

**4 JUNE 2015 DRAFT**

**SHIPPING (MARINE POLLUTION PREVENTION)  
BILL 2015**

**Prepared for Saint Christopher and Nevis  
by the Oceans and Natural Resources Division of the  
Commonwealth Secretariat**

**Prepared by**

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## **EXPLANATORY MEMORANDUM**

The purpose of this Act is to establish a legal framework concerning marine pollution and related issues. The Act will incorporate into national legislation a number of international conventions relating to marine pollution to which Saint Christopher and Nevis ('SKN') is a Contracting Party. The Act specifies to which ships each Part applies, which generally is: ships registered in SKN, or foreign ships operating in SKN waters.

### **PART I – PRELIMINARY**

This Part empowers the Minister to determine the date of commencement for various Parts or provisions of the Act by Order published in the Gazette. It defines important words and clauses which are used in the Act. It also provides that the Government of SKN must take a precautionary approach to protect the marine environment, and may apply more stringent standards to the matters covered by the Act.

### **PART II – POWERS AND JURISDICTION UNDER THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA IN RELATION TO MARINE POLLUTION**

This Part grants powers and responsibilities to the SKN Maritime Administration concerning the prevention of marine pollution consistent with the obligations of SKN under the international agreement known as the 1982 United Nations Convention on the Law of the Sea, which SKN ratified in 1993.

### **PART III – PREVENTION OF POLLUTION BY DUMPING WASTES AT SEA**

This Part makes provision for the exercise of certain powers by the SKN Maritime Administration with regard to waste disposal at sea in a manner that is consistent with the provisions of an international agreement known as the 1996 Protocol to the Convention of the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, acceded to by SKN in 2006. This is one of the first global conventions aimed to protect the marine environment from human activities, and whose objective is to promote the effective control of all sources of marine pollution and to take all practicable steps to prevent pollution of the sea by dumping of wastes and other matter.

### **PART IV – PREVENTION OF POLLUTION FROM SHIPS**

This Part gives effect to the International Convention for Prevention of Pollution from Ships 1973 as amended by the Protocol of 1978, known as 'MARPOL'. This is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental cause.

MARPOL comprises the following annexes, all acceded to by SKN, each of which regulates a different aspect of pollution:

- ANNEX I – Prevention of Pollution by Oil.

- ANNEX II – Control of Pollution by Noxious Liquid Substances in Bulk.
- ANNEX III – Prevention of Pollution by Harmful Substances Carried by Sea in Package Form.
- ANNEX IV – Prevention of Pollution by Sewage from Ships.
- ANNEX V – Prevention of Pollution by Garbage from Ships.
- ANNEX VI – Prevention of Air Pollution from Ships.

#### **PART V – OIL POLLUTION PREPAREDNESS, RESPONSE AND COOPERATION**

This Part confers powers and duties on the SKN Maritime Administration with respect to oil pollution incidents covered by the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990, acceded to by SKN in 2005. This Convention aims to prepare ships and national authorities to respond promptly and effectively to oil pollution incidents.

#### **PART VI – CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE**

This Part details the legislative regime governing liability and compensation for oil pollution damage that applies under an international agreement known as the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001, which was acceded to by SKN in 2010. Bunker oil is the oil used for the operation of the ship, and is distinct from cargoes of crude oil, petroleum etc. The Convention aims to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships' bunkers.

#### **PART VII – LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES**

This Part details the obligations of SKN under an international agreement known as the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea 1996, which was acceded to by SKN in 2010. This Convention establishes a system enabling up to 250 million SDR<sup>1</sup> to be paid out in compensation to victims of accidents involving hazardous and noxious substances, such as chemicals.

#### **PART VIII – CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS**

This Part gives effect to the provisions of an international agreement known as the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004, which was acceded to by SKN in 2004. This Convention aims to prevent the spread of harmful aquatic organisms from one region to another, by establishing standards and procedures for the management and control of ships' ballast water and any sediments contained therein.

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<sup>1</sup> SDR are 'special drawing rights': an international type of monetary reserve assets defined and maintained by the International Monetary Fund.

## **PART IX – CONTROL OF ANTI-FOULING SYSTEMS ON SHIPS**

This Part gives effect to the provisions of the International Convention on the Control of Harmful Anti-Fouling Systems on Ships 2001, which was acceded to in 2008. This Convention requires parties to restrict the use of harmful chemicals in ships' anti-fouling systems, such as the paint used to coat the bottoms of ships to prevent sea-life attaching to the hull and slowing the vessel down.

## **PART X – REMOVAL OF WRECKS**

This Part gives effect to the provisions of the Nairobi International Convention on the Removal of Wrecks 2007, which covers the prompt and effective removal of shipwrecks located beyond the territorial sea with the potential to act as a hazard to navigation, or to affect adversely the safety of lives, property at sea, or the marine environment. Although the incidence of marine casualties has decreased in recent years, the number of abandoned wrecks reported has increased, and a wreck can be costly to mark and remove. The Convention moves financial liability for wreck removal to the ship-owners, and provides States with a right of direct action against insurers.

**Comment [LH1]:** SKN not a contracting party. This Part X of the Act can either be removed; or it can be retained but not brought into force until such time as SKN accedes to the Wrecks Convention.

## **PART XI - ENFORCEMENT, LEGAL PROCEEDINGS AND JURISDICTION**

This Part details the methods and roles and responsibilities for the enforcement of the provisions of the Act.

## **PART XII – ADMINISTRATION**

This Part makes necessary provisions for the Minister to administer the Act; including by way of making regulations.

**[INSERT CONTENTS LIST ONCE ACT IS FINALISED]**

# SHIPPING (MARINE POLLUTION PREVENTION) ACT 2015

AN ACT to incorporate into the national law of Saint Christopher and Nevis various international conventions relating to the prevention of marine pollution from ships.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis and by the authority of the same as follows:

## PART I – PRELIMINARY

### 1. Short title and date or dates of commencement

This Act may be cited as the Shipping (Marine Pollution Prevention) Act 2015 and parts of this Act or provisions of this Act shall come in to force on such date or dates as the Minister may determine by Order published in the Gazette.

**Comment [LH2]:** Check this wording / mechanism with the AG's Office. This will be important for this Act if, as seems likely, different Parts will be brought into force at different times (upon SKN becoming party to the relevant Convention covered by that Part).

### 2. Interpretation of this Act

(1) In this Act, unless the context otherwise requires –

“AFS Convention” means the International Convention for the Control of Harmful Anti-Fouling Systems on Ships 2001;

“agent” means, in relation to a ship, an agent of the owner vested with a specific authority by the owner;

“anti-fouling system” means a coating, paint, surface treatment, surface or device that is used on a ship to control or prevent attachment of unwanted organisms;

“Ballast Certificate” means an International Ballast Water Management Certificate issued under this Act, or otherwise under the Ballast Water Convention;

“ballast water” means water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship;

“Ballast Water Convention” means the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004;

“ballast water management” means mechanical, physical, chemical, and biological processes, either singularly or in combination, to remove, render

harmless, or avoid the uptake or discharge of harmful aquatic organisms and pathogens within ballast water and sediments;

"Bunker Convention" means the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001;

"bunker oil" means any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation or propulsion of the ship, and any residues of such oil;

"Director" means the Director of Maritime appointed pursuant to section 411 of the Merchant Shipping Act;

"Director of Environment" means such person as is appointed to this role in relation to this Act, by the Minister responsible for the National, Conservation and Environment Protection Act (No. 5 of 1987), or such enactment as may replace it;

"discharge" means any release of a substance howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying but does not include –

- (a) dumping within the meaning of Part IV of this Act,
- (b) release of substances directly arising from the exploration, exploitation and associated offshore processing of seabed mineral resources, or
- (c) release of substances for purposes of legitimate scientific research into pollution abatement or control;

"dollar" means East Caribbean Dollar;

"exclusive economic zone" in respect of SKN has the meaning given in section 2 of the Maritime Areas Act (Cap 7.03, No. 3 of 1984); and in respect of any other State means the zone of national jurisdiction defined by this term in UNCLOS that extends beyond and adjacent to the territorial sea of a State;

"Government ship" means any ship owned by SKN Government or held by any person on behalf of or for the benefit of SKN Government;

"harmful aquatic organisms and pathogens" means aquatic organisms or pathogens which, if introduced into the sea including estuaries, or into freshwater courses, may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with

**Comment [LH3]:** Check with SKN: as far as I can see there is no later environmental legislation, and no Director / Secretary / CEO etc. of Environment appointed by statute in SKN, so I suggest this wording rather than referring to an existing post.

other legitimate uses of such areas;

"harmful substance" means any substance, or effluents containing such a substance, which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, and includes any substance subject to control under MARPOL;

"high seas" means all parts of the sea that are not included in the exclusive economic zone, territorial sea, internal waters or archipelagic waters of any State;

"HNS Convention" means the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 and its Protocol of 2010;

"IMO" means the International Maritime Organisation;

"incineration at sea" means the combustion on board a ship, platform or other man-made structure at sea of wastes for the purpose of their deliberate disposal by thermal destruction; but does not include the incineration of wastes on board a ship, platform, or other man-made structure at sea if such wastes were generated during the normal operation of that ship, platform or other man-made structure at sea;

"internal waters" in respect of the SKN has the meaning given in section 2 of the Maritime Areas Act (Cap 7.03, No. 3 of 1984); and in respect of any other State has the meaning given in UNCLOS;

"Intervention Convention" means the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 and the Protocol Relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil 1973;

"London Convention" means the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matters;

"maritime casualty" means a collision of ships, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo;

"MARPOL" means the International Convention for the Prevention of Pollution from Ships 1973 and its 1978 Protocol;

"MARPOL member State" means a State the Government of which is a party to MARPOL;

**Comment [LH4]:** Delete unless SKN intends to sign up to this Protocol before bringing Part III of this Bill into force.

