notice, prohibition notice or improvement notice, the arbitrator must—
  - (a) have regard, in coming to a decision, to any other matters not specified in the notice which appear to the arbitrator to be relevant to whether the ship—
    - (i) was or was not a dangerously unsafe ship; or
    - (ii) complied or failed to comply with a provision of the Ordinance or the relevant regulations;
  - (b) include in the decision a finding whether there were or were valid grounds for the issue of the notice;
  - (c) if the finding under paragraph (b) is that there were no valid grounds for the issue of the notice, cancel the notice; and
  - (d) if the finding under paragraph (b) is that in all the circumstances there were grounds for the issue of the notice, either—
    - (i) confirm the notice with such modifications as the arbitrator in the circumstances thinks fit; or
    - (ii) confirm the notice in its original form.
- (12) In this section “**responsible person**” means the person responsible for the issue of the certificate in connection with which a survey required by this Ordinance or regulations made under it is carried out.



### **Compensation in connection with invalid detention of ship**

**116B. (1)** On a reference under section 116A relating to a detention notice, the arbitrator may award the owner of the ship such compensation, as the arbitrator thinks fit, in respect of any loss suffered by the owner in consequence of the detention of the ship, if the arbitrator decides that—

- (a) the grounds for the detention of the ship did not constitute a valid basis for the detention; and
- (b) there was no reasonable basis for the inspector to form the opinion that the grounds justified the detention.

**(2)** Any compensation awarded under this section is payable by the Maritime Authority and is enforceable as a debt.”.

### **Amendment to section 120 - returns etc to the Governor**

**17.** The principal Ordinance is amended in section 120—

- (a) by repealing the words “the Governor” wherever it appears and substituting the words “the Maritime Authority”; and
- (b) in subsection (3) by repealing the words “surveyor of ships” and substituting the word “surveyor”.

### **Insertion of section 125—dynamic references in regulations**

**18.** The principal Ordinance is amended by inserting after section 124 the following section—

#### **“Power to make dynamic references to international instruments**

**125. (1)** This section applies where—

- (a) the Governor has power under this Ordinance to make subsidiary legislation; and
- (b) the Governor proposes to exercise that power to make subsidiary legislation which refers to an international instrument.

**(2)** The power may be exercised so as to have the effect that the reference to the international instrument is construed—

- (a) as a reference to the international instrument as modified from time to time;
- (b) if the international instrument is replaced by another instrument, as a reference to that other instrument.

**(3)** For the purposes of subsection (2)(a), an international instrument is modified if—

- (a) omissions, additions or other alterations to the text of the instrument take effect; or
- (b) supplementary provision made under the instrument takes effect.

**(4)** In this section, provision included in subsidiary legislation by virtue of subsection (2) is referred to as dynamic provision.

(5) Subsidiary legislation which makes dynamic provision may make provision as to—

(a) when a modification of an international instrument is to be treated as taking effect for the purposes of subsection (2)(a);

(b) when an international instrument is to be treated as having been replaced by another instrument for the purposes of subsection (2)(b).

(6) In this section—

“**international instrument**” means an international convention or treaty or an instrument made under such a convention or treaty;

“**subsidiary legislation**” has the same meaning as in section 3(1) of the Interpretation Ordinance, 1968.”.

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## EXPLANATORY NOTE

*(This note is not part of the Ordinance)*

The Bill would amend the Merchant Shipping Ordinance 2021 to make further provision for the regulation of St Helena ships and ships in St Helena waters.

*Clause 1* will provide the short title and for the commencement of the Ordinance and the manner in which the Ordinance comes into force. It also will provide the meaning of specified terms used in the Ordinance.

*Clause 2* will amend the principal Ordinance by substituting throughout the term “Governor on the advice of Executive Council” for the term “Governor in Council” and the term “Maritime Authority” for “superintendent”.

*Clause 3* will amend the definitions in section 2 of the principal Ordinance as a consequence of some of the other amendments to be made by this Ordinance. New definitions of “ship” and “proper officer” will also be included.

*Clause 4* will amend section 2A of the principal Ordinance (which was inserted by the Merchant Shipping (Amendment) Ordinance 2021) to provide that the Maritime Authority may delegate the exercise of its functions under the principal Ordinance, or any regulations made under it, to a person or body which the Authority considers suitable and qualified to undertake the function. Section 2A will also be amended by the insertion of new subsection (7) to provide that the Maritime Authority and its officers shall not be held personally liable when undertaking functions conferred on them by the Ordinance, or regulations made under it, if acting in good faith.