"master" includes every person having command or charge of any ship, other than a pilot;

"Merchant Shipping Act" means the Merchant Shipping Act (Cap 7.05, No. 24 of 2002), or any future enactment that replaces it;

"Merchant Shipping Notice" means a notice entitled as such and published by the Director, as may be amended by the Director from time to time;

"Minister" means the Minister responsible for shipping and seafarers for the time being;

"National Coordinator" means the person responsible for the SKN National Oil Spill Contingency Plan;

"noxious liquid substance" has the meaning given in regulation 1 to Annex II of MARPOL;

"offshore unit" means any fixed or floating offshore installation or structure engaged in gas or oil exploration, exploitation or production activities, or loading or unloading of oil;

"oil pollution incident" means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil and which poses or may pose a threat to the marine environment, or to the coastline or related interests of one or more States, and which requires emergency action or other immediate response;

"OPRC" means the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990;

"owner" in relation to a ship, includes the registered owner, a demise or bareboat charterer, a managing owner and an operator of the ship;

"pollution" means the introduction, directly or indirectly, by human activity, of substances, energy or wastes into the sea which results or is likely to result in such deleterious effects as harm to living resources and marine life or ecosystems, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;

"reception facility" means any facility which is used for the reception of oil, noxious liquid substances, sediment, sewage or garbage at a port or terminal;

"registered owner" means the person or person registered as the owner of a ship

**Comment [LH5]:** Check with SKN Maritime / NEMA whether they are happy with this wording, or whether they would prefer to specify the particular job title here (e.g. Captain of the Coastguard).

or, in the absence of registration, the person or persons owning a ship at the relevant time. In the case of a ship owned by a State and operated by a company that is registered as the operator of the ship in that State, “registered owner” shall mean such company;

“sea ports and oil handling facilities” means those facilities which present a risk of an oil pollution incident and includes, inter alia, sea ports, oil terminals, pipelines and other oil handling facilities;

“sediments” means matter settled out of ballast water within a ship;

“ship”, unless otherwise expressly indicated, means any seagoing vessel or any floating craft or platform of any type whatsoever;

“SKN” means Saint Christopher and Nevis;

“SKN waters” means SKN’s internal waters, territorial sea and exclusive economic zone;

“SKN ship” means a ship registered in SKN under the Merchant Shipping Act;

“territorial sea” in respect of SKN in respect of the SKN has the meaning given in section 2 of the Maritime Areas Act (Cap 7.03, No. 3 of 1984); and in respect of any other State has the meaning given in UNCLOS;

“UNCLOS” means the 1982 United Nations Convention on the Law of the Sea;

“undue delay” means a delay that is unreasonable and unnecessary in light of the particular conditions of a ship’s cargo, destination and schedule, and in light of the purpose and scope of the investigation, inspection or other cause for detaining a ship;

“wastes” means materials and substances of any kind, form or description;

“wreck” means, following a maritime casualty,

- (a) a sunken or stranded ship;
- (b) any part of a sunken or stranded ship, including any object that is or has been onboard such a ship;
- (c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or
- (d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken; and

**Comment [LH6]:** Check with SKN AG’s Office whether it is stylistically compatible and appropriate to use such an abbreviation in legislation, and if so, whether ‘SKN’ or ‘SCN’ is preferred.

“Wreck Convention” means the Nairobi International Convention on the Removal of Wrecks 2007.

(2) Any reference in this Act to an international agreement includes all Protocols and Annexes thereto and any amendments, insofar as these apply to SKN, and includes any unified interpretation approved by resolution of the General Assembly of the IMO for the time being in force.

(3) Any reference in this Act to an Annex or IMO Guideline is a reference to it as may be amended or succeeded from time to time.

### **3. Application of this Act**

Subject to section 50 of this Act and any applicable regulations made under this Act, this Act shall not apply to ships or aircraft entitled to sovereign immunity under international law, including any warship, or other ship owned by a State and engaged on government non-commercial service.

### **4. Objects of this Act**

The objects of this Act are to prevent the deliberate, negligent or accidental release of harmful substances from ships, and to prevent, reduce and where practicable eliminate pollution, for the protection and preservation of the marine environment and the conservation of the natural resources therein.

### **5. Precautionary approach**

In administering this Act, SKN Government shall apply a precautionary approach whereby appropriate and cost-effective preventative measures are taken when there is reason to believe that ships’ discharges into the marine environment, or other actions regulated by this Act, are likely to cause environmental harm, even if there is scientific uncertainty as to the causal relation between such inputs and their effects, or the extent of the harm threatened.

### **6. Government may take more stringent measures**

Nothing in this Act shall prevent SKN Government from adopting more stringent measures than is provided for in this Act or in the international agreements that are referred to in this Act with respect to the prevention, reduction or elimination of pollution or environmental damage.

### **7. Duties of officers and crew**

The owner and master of a ship shall ensure that its officers and crew are familiar with the requirements of this Act, as is appropriate to their duties.

## **PART II – POWERS AND JURISDICTION UNDER UNCLOS IN**

## RELATION TO MARINE POLLUTION

### 8. Pollution prevention measures

- (1) SKN Government shall take all measures necessary to ensure that maritime activities under the jurisdiction or control of SKN are conducted so as to –
  - (i) prevent, reduce and control pollution of the marine environment, and
  - (ii) not cause damage by pollution to other States, and not to cause the spread of pollution arising from such activities beyond the areas where SKN exercises rights and jurisdiction in accordance with UNCLOS.
- (2) In taking measures in accordance with this section, SKN Government shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with UNCLOS.
- (3) Measures taken in accordance with this section may include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.
- (4) In taking measures under this section, SKN Government shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.

### 9. Compensation

SKN Government shall take all practicable measures to ensure recourse is available for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by person under the jurisdiction of SKN, in accordance with this Act and the legal systems of SKN.

### 10. Notification of imminent or actual damage

Where the Director becomes aware that the marine environment of SKN is in imminent danger or has been damaged by pollution, the Director shall immediately notify any other States the Director deems likely to be affected by such damage, as well as the IMO.

### 11. Assessment of potential effects of activities

Where the Director has reasonable grounds to believe that planned activities under the jurisdiction or control of SKN may cause substantial pollution of or significant and harmful changes to the marine environment, the Director shall as far as practicable cause to be assessed the potential effects of such activities on the

**Comment [LH7]:** Check with SKN who is the appropriate person to take responsibility for such marine environmental monitoring and assessment functions. As currently drafted, this responsibility is given to the (Maritime Affairs) Director, but in some jurisdictions this would sit more appropriately with the Environment protection agency.

marine environment and communicate reports of the results of such assessments to the IMO.

## **12. Monitoring of the risks of effects of pollution**

- (1) The Director shall endeavour as far as is practicable, directly or through the IMO, to observe, measure, evaluate and analyse by recognised scientific methods the risks or effects of pollution of the marine environment, and in particular keep under surveillance the effects of maritime activities that are permitted in SKN or in which SKN engages, so as to determine whether such activities are likely to pollute the marine environment.
- (2) The Director shall prepare reports of the results obtained under sub-section 12(1) and provide such reports of results to the IMO at appropriate intervals.

## **PART III – PREVENTION OF POLLUTION BY DUMPING OF WASTES AT SEA**

### **13. Interpretation of Part III**

In this Part –

“dumping” means –

- (a) any deliberate disposal into the sea of wastes from ships, aircraft, platforms or other man-made structures at sea, or
- (b) any storage of wastes in the seabed and the subsoil thereof from ships, aircraft, platforms or other man-made structures at sea, and
- (c) any deliberate disposal, abandonment or toppling at site of ships, aircraft, platforms or other man-made structures at sea;

but does not include –

- (d) the disposal into the sea of wastes incidental to, or derived from the normal operations of ships, aircraft, platforms or other man-made structures at sea and their equipment, other than where those operations are for the specific purpose of transport, disposal or treatment of waste,
- (e) placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to this Part,
- (f) abandonment at sea of items such as cables, pipelines and marine

research devices placed for a purpose other than the mere disposal thereof, and

- (g) disposal or storage of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of seabed mineral resources;

“sea” means all marine waters other than the internal waters of States, as well as the seabed and the subsoil thereof, but does not include sub-seabed repositories accessed only from land; and

“aircraft” means airborne craft of any type whatsoever, whether self-propelled or not.

#### **14. Application of Part III**

(1) This Part shall apply to all –

- (a) SKN ships and aircraft that are registered in SKN or are otherwise entitled to fly the flag of SKN, including ships under Government use;
- (b) ships and aircraft loading wastes or other matter in the territory of SKN which are to be dumped or incinerated at sea; and,
- (c) ships, aircraft and platforms or other man-made structures believed to be engaged in dumping or incineration at sea within SKN waters.

(2) This Part shall not apply to –

- (a) the disposal or storage of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of seabed mineral resources;
- (b) ships and aircraft entitled to sovereign immunity under international law.

#### **15. Prohibition on dumping of wastes**

Subject to section 16 or sub-section 20(2) of this Act, the dumping of any wastes –

- (a) at sea by the persons to whom this Part applies, or,
- (b) at sea within SKN waters by any person,

is prohibited except where dumping is otherwise permitted under this Part.

## **16. Dumping or incineration at sea permits**

(1) The dumping of wastes listed in Annex 1 to the London Convention, or the incineration of waste at sea in the force majeure circumstances provided for in sub-section 20(2) of this Act, may be permitted subject to the issue of a permit by the Director of Environment where such wastes are –

(a) loaded in the territory of SKN; or,

(b) loaded onto a ship or aircraft registered in SKN or flying SKN's flag, when the loading occurs in the territory of a State not a Party to the London Convention.

(2) In issuing a permit under this section, the Director of Environment shall impose conditions in accordance with Annex 2 to the London Convention and may impose additional relevant criteria, measures and requirements.

(3) The Director of Environment shall not issue a dumping permit where an environmentally preferable alternative is available.

## **17. Duty to notify IMO**

Where a permit is issued under section 16 of this Act, the Director of Environment shall inform the Director and shall communicate details of any dumping or incineration carried out pursuant to the permit, and the Director shall notify the IMO.

## **18. Prohibition of incineration at sea**

Subject to section 20 of this Act, the incineration of wastes –

(a) at sea by the persons to whom this Part applies, or,

(b) within SKN waters by any person,

is hereby prohibited.

## **19. Prohibition of export of wastes**

The export of wastes from SKN to other countries for dumping or incineration at sea is hereby prohibited.

## **20. Exceptions in cases of force majeure**

(1) Sections 15 and 18 of this Act shall not apply in circumstances of force majeure or other cases of emergency, where dumping or incineration at sea is deemed by the Director to be necessary to –

- (a) secure the safety of human life or of ships, aircraft, platforms or other man-made structures at sea, or
  - (b) lessen damage to human safety or life or the marine environment that would otherwise occur.
- (2) Where practicable, a person considering dumping or incineration in the circumstances referred to in sub-section 20(1) shall apply to the Director of Environment, who may issue a permit under section 16 of this Act excepting the application of relevant sections of this Part, after consulting the Director, the IMO, and any other country or countries that are likely to be affected, and taking into account any recommendations of the IMO.
- (3) In any case, such dumping or incineration at sea referred to in sub-section 20(1) shall be conducted so as to minimise the likelihood of damage to human or marine life.

## 21. Obligations of a person authorised to dump or incinerate waste at sea

A person authorised to engage in dumping or incineration at sea under this Part shall -

- (a) bear the cost of meeting the pollution prevention and control requirements for the authorised activities, having due regard to the public interest; and,
- (b) not cause, directly or indirectly, damage or likelihood of damage to the environment or transform one type of pollution into another.

## 22. Offences

Any person who contravenes the provisions of sections 15, 18 or 19 of this Act shall be guilty of an offence and shall be liable on summary conviction to a fine of up to [\\$300,000] or to imprisonment for a term not exceeding two years, or to both.

## 23. Record keeping and reporting

(1) The Director of Environment shall –

- (a) keep records of the nature and quantities of all wastes or other matter for which permits have been issued under section 16 and, where practicable, quantities actually dumped, and the location, time and method of dumping; and
- (b) cause to be monitored, where appropriate, in collaboration with other State Parties to the London Convention and competent international organisations, the condition of the sea for the purposes of this Part.

**Comment [LH8]:** The penalties cited in this draft Bill mirror the suggested figures contained in the 2008 IMO Model Law, converted from USD, and checked by ComSec via a benchmarking exercising.

The amount of fines stipulated in the draft law is a matter for SKN. It is recommended to seek consistency with relevant existing domestic penalties, and with the level of fines in legislation of other Caribbean countries dealing with marine pollution.

(2) The Director of Environment shall communicate to the Director and, where appropriate, to other State Parties to the London Convention, and the Director shall report to the IMO –

(a) on an annual basis, the information referred to in sub-section 23(1); and

(b) on a regular basis, measures taken by SKN to implement this Part, including a summary of enforcement measures, and a description of their effectiveness.

#### **24. Co-operation regarding enforcement**

SKN Government shall co-operate in the development of procedures for the effective application of the London Convention in areas beyond the jurisdiction of any State, including procedures for the reporting of ships and aircraft observed dumping or incinerating at sea in contravention of the London Convention.

### **PART IV – PREVENTION OF POLLUTION FROM SHIPS**

#### **25. Interpretation of Part IV**

In this Part, unless the context otherwise requires –

"incident" means an event involving the factual or probable discharge into the sea of a harmful substance;

"oil" means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products (other than petrochemicals that are expressly excluded from the definition of 'oil' contained in regulation 1(1) of Annex 1 to MARPOL);

"ship" includes fixed platforms.

#### **26. Application of Part IV**

(1) Except as expressly provided otherwise, this Part shall apply to –

(a) all SKN ships;

(b) all ships operating under the authority of a MARPOL member State within SKN waters;

(c) any other ship voluntarily entering a port or offshore terminal of SKN.

**Comment [LH9]:** This Part needs to be checked against Part III of the Marine Pollution Management Act 2002. There may be some overlap, in which case either this Part should be modified, or relevant sections of the Marine Pollution Management Act should be repealed by s.133 of this Act. A policy instruction from Maritime Administration is required, in this regard.

- (2) Notwithstanding sub-section 26(1), no more favourable treatment shall be given to ships of States which are not MARPOL member States than is provided for under MARPOL and this Part.

## 27. General duty to comply with MARPOL

(1) It shall be the duty of –

- (a) the owner and the master of a ship to which this Part applies,
- (b) any other person with responsibility for the operation of a ship to which this Part applies and with control of a matter to which MARPOL relates, and
- (c) any other person upon whom an obligation is imposed by MARPOL or to whom a direction is given to comply with MARPOL;

to comply with and ensure compliance with the provisions of MARPOL applicable to ships, together with any Code adopted by the IMO which relates to such a provision of MARPOL.

(2) In complying with a requirement of MARPOL, account must be taken of –

- (a) any relevant guideline or recommendation adopted by the IMO,
- (b) the location of SKN waters within the Wider Caribbean Region special area, for the purposes of Annex V of MARPOL, and
- (c) any guidelines issued by the Director with respect to the application of this Part.

(3) A person contravening this section is guilty of an offence, and –

(a) in relation to a requirement of MARPOL relating to:

- a. control of discharge of oil,
- b. prevention of oil pollution for ships operating in a special area, or
- c. discharge of noxious liquid substances,

is liable on conviction to a fine not exceeding [\$1,350,000]; or

(b) in relation to any other requirement of MARPOL not listed in subparagraph (a), is liable on conviction to a fine not exceeding [\$675,000].

**Comment [LH10]:** Similar offence in the Marine Pollution Management Act 2002 has a penalty of \$1,000,000.

## 28. Reception facilities

Reception facilities shall be provided at SKN terminals, repair ports, and other ports in accordance with the requirements of MARPOL and the Minister may prescribe sanctions and penalties by way of fines for any contravention of those requirements.

**Comment [LH11]:** Check with SKN: can a responsibility to oversee this be attributed to a specific agency e.g. Port Authority, or Solid Waste Management Corporation?

## 29. Surveys and certificates for the purposes of MARPOL

- (1) All ships to which Annex I or Annex II of MARPOL apply shall be subject to such surveys as are required by the respective Annex.
- (2) Where surveys carried out in SKN in accordance with this section are satisfactory, the Director shall issue the appropriate certificates specified in MARPOL.
- (3) Subject to sub-section 31(2), a certificate issued by a MARPOL member State in accordance with MARPOL shall be accepted by the Director and regarded for all purposes of MARPOL as having the same validity as a corresponding certificate issued under sub-section 28(2) of this Act.
- (4) The grant, revocation, extension, validation, suspension, exemption from, and variation of, and the form and recording of certificates issued in SKN under this section shall be conducted in accordance with the relevant requirements of MARPOL.
- (5) The Director may establish measures to ensure that the appropriate provisions of this Part are complied with by SKN ships that are not subject to the surveys required by Annex I or Annex II of MARPOL.

## 30. Fraud, misuse of certificates, etc.

- (1) No person shall –
  - (a) intentionally alter a certificate issued for the purposes of MARPOL;
  - (b) falsely make a certificate referred to in MARPOL;
  - (c) knowingly or recklessly furnish false information in connection with any survey required by MARPOL;
  - (d) with intent to deceive, use, lend, or allow to be used by another, a certificate issued for the purposes of MARPOL; or
  - (e) fail to surrender a certificate required to be surrendered for the purposes of MARPOL.
- (2) A person who contravenes sub-section 30(1) shall be guilty of an offence and liable upon conviction to a fine of [\$135,000] or to a term of imprisonment of six months, or to both.

**Comment [HL12]:** Similar offences in the Merchant Shipping Act have penalties of \$70k

### **31. Inspection of ships for MARPOL purposes**

- (1) A ship to which this Part applies, and which does not hold a certificate issued by a MARPOL member State in accordance with MARPOL, may while voluntarily in a port or offshore terminal of SKN be subject to inspection by officers appointed or authorised by the Director for the purpose of verifying whether the ship has discharged any harmful substances in violation of this Part.
- (2) A ship holding or purporting to hold a certificate issued by a MARPOL member State in accordance with MARPOL may while in a port or offshore terminal of SKN, be subject to inspection by officers duly authorised by the Director for the purpose of verifying that –
  - (a) there is on board that ship a valid certificate,
  - (b) the condition of the ship or its equipment corresponds substantially with the particulars of that certificate, or
  - (c) the master or crew are familiar with essential shipboard procedures for preventing pollution.

### **32. Detention order upon certificate failure**

In the event that any inspection under section 31 of this Act does not produce satisfactory verification, the Director shall, by order, cause the ship to be detained and prevent it from sailing until it can proceed to sea without presenting an unreasonable threat of harm to the marine environment.

### **33. Detection of violations and enforcement of the Part**

- (1) The Director shall co-operate with Governments of other MARPOL member States in the detection of violations and enforcement of this Part, using all appropriate and practicable measures of detection and environmental monitoring, and adequate procedures for reporting and accumulation of evidence.
- (2) In respect of ships other than SKN ships –
  - (a) Where a ship operating under the authority of another State is found not to be in compliance with MARPOL or this Part, the Director may request consultation with the Government of the State concerned, before denying the ship entry to a SKN port or offshore terminal, or taking any other action against the ship.
  - (b) Where an inspection undertaken under this Part indicates a violation or

alleged violation of MARPOL or this Part by a ship of a MARPOL member State, the Director shall furnish to the Government of the State concerned –

(i) evidence, if any, and a report pertaining to the alleged violation, so that appropriate action may be taken under MARPOL; and,

(ii) shall notify the master of the ship, if it is practicable.

(c) Where a ship purporting to hold a certificate issued by a MARPOL member State is found not to be carrying a valid certificate as required by this Part or by MARPOL, the Director shall inform the Government of the State concerned.

(d) The Director may furnish to the Government of the State under whose authority a ship is operating any such information or evidence as may be in the Director's possession in respect of a violation of this Part.

(3) Where information or evidence is received by the Director from the Government of a MARPOL member State in respect of a violation of MARPOL by a SKN ship, the Director –

(a) may request the Government of such State to furnish further or better information or evidence of the alleged violation,

(b) where the Director is satisfied that there is sufficient evidence, shall cause proceedings to be taken in respect of that violation as soon as possible, and

(c) shall inform the Government of the State which has reported the alleged violation and the IMO promptly of any action taken.

(4) Where the Government of a MARPOL member State furnishes sufficient evidence to the Director that a ship to which MARPOL applies has discharged harmful substances in any place, and requests an investigation, the Director may inspect such ship when it enters a port or offshore terminal of SKN, and shall send the report of such investigation to the Government of the State requesting it, and to the Government of the flag State of the ship, so that appropriate action may be taken under MARPOL.

#### **34. Reports on incidents involving harmful substances**

(1) When an incident involving a ship to which this Part applies involves –

(i) a discharge or probable discharge of oil, or noxious liquid substances carried in bulk, resulting from damage to the ship or its equipment, or for the purpose of securing the safety of a ship or saving life at sea;

- (ii) a discharge or probable discharge of harmful substances in a packaged form of the type specified for harmful substances in the International Maritime Dangerous Goods Code; or
- (iii) a discharge during the operation of a ship of oil or noxious liquid substances in excess of the quantity or instantaneous rate permitted by MARPOL,

the master or other person having charge of the ship must report to the Director the particulars of such incident without delay and to the fullest extent possible, in accordance with this section, and such report must include –

- (a) the identities of the ship or ships involved,
  - (b) the time, type and location of the incident,
  - (c) the quantity and type of harmful substance involved,
  - (d) details of any assistance received, and,
  - (e) details of any salvage, or other, measures taken.
- (2) Where a ship referred to in sub-section 34(1) is abandoned, or where a report from such a ship is incomplete or unobtainable, the owner or charterer of the ship, or their agent shall, to the fullest extent possible, assume the obligations of the master under this section.
- (3) The Director shall –
- (a) make all arrangements necessary for an appropriate officer or agency to receive and process reports made under this section; and
  - (b) notify the IMO with complete details of such arrangements for circulation to other MARPOL and IMO member States.
- (4) Upon receipt of a report referred to in this section, the Director shall relay the report by the fastest telecommunications channel available and without delay to the Government of the flag State of the ship involved, to the nearest coastal State or States, and to the Government of any other MARPOL member State which may be affected.
- (5) Any person who is obliged to send a report under this section shall, when possible –
- (a) supplement the initial report as necessary and provide information concerning further developments; and
  - (b) comply as fully as possible with requests from affected MARPOL member States for additional information.

- (6) The Minister may make regulations for procedures to be followed in reporting incidents involving harmful substances based on guidelines developed by the IMO.

### **35. MARPOL technical co-operation**

In accordance with the aims and purposes of MARPOL, the Director shall, in consultation with the IMO and other international bodies, and with assistance and co-ordination from the Executive Director of the United Nations Environment Programme, promote support for any MARPOL member States who request technical assistance for –

- (a) the training of scientific and technical personnel,
- (b) the supply of necessary equipment and facilities for reception and monitoring,
- (c) the facilitation of other measures and arrangements to prevent or mitigate pollution of the marine environment by ships, and
- (d) the encouragement of research;

preferably within the States concerned.

## **PART V – OIL POLLUTION PREPAREDNESS, RESPONSE AND COOPERATION**

### **36. Interpretation of Part V**

In this Part, “oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products;

### **37. Oil pollution emergency plans**

Persons having the management of offshore units, sea ports and oil-handling facilities under the jurisdiction of SKN shall have oil pollution emergency plans or similar arrangements that are coordinated with the national system established in accordance with section 40 and approved in accordance with procedures established by the National Coordinator.

### **38. Oil pollution reporting procedures**

- (1) Persons having the management of offshore units, sea ports and oil-handling facilities under the jurisdiction of SKN, and officers of the SKN –
- (a) coast guard;

(b) Department of Maritime Administration;

(c) Police Force; and,

(d) Customs and Immigration Services,

as well as any other officers designated by the Minister for the purposes of this sub-section, must report to the National Coordinator without delay any observed event involving a discharge or probable discharge of oil, or presence of oil at sea.

(2) The master of a SKN ship shall without delay report any event on their ship involving a discharge or probable discharge of oil to the nearest coastal State.

(3) Reports under this section shall be made in accordance with section 34 of this Act, as appropriate.

### **39. Action on receiving an oil pollution report**

(1) Upon receipt of a report made under section 38 of this Act, or pollution information provided by other sources, which the National Coordinator determines constitutes an oil pollution incident, the National Coordinator shall –

(a) assess the nature, extent and possible consequences of the oil pollution incident; and,

(b) without delay, inform the Director, for the Director's onward transmission to the IMO and any States whose interests are affected or likely to be affected by such oil pollution incident, of –

(i) the details of the event,

(ii) the assessment made under sub-paragraph (a),

(iii) any action taken or intended to be taken to deal with the incident, and

(iv) any such further information as appropriate,

until the action taken to respond to the oil pollution incident has been concluded or until joint action has been decided upon by such States.

(2) When exchanging information and communicating with other States and with the IMO pursuant to this section, the National Coordinator shall so far as practicable comply with the reporting system contained in the Manual on Oil Pollution, Section II - Contingency Planning, appendix 2, developed by the

Marine Environment Protection Committee of the IMO.

**40. National and regional systems for oil pollution preparedness and response**

- (1) The National Coordinator shall establish a national system for responding promptly and effectively to oil pollution incidents.
- (2) The National Coordinator shall, in relation to oil pollution, be –
  - (a) the competent national authority with responsibility for preparedness and response;
  - (b) the national operational contact point responsible for the receipt and transmission of reports as referred to in section 38 of this Act; and
  - (c) the authority to act on behalf of the Government to request assistance or to decide to render assistance requested in relation to an oil pollution incident.
- (3) The National Coordinator shall prepare a national contingency oil spill contingency plan for preparedness and response which shall include the organisational relationship of the various bodies involved, whether public or private, taking into account the guidelines contained in the Manual on Oil Pollution, Section II - Contingency Planning, developed by the Marine Environment Protection Committee of the IMO.
- (4) The National Coordinator shall, within available capabilities, either individually or through bilateral or multilateral co-operation, and in co-operation with the oil and shipping industries, port authorities and other relevant entities as appropriate, establish –
  - (a) a minimum level of pre-positioned oil spill combating equipment, commensurate with the risk involved, and programmes for its use;
  - (b) a programme of exercises for oil pollution response organisations and training of relevant personnel;
  - (c) detailed oil pollution incident plans, and continuously available communication capabilities; and
  - (d) arrangements to co-ordinate a response to an oil pollution incident and to mobilise the necessary resources.
- (5) The National Coordinator shall keep the Director updated with –
  - (a) The National Coordinator's location, and telecommunication data,

(b) information concerning pollution response equipment and expertise in disciplines related to oil pollution responses and marine salvage which may be made available to other States, upon request, and

(c) the national contingency plan;

and the Director shall ensure that such information is provided to the IMO, directly or through relevant regional organisation or arrangements.

#### **41. International co-operation in pollution response**

(1) The National Coordinator shall co-operate and provide advisory services, technical support and equipment for the purpose of responding to a serious oil pollution incident, upon the request of any State Party to the OPRC affected or likely to be affected by that oil pollution incident.

(2) The financing of the costs for such assistance shall be based on the provisions set out in the Annex to the OPRC, and in appropriate circumstances, the Director may seek assistance from the IMO in identifying sources of provisional financing for those costs.

(3) In accordance with applicable international agreements, the National Coordinator shall take necessary measures to facilitate the movement of ships, aircraft, other forms of transport, personnel, cargoes, materials and equipment engaged in responding to an oil pollution incident in, through and out of SKN territory and SKN waters.

#### **42. Research and development**

The National Coordinator shall, where appropriate, co-operate directly, or through relevant regional arrangements and/or the IMO, in –

(i) the promotion and exchange of results of research and development programmes,

(ii) establishing links between research institutions within SKN and those of other State Parties to the OPRC,

(iii) the promotion of international symposia, and,

(iv) the development of standards;

relating to the enhancement of state-of-the-art oil pollution preparedness and response, including technologies and techniques for surveillance, containment, recovery, dispersion, clean-up and otherwise minimising or mitigating the effects of

oil pollution, and for restoration.

#### **43. OPRC Technical co-operation**

- (1) The National Coordinator shall, where appropriate, directly or through international bodies provide support for those State Parties to the OPRC which request technical assistance to –
  - (a) train personnel,
  - (b) make available relevant technology, equipment and facilities,
  - (c) facilitate other measures and arrangements to prepare for and respond to oil pollution incidents, and,
  - (d) initiate joint research and development programmes;in respect of oil pollution preparedness and response.
- (2) The National Coordinator shall, where appropriate, co-operate in the transfer of technology in respect of oil pollution preparedness and response.
- (3) The support and transfer of technology referred to in this section may be provided through the IMO, and for such purposes, the Director shall liaise with the IMO.

#### **44. Bilateral and multilateral co-operation in preparedness and response**

The National Coordinator may enter into bilateral or multilateral arrangements for oil pollution preparedness and response, and in such circumstances, the Director shall send to the IMO, copies of relevant instruments or documents relating to such arrangements.

### **PART VI – INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR BUNKER OIL POLLUTION DAMAGE**

#### **45. Compulsory insurance against liability for bunker oil pollution**

- (1) No ship having a gross tonnage, calculated in accordance with the tonnage regulations made under section 48 of the Merchant Shipping Act, of more than 1000 tonnes shall –
  - (i) enter or leave a port in SKN, or offshore terminal in SKN waters,
  - (ii) if the ship is a SKN ship, enter or leave a port or offshore terminal in any other country,

unless there is in force a certificate that complies with the provisions of sub-section 45(2) of this Act.

(2) A certificate required pursuant to this Part must –

(a) show that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article VII of the Bunker Convention;

(b) for a:

(i) SKN ship, be issued by the Director;

(ii) ship registered in a State Party to the Bunker Convention other than SKN, be issued by or under the authority of the government of that country; or

(iii) ship registered in a country which is not a State Party to the Bunker Convention, be issued by the Director or by or under the authority of the government of any other State Party to the Bunker Convention; and

(c) be carried in the ship and produced upon demand by the master to any officer of customs and excise, the Director, or any surveyor authorised by the Director for the purpose.

(3) The master or owner of any ship in contravention of sub-section 45(1) is guilty of an offence, and liable on summary conviction to a fine not exceeding [ \$150,000 ].

(4) The master of any ship in contravention of sub-section 45(2)(c) is guilty of an offence, and liable on summary conviction to a fine not exceeding [ \$10,000 ].

(5) Any ship attempting to leave a port in SKN in contravention of this section may be detained by order of the Director.

#### **46. Issue of certificate by Director**

(1) Where the Director is satisfied in respect of a SKN ship, or a ship registered in a country which is not a State Party to the Bunker Convention, that –

(i) there is or will be in force a contract of insurance or security in respect of the ship satisfying the requirements of Article VII of the Bunker Convention,

(ii) the insurance or security is sufficient to cover the owner's liability under

**Comment [HL13]:** Similar offence in the Merchant Shipping Act has a penalty of \$25,000

the Bunker Convention, and

- (iii) the person providing the insurance or other security will be able to meet the obligations thereunder,

the Director shall upon application issue a certificate to the owner of the ship for a period of validity no longer than the period of validity of the insurance or other security.

- (2) The Director shall make available for public inspection a copy of any certificate issued under this section in respect of a SKN ship.

#### **47. Cessation and cancellation of certificates**

- (1) Where a person to whom a certificate has been issued under section 46 of this Act ceases to be the owner of the ship to which the certificate relates, the certificate shall cease to be valid, and that person shall immediately deliver up the certificate to the Director for cancellation.

- (2) Where, at any time while a certificate issued under section 46 of this Act is in force –

- (a) it is established in any legal proceedings that the contract of insurance or other security in respect of which the certificate was issued is or may be treated as invalid, or
- (b) circumstances arise in relation to any insurer or guarantor named in the certificate such that, if the certificate were applied for at that time, the Director would be entitled to refuse the application,

the certificate may be cancelled by the Director and, if so cancelled, shall on demand immediately be delivered up to the Director by the person to whom the certificate was issued.

#### **48. Liability for bunker oil pollution damage**

- (1) In this section “ship” shall include a vessel that is not sea-going.
- (2) Subject to sub-section 48(4), where any bunker oil is discharged from a ship, the owner of the ship, or other person listed in section 49 of this Act, shall be liable -
  - (a) for the costs of reasonable reinstatement measures undertaken or to be undertaken in respect of any environmental damage caused outside the ship in the SKN waters or on land in SKN by contamination resulting from the discharge;

- (b) for the cost of any measures taken for the purpose of preventing or minimising any such damage; and
- (c) for any damage caused in the SKN waters or on land in SKN by any preventative measures so taken.

(3) Where -

- (a) liability is incurred under this section by the owner of each of two or more ships, but
- (b) the damage or cost for which each of the owners would be liable cannot reasonably be separated from that for which the other or others would be liable,

each of the owners shall be liable jointly with the other or others, for the whole of the damage or cost for which the owners together would be liable under this section.

(4) No liability shall be incurred under this section where the owner can prove that the discharge or threat of pollution or other damage –

- (i) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;
- (ii) was wholly caused by an act or omission done with the intent to cause damage by a third party; or
- (iii) was wholly caused by the negligence or wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

#### **49. Restriction of liability for bunker oil pollution**

Where a liability occurs under section 48, the following person shall incur liability only to the extent that the damage or cost resulted from anything done or omitted to be done by that person either with intent to cause any such damage or cost, or recklessly and in the knowledge that any such damage or cost would probably result –

- (a) a servant or agent of the owner of the ship;
- (b) a person employed or engaged in any capacity on board the ship or to perform any service for the ship;

- (c) a charterer of the ship howsoever described and including a bareboat charterer;
- (d) a manager or operator of the ship;
- (e) a person performing salvage operations with the consent of the owner of the ship or on the instructions of a competent public authority;
- (f) a person taking measures in accordance with sub-section 48(2)(ii); or
- (g) a servant or agent of a person falling within paragraph 49(c), (d) or (e).

#### **50. Government ships**

- (1) In relation to a ship owned by a State and for the time being used for commercial purposes it shall be sufficient compliance for the purposes of section 45 if there is in force a certificate issued by the government of that State showing that the ship is owned by that State and that any liability for pollution damage, as defined in the Bunker Convention, will be met.
- (2) Every State Party to the Bunker Convention shall, for the purposes of any proceedings brought in SKN to enforce a claim under the Bunker Convention, be deemed to have submitted to the jurisdiction of the Court of SKN, and accordingly rules of Court may provide for the manner in which such proceedings are to be commenced and carried on; but nothing in this sub-section shall authorise the issue of execution against the property of any State.

#### **51. Saving for recourse actions**

Nothing in this Part shall prejudice any claim, or the enforcement of any claim, a person incurring any liability under this Part may have against another person in respect of that liability.

### **PART VII – LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES**

#### **52. Interpretation of Part VII**

- (1) In this Part, “carriage by sea”, “damage”, “ and noxious substances”, “HNS Fund”, “incident”, “preventive measures”, and “terminal” shall have the same interpretations as those provided in Article 1 of the HNS Convention.
- (2) In interpreting the definition of “hazardous and noxious substances” any

reference in that definition to a particular convention or code shall be taken to be a reference to that convention or code as amended from time to time.

### **53. Application of Part VII**

- (1) This Part shall apply exclusively to –
  - (a) damage caused on land or in the internal waters and territorial sea of SKN;
  - (b) damage by contamination of the environment in the exclusive economic zone of SKN;
  - (c) damage, other than damage by contamination of the environment, caused outside of SKN, if this damage has been caused by a hazardous and noxious substance carried on board a SKN ship, or a ship registered in a State Party to the HNS Convention, or in the case of an unregistered ship, a ship entitled to fly the flag of a State Party to the HNS Convention; and
  - (d) preventive measures, wherever taken,arising from the carriage of hazardous and noxious substances by sea.
- (2) This Part shall not apply to –
  - (a) pollution damage as defined in the International Convention on Civil Liability for Oil Pollution Damage 1969, as amended, whether or not compensation is payable in respect of it under that Convention; and
  - (b) damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code adopted by the IMO on 6 November 1991 by Resolution A.716(17), or in the International Maritime Solid Bulk Cargoes Code, as may be amended from time to time.
- (3) Where ships owned by a State Party to the HNS Convention are used for commercial purposes, the State shall be subject to suit in SKN if such a ship has caused such damage as is referred to in paragraphs (a) and/or (b) of sub-section 53(1) of this Act, and preventive measures have been taken; and in such a case, the State shall waive all defences based on its status as a sovereign State.

### **54. Liability of the registered owner**

- (1) Except as provided in sub-sections 54(2) and (3) of this Act, the registered owner at the time of an incident shall be liable for damage caused by any hazardous and noxious substances in connection with their carriage by sea on board the ship, provided that if an incident consists of a series of occurrences having the same origin the liability shall attach to the registered owner at the time of the first of such occurrences.
- (2) Liability shall not attach to the registered owner under this section, insofar as the registered owner proves that the damage –
  - (a) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;
  - (b) was wholly caused by an act or omission done with the intent to cause damage by a third party;
  - (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or
  - (d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either –
    - (i) has caused damage, wholly or partly; or
    - (ii) has led the owner not to obtain insurance in accordance with section 61 of this Act;provided that neither the registered owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.
- (3) Where the registered owner proves that the damage resulted wholly or partly either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from liability to such person.
- (4) No claim for compensation for damage shall be made against the registered owner otherwise than in accordance with this Part.
- (5) Subject to sub-section 54(6), no claim for compensation for damage under this Part or otherwise may be made against –

- (a) the servants or agents of the registered owner or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) any charterer howsoever described, including a demise or bareboat charterer,
- (d) a manager or operator of the ship;
- (e) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (f) any person taking preventive measures; and
- (g) the servants or agents of persons mentioned in paragraphs (c), (d), (e) and (f);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

- (6) Nothing in this Part shall prejudice any existing right of recourse of the owner against any third party, including, but not limited to, the shipper or the receiver of the substance causing the damage, or the persons indicated in sub-section 54(5).

#### **55. Incidents involving two or more ships**

- (1) Whenever damage has resulted from an incident involving two or more ships each of which is carrying hazardous and noxious substances, each owner, unless exonerated under section 54 of this Act, shall be liable for the damage.
- (2) The registered owners referred to in sub-section 55(1) shall be jointly and severally liable for all such damage which is not reasonably separable; and shall be entitled to the limits of liability applicable to each of them under section 56 of this Act.
- (3) Nothing in this section shall prejudice any right of recourse of a registered owner against any other owner.

#### **56. Limitation of liability**

- (1) The registered owner of a ship shall be entitled to limit liability under this

Part in respect of any one incident to an aggregate amount calculated in accordance with, and within the limits set by, the HNS Convention.

- (2) The registered owner shall not be entitled to limit liability under this Part if it is proved that the damage resulted from the personal act or omission of the owner, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

#### **57. Limitation fund**

- (1) In order to benefit from the limitation of liability provided under section 56 of this Act –
  - (a) a registered owner must make a deposit with the Court, or produce a bank or other guarantee acceptable to the Court, to constitute a fund for the total sum established in accordance with section 56;
  - (b) the insurer or other person providing financial security shall be entitled to constitute a fund in accordance with this section on the same conditions and having the same effect as if it were constituted by the registered owner; and
  - (c) such a fund may be constituted even if, under the provisions of section 56(2), the registered owner is not entitled to limitation of liability, but its constitution shall in that case not prejudice the rights of any claimant against the owner.
- (2) Subject to section 60 of this Act, a fund constituted under this Part shall be distributed among the claimants in proportion to the amounts of their established claims; and claims in respect of expenses reasonably incurred or sacrifices reasonably made by the registered owner voluntarily to prevent or minimise damage shall rank equally with other claims against the fund.

#### **58. Limitation fund to be constituted in dollars**

- (1) A payment into Court for the constitution of a fund under this Part shall be made in dollars and for the purpose of converting such an amount from special drawing rights into dollars, one special drawing right shall be treated as equal to such a sum in dollars as the International Monetary Fund have fixed as being the equivalent of one special drawing right for –
  - (i) the day on which the amount of the limit is determined; or
  - (ii) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed.
- (2) A certificate given by or on behalf of the Minister, stating that a sum has

been fixed in accordance with this section, shall be conclusive evidence of that.

#### **59. Bar to other actions**

- (1) Subject to sub-section 59(2), where the registered owner, after an incident, has constituted a fund in accordance with the provisions of this Part and is entitled to limit liability –
  - (a) no person having a claim for damage arising out of that incident shall be entitled to exercise any right against any other assets of the registered owner in respect of such claim; and
  - (b) the Court shall order the release of any ship or other property belonging to the registered owner which has been arrested in respect of a claim for damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.
- (2) Sub-section 59(1) shall only apply if the claimant is able to bring a claim before the Court and the fund is actually available in respect of that claim.

#### **60. Death and injury**

Claims brought under this Part in respect of death or personal injury shall have priority over other claims, save to the extent that the aggregate of such claims exceeds two-thirds of the total amount established in accordance with section 56 of this Act.

#### **61. Compulsory insurance of the owner**

- (1) The registered owner of –
  - (a) a SKN ship operating anywhere, or
  - (b) a ship registered in a State Party to the HNS Convention operating in SKN waters,which is carrying hazardous and noxious substances must maintain insurance or other financial security to cover liability for damage, sufficient to meet the relevant limit of liability established in accordance with section 56 of this Act.
- (2) Upon determining that the requirements of this section have been satisfied, the Director shall issue to each SKN ship a compulsory insurance certificate, for a period of validity no longer than the period of validity of the insurance or other security.

- (3) A compulsory insurance certificate issued by the Director or by a State Party to the HNS Convention in the form specified in the HNS Convention, and in English or with text that includes an English translation, must be carried on board every ship to which this section applies; and a copy of that certificate shall be deposited with the Director.
- (4) An insurance or other financial security shall not satisfy the requirements of this section if it can cease, for reasons other than the expiry of the specified period of validity, before three months have elapsed from the date on which notice of its termination is given to the Director, unless within that period the compulsory insurance certificate has been surrendered to the Director, or a new compulsory insurance certificate has been issued.
- (5) The Director may at any time request consultation with an issuing or certifying State should the Director believe that the insurer or guarantor named in the compulsory insurance certificate is not financially capable of meeting the obligations imposed by this Part.
- (6) Any sums provided by insurance or by other financial security maintained in accordance with sub-section 61(1) shall be available exclusively for the satisfaction of claims under this Part.
- (7) The master or registered owner of any ship in contravention of sub-section 61(1) is guilty of an offence, and liable on summary conviction to a fine not exceeding [\$150,000].
- (8) The master or registered owner of any ship in contravention of sub-section 61(3)(2) is guilty of an offence, and liable on summary conviction to a fine not exceeding [\$10,000].
- (9) Any ship attempting to leave a port or offshore terminal in SKN in contravention of this section the ship may be detained by order of the Director.

## **62. Government ships**

- (1) In relation to a ship owned by a State and for the time being used for commercial purposes it shall be sufficient compliance for the purposes of section 61 if there is in force a certificate issued by the government of that State showing that the ship is owned by that State and that any liability arising under the HNS Convention will be met.
- (2) The provisions of section 61 shall not be applicable to a ship owned by SKN Government, but such ship shall carry a compulsory insurance certificate issued by the Director stating that the ship is owned by the Government and that the ship's liability is covered within the limit prescribed in accordance

with section 56 of this Act, and such certificate shall follow as closely as possible the form specified in the HNS Convention.

### **63. Compensation for damage under this Part**

Any claim for compensation for damage under this Part may be brought directly against the insurer or other person providing financial security for the registered owner's liability for damage (hereinafter 'the defendant'); and in such case –

- (a) the defendant may, even if the registered owner is not entitled to limitation of liability, benefit from the limit of liability established in section 56;
- (b) the defendant may invoke the defences (other than the bankruptcy or winding up of the registered owner) which the registered owner would have been entitled to invoke, or may invoke the defence that the damage resulted from the wilful misconduct of the owner; and
- (c) the defendant may require the registered owner to be joined in the proceedings.

### **64. Prohibitions under this Part**

- (1) No SKN ship to which this Part applies shall trade unless a certificate has been issued under sub-section 61(2).
- (2) No ship to which this Part applies shall enter or leave a port or offshore facility in SKN unless there is in force in respect of that ship insurance or other security in the amounts specified in sub-section 61(1).

### **65. International Hazardous and Noxious Substances Fund**

All matters relating to the HNS Fund shall be governed by the provisions of Chapter III, the relevant provisions of Chapter IV, and Article 52 of the HNS Convention; and any applicable regulations that may be prescribed under this Act.

## **PART VIII – CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS**

### **66. Interpretation of Part VIII**

In this Part –

“company” means the owner of the ship or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code; and

“gross tonnage” means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships 1969 as amended, or any successor Convention.

#### **67. Application of Part VIII**

- (1) Except where expressly provided otherwise, this Part shall apply to –
  - (a) SKN ships, and
  - (b) other ships when in SKN waters.
  
- (2) This Part shall not apply to –
  - (a) ships –
    - i. not designed or constructed to carry ballast water,
    - ii. that only operate in SKN waters,
    - iii. that only operate in SKN waters and the high seas,  
unless the Director determines that the discharge of ballast water from such ships would impair or damage the environment, human health, property, resources of SKN, or those of adjacent or other States; and
  - (b) permanent ballast water in sealed tanks on ships, which is not subject to discharge.
  
- (3) With respect to the application of this Part, no more favourable treatment than is provided for under the Ballast Convention shall be given to ships of States which are not State Parties to the Ballast Convention.

#### **68. Surveys for the Purpose of the Ballast Convention**

All ships of 400 gross tonnage and above to which this Part apply, but excluding –

- (a) floating platforms,
- (b) floating production, storage and off-loading vessels, and
- (c) floating storage and offloading units;

shall be subject to the surveys specified in Regulation E-1 of the Annex to the Ballast Convention; and such surveys shall be endorsed on the Ballast Certificate as required by the Ballast Convention.

### **69. Issue of Ballast Certificate**

A Ballast Certificate shall be issued by the Director, or on behalf of the Director by any person or organisation duly authorised by the Director, to any SKN ship upon successful completion of a survey under section 68 and in accordance with this Part.

### **70. Issue of Ballast Certificate upon request by a State Party**

- (1) The Director may at the request of the Government of a State Party to the Ballast Convention cause a ship to be surveyed in accordance with section 68 of this Act and, upon successful completion of such survey, the Director shall issue or authorise the issue of a Ballast Certificate to the ship in accordance with this Part.
- (2) A Ballast Certificate issued under this section shall contain a statement to the effect that it has been issued at the request of the Government of a State Party to the Ballast Convention; and a copy of it together with a copy of the survey report shall be transmitted as early as possible to the Government requesting the survey.
- (3) The Director may request the Government of a State Party to the Ballast Convention to issue a Ballast Certificate in respect of a SKN ship, and such Ballast Certificate shall have the same force and receive the same recognition in SKN as a Ballast Certificate issued by the Director under this Part.
- (4) No Ballast Certificate shall be issued under this Part to a ship which does not fly the flag of a State Party to the Ballast Convention.

### **71. Form of Ballast Certificate**

A Ballast Certificate shall be in the form prescribed in the Ballast Convention, and shall be of such duration and validity as is specified in Regulation E-5 of the Annex to the Ballast Convention.

### **72. Corrective action**

When the Director, a nominated surveyor, or a recognised organisation determines that a ship's ballast water management –

- (i) does not conform to the particulars of its Ballast Certificate, or
- (ii) is such that the ship is not fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources,

such person shall –

- (a) not issue the Ballast Certificate, or secure its withdrawal, as appropriate,
- (b) immediately require corrective action to be taken to bring the ship into compliance, and
- (c) if the ship is in the port of another State Party to the Ballast Convention, notify the appropriate authorities of that State immediately.

### **73. Report of accidents and defects**

- (1) In the event that an accident occurs, or a defect is discovered, which substantially affects the ability of a ship to which this Part applies to conduct ballast water management in accordance with the Ballast Convention or this Act, the owner, operator or other person in charge of the ship shall make a report at the earliest opportunity to the Director, the recognised organisation or the nominated surveyor responsible for issuing the ship's Ballast Certificate, and to the port State, where the ship is in the port of a State Party to the Ballast Convention.
- (2) A recipient in SKN of a report pursuant to sub-section 73(1) shall determine whether a survey is required pursuant to section 68 of this Act.

### **74. Ballast water management**

Every ship to which this Part applies must –

- (a) have on board and implement a ballast water management plan, in accordance with Regulation B-1 of the Annex to the Ballast Convention; and
- (b) conduct ballast water management in accordance with Regulation B-3 of the Annex to the Ballast Convention.

### **75. Maintenance requirements**

The owner, master or agent of any ship to which this Part applies shall ensure that –

- (a) the condition of the ship and its equipment, systems and processes are maintained to conform with the provisions of the Ballast Convention to ensure that the ship in all respects remains fit to proceed to sea without presenting a threat of harm to the environment, human health, property

or resources from its ballast water management; and

- (b) after any survey of the ship under this Part has been completed, no change is made in the ship's structure, or the equipment, fittings, arrangements or material associated with the ship's ballast water management plan and covered by the survey, without the prior approval of the Director, except the direct replacement of such equipment or fittings.

#### **76. Transfer of flag**

- (1) Upon transfer of a SKN ship to the flag of a State Party to the Ballast Convention, where such State so requests within three months after the transfer has taken place, the Director shall transmit as soon as possible to the Government of the State concerned, a copy of the Ballast Certificate carried by the ship before the transfer and, if available, a copy of the ship's most recent survey report.
- (2) Where a ship is transferred to a SKN flag, a new Ballast Certificate shall only be issued when the Director is fully satisfied that the ship is in full compliance with the requirements of this Part.

#### **77. Discharge of Ballast Water controlled**

Except where expressly provided otherwise, the owner and master of a ship shall ensure that the discharge of ballast water is only conducted through ballast water management in accordance with the Ballast Convention.

#### **78. Exceptions from control**

Any measures adopted, whether pursuant to this Part or otherwise, shall not apply to –

- (a) the uptake or discharge of ballast water and sediments necessary for the purpose of ensuring the safety of a ship in emergency situations or saving life at sea;
- (b) the accidental discharge or ingress of ballast water and sediments resulting from damage to a ship or its equipment –
  - i. provided that all reasonable precautions have been taken before and after the occurrence of the damage or discovery of the damage or discharge for the purpose of preventing or minimizing the discharge; and
  - ii. unless the owner, company or officer in charge wilfully or recklessly caused damage;

- (c) the uptake and discharge of ballast water and sediments when being used for the purpose of avoiding or minimizing pollution incidents from the ship;
- (d) the uptake and subsequent discharge on the high seas of the same ballast water and sediments; or
- (e) the discharge of ballast water and sediments from a ship at the same location where the whole of that ballast water and sediments originated and provided that no mixing with unmanaged ballast water and sediments from other areas has occurred.

#### **79. Ballast water record book**

- (1) Every ship to which this Part applies must have on board a ballast water record book that complies with Regulation B-2 of the Annex to the Ballast Convention; and entries must be made in the ballast water record book as required by Regulation B-3.3 and B-3.5 and B-4 of the Annex to the Ballast Convention.
- (2) Ballast water record book entries must be maintained on board the ship for a minimum period of two years after the last entry has been made, and thereafter in the company's control for a minimum period of three years.
- (3) The ballast water record book shall be kept readily available for inspection at all reasonable times and, in the case of an unmanned ship under tow, may be kept on the towing ship.

#### **80. Ballast water exchange**

Any ship to which this Part applies that conducts ballast water exchange to meet the standard in Regulation D-1 of the Annex to the Ballast Convention must do so in accordance with Regulation B-3 of the Annex to the Ballast Convention.

#### **81. Management of sediments**

Every ship to which this Part applies shall remove and dispose of sediments in accordance with Regulation B-5 of the Annex to the Ballast Convention.

#### **82. Exemptions**

The Director may grant exemptions to the requirements of this Part in accordance with Regulation A-4 of the Annex to the Ballast Convention.

#### **83. Additional measures established by Merchant Shipping Notice**

- (1) The Director may publish a Merchant Shipping Notice to establish

measures to provide equivalent compliance with the requirements of this Part for pleasure craft used solely for recreation or competition, or craft used primarily for search and rescue, less than 50 metres in overall length and with a ballast water capacity of no more than eight cubic metres, which shall take into account the IMO's Guidelines for Ballast Water Management Equivalent Compliance (G3).

- (2) The Director may, with the approval of the IMO, publish a Merchant Shipping Notice to establish measures additional to this Part which the Director considers necessary to prevent, reduce or eliminate the transfer of harmful aquatic organisms and pathogens through ships' ballast water and sediments, which shall take into account the relevant Guidelines developed by the IMO.
- (3) The Director may publish a Merchant Shipping Notice describing areas in SKN waters where ships should not uptake ballast water.
- (4) The owner and master of any ship falling within the scope of any additional measures established under this section must comply with those additional measures.

#### **84. Warnings concerning ballast water uptake in certain areas**

- (1) The Director shall notify the IMO and any potentially affected State Parties to the Ballast Convention of any areas identified under sub-section 83(3), and such notification shall include –
  - (a) the time period such warning is likely to be in effect,
  - (b) the co-ordinates of the area or areas,
  - (c) the location of any alternative area or areas for the uptake of ballast water, and
  - (d) advice to ships needing to uptake ballast water in the area, describing any arrangements made for alternative supplies.
- (2) The Director shall notify mariners, the IMO, and any potentially affected State Parties to the Ballast Convention when a notification given concerning ballast water uptake in certain areas is no longer applicable.

#### **85. Cleaning or repair of ballast tanks at SKN ports**

- (1) Every authority of a port, or operator of a terminal, in SKN where cleaning or repair of ballast tanks occurs must –
  - (a) notify the Director that cleaning or repair of ballast tanks is

undertaken at that port or terminal, and

(b) provide adequate facilities for the reception of sediments from ships taking into account relevant IMO Guidelines, and without causing undue delay to ships or impairment or damage to the environment, human health, property or resources of SKN or other State Parties to the Ballast Convention.

(2) The Minister may make a designation that certain ports or terminals may or may not be used for the purposes of cleaning or repair of ballast tanks.

#### **86. Inspection of ships for Ballast Convention purposes**

(1) A ship to which this Part applies may, in any port or offshore terminal of SKN, be subject to inspection by officers appointed or authorised by the Director for the purpose of verifying whether the ship is in compliance with this Part, and such inspection may include –

(a) verifying that there is on board a valid Ballast Certificate,

(b) inspecting of the ballast water record book, and

(c) sampling the ship's ballast water, in accordance with any relevant the guidelines of the IMO, provided that the time required to analyse the samples shall not be used as a basis for unduly delaying the operation, movement or departure of the ship.

(2) Where a ship to which the requirement applies does not carry a valid Ballast Certificate or ballast water record book, or there are clear grounds for believing that –

(a) the condition of the ship or its equipment does not correspond substantially with the particulars of the Ballast Certificate,

(b) the master or the crew are not familiar with essential shipboard procedures relating to ballast water management, or have not implemented such procedures, or

(c) the sampling indicates that the ship poses a threat to the environment, human health, property or resources,

a more detailed inspection may be carried out; and the inspector shall take such steps as are necessary or expedient to prevent the ship discharging Ballast Water until it can do so without presenting a threat of harm to the environment, human health, property or resources.

(3) Where a State Party to the Ballast Convention furnishes sufficient evidence to the Director that a ship to which this Part applies is operating or has

operated in violation of a provision in the Ballast Convention, and requests an investigation, the Director may inspect such ship when it enters a port or offshore terminal of SKN, and shall send the report of such investigation to the Government of the State requesting it, and to the Government of the State under whose authority the ship is operating, so that appropriate action may be taken.

#### **87. Notification of control actions**

Where an inspection undertaken under this Part indicates a violation of the Ballast Convention, the Director shall notify the ship and shall furnish to the Government of the State concerned evidence, if any, and a report pertaining to the violation.

#### **88. Offences and penalties**

- (1) It shall be the duty of the owner and master of the ship to comply with, and ensure compliance with, the provisions of this Part; and it shall be the duty of any other person upon whom an obligation is placed by or under this Part to comply or ensure compliance with that obligation, and any person contravening this sub-section shall be guilty of an offence and liable on summary conviction to a fine not exceeding [\$300,000].
- (2) It shall be a defence to a charge under sub-section 88(1) where it can be shown that the person charged took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

### **PART IX – CONTROL OF ANTI-FOULING SYSTEMS ON SHIPS**

#### **89. Interpretation of Part IX**

In this Part “ship” includes fixed platforms.

#### **90. Application of Part IX**

- (1) Except as expressly provided otherwise, this Part shall apply to –
  - (a) all SKN ships;
  - (b) all ships operating under the authority of a State Party to the AFS Convention within SKN waters; and
  - (c) any other ship voluntarily entering a port or offshore terminal of SKN.
- (2) Notwithstanding sub-section 90(1), no more favourable treatment shall be given to ships of States which are not State Parties to the AFS Convention than is provided for under the AFS Convention and this Part.

### **91. Prohibition on anti-fouling systems**

- (1) A ship to which this Part applies must comply with the requirements of Annex 1 to the AFS Convention.
- (2) Any steps taken to bring a ship into compliance with this section, including the treatment and disposal of waste, must be taken in a safe and environmentally sound manner to protect human health and the environment.
- (3) Where a ship to which this Part applies bears an anti-fouling system that becomes controlled by a subsequent amendment to Annex 1 to the AFS Convention, that ship must be brought into compliance within 60 months of the date of amendment or by any other earlier date if so required by the Marine Environment Protection Committee of the IMO.

### **92. Monitoring of the risks of effects of pollution**

The Director shall take appropriate measures to observe, measure, evaluate and analyse the effects of anti-fouling systems; and shall promote the sharing of relevant information upon request by any State Party to the AFS Convention.

### **93. Surveys and certificates for the purposes of the AFS Convention**

- (1) All SKN ships shall be subject to such surveys, certification or declaration as are required by Annex 4 to the AFS Convention.
- (2) Where surveys carried out in SKN in accordance with this section are satisfactory, the Director shall issue the appropriate certificates in accordance with Annex 4 to the AFS Convention.
- (3) A certificate issued by a State Party to the AFS Convention in accordance with Annex 4 to the AFS Convention shall be accepted by the Director as having the same validity as a corresponding certificate issued under subsection 93(2) of this Act.
- (4) The grant, revocation, extension, validation, suspension, exemption from, and variation of, and the form and recording, of certificates issued in SKN under this section must be conducted in accordance with the AFS Convention.
- (5) The Director may establish measures to ensure that the appropriate provisions of this Part are complied with by SKN ships that are not subject to the surveys required by Annex 4 of the AFS Convention.

### **94. Transfer of flag**

- (1) Upon transfer of a SKN ship to the flag of a State Party to the AFS

Convention, where such State so requests within three months after the transfer has taken place, the Director shall transmit as soon as possible to the Government of the State concerned a copy of the AFS Convention Certificate carried by the ship before the transfer and, if available, a copy of the ship's most recent survey report.

- (2) Where a ship is transferred to a SKN flag, a new AFS Convention Certificate shall only be issued when the Director is fully satisfied that the ship is in full compliance with the requirements of this Part.

### **95. Inspection of ships for AFS Convention purposes**

- (1) A ship to which this Part applies may, in any port or offshore terminal of SKN, be subject to inspection by officers appointed or authorised by the Director for the purpose of verifying whether the ship is in compliance with this Part and the AFS Convention, and such inspection may include –
  - (a) verifying that there is on board a valid AFS Convention Certificate or Declaration,
  - (b) a brief sampling the ship's anti-fouling system, in accordance with any relevant guidelines of the IMO, provided this does not affect the integrity, structure or operation of the anti-fouling system, and provided that the time required to analyse the samples shall not be used as a basis for unduly delaying the operation, movement or departure of the ship.
- (2) Where there are clear grounds for believing that a ship is in violation of this Part, a thorough inspection may be carried out in accordance with any relevant guidelines of the IMO.
- (3) Where a State Party to the AFS Convention furnishes sufficient evidence to the Director that a ship to which this Part applies is operating or has operated in violation of a provision in the AFS Convention, and requests an investigation, the Director may inspect such ship when it enters a port or offshore terminal of SKN, and shall send the report of such investigation to the Government of the State requesting it, and to the Government of the State under whose authority the ship is operating, so that appropriate action may be taken.

## **PART X – REMOVAL OF WRECKS**

### **96. Interpretation of Part X**

For the purposes of this Part –

- (a) “hazard” means any condition or threat that poses a danger or

**Comment [LH14]:** SKN is not signatory to this Convention. SKN may wish to delete this Part XI in its entirety, or retain it in the Bill, but only bring Part XI into force (by Order) if and when SKN has acceded to the Wrecks Convention.

impediment to navigation; or that may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of any State; and

- (b) in determining whether or not a wreck poses a hazard for the purposes of this Part, the Director shall take into account the criteria provided by the Wreck Convention.

#### **97. Application of Part X**

This Part –

- (a) applies in relation to the removal of any wreck in SKN's exclusive economic zone, or any wreck of an SKN ship in any location; save for any measures taken under the Intervention Convention; and
- (b) does not apply to the territorial sea of SKN, where, for the avoidance of doubt