*Clause 5* will amend section 13 of the principal Ordinance to clarify that, unless and until tonnage regulations are made by the Governor, for the purposes of registration, the tonnage of ships is to be measured in accordance with the International Convention on Tonnage Measurement of Ships, 1969.

*Clause 6* will amend section 20 of the principal Ordinance to clarify which provisions of Part 4 of the principal Ordinance apply to all St Helena ships and which provisions only apply to domestic vessels. Domestic vessels will be defined as St Helena ships which are under 24m in length, are not engaged on international voyages and do not operate outside St Helena’s Exclusive Economic Zone.

*Clause 7* will amend the principal Ordinance by substituting the word “surveyor” for the term “surveyor of ships” in section 34(2)(e).

*Clause 8* will amend section 42 of the principal Ordinance to provide that the offence of conduct endangering a ship may be committed when a ship is proceeding to or from a port.

*Clause 9* will amend the principal Ordinance by introducing new sections 60A to 60D which will enable the Maritime Authority to take action in respect of dangerously unsafe ships. Section 60A gives power to an inspector to detain a dangerously unsafe ship and sections 60B and 60C provide that the owners and masters of ships which are dangerously unsafe or are operated in an unsafe manner commit a criminal offence. Section 60D makes it an

offence for a person to use in navigation a lighter, barge or similar vessel which is so unsafe that human life is endangered.

*Clause 10* will amend section 62 of the principal Ordinance by introducing new sections 62A and 62B, which will enable the Governor to establish temporary exclusion zones around ships, structures, or other things which are wrecked, damaged or in distress (“a casualty”). These zones may be established in St Helena waters or the Exclusive Economic Zone, where significant harm will or may occur as a result of the casualty and restricting access to an area around the casualty would prevent or reduce significant harm or the risk of such harm. Where a zone is established, depending on the threat posed, the area of sea and their nationality, ships will be prohibited from entering the zones without the consent of the Governor. Section 62B will set out the offences committed by the masters of ships which enter a temporary exclusion zone.

*Clause 11* will amend section 84 of the principal Ordinance to ensure that the powers of the Governor to intervene in a maritime casualty and issue directions where pollution is threatened extend over St Helena’s exclusive economic zone.

*Clause 12* will replace sections 100 to 103 of the principal Ordinance with new sections 103A to 103E. Section 103A provides for the appointment of surveyors by the Governor and for societies for the survey and classification of ships to be authorised by the Governor or Maritime Authority to undertake the functions of surveyors. Section 103B sets out the powers that a surveyor will have when exercising a function under the principal Ordinance and regulations made under it. Section 103C provides for the appointment of inspectors who will undertake inspections of ships and exercise port state control. Section 103D will then set out the on the face of the principal Ordinance the detailed powers of an inspector, including the power to go on board ships and examine crew members. Section 103E makes it an offence for a person to obstruct an inspector in the exercise of their duties; to fail to comply with a requirement imposed by an inspector; or to make a false statement or declaration to an inspector.

*Clause 13* will amend section 104 of the principal Ordinance to clarify the statutory provisions in respect of which, if those provisions are not complied with, prohibition or improvement notices may be issued.

*Clause 14* will amend section 107 of the principal Ordinance to provide for the appointment of marine accident investigators and a Chief Marine Accident Investigator by the Governor. The list of matters that may be included in regulations made under this section will also be expanded.

*Clause 15* will amend section 115 of the principal Ordinance to make express provision in the principal Ordinance for the circumstances where a ship is detained for being in breach of a requirement in the principal Ordinance or in the regulations made under it.

*Clause 16* will insert new sections 116A and 116B into the principal Ordinance to make provision for the reference of disputes in respect of surveys or detention, prohibition and improvement notices to an arbitrator. The sections will state who may be appointed as an arbitrator and the procedure to be followed, including provision, where the arbitrator finds there was no basis for a detention, for the payment of compensation.

*Clause 17* will amend section 120 of the principal Ordinance, to specify what returns in respect of a ship should be made and to whom.

*Clause 18* will insert a new section 125 into the principal Ordinance. This will enable the Governor, when making regulations under the principal Ordinance, to incorporate by reference provisions of international instruments and for those provisions to be updated if the international instrument is subsequently amended or replaced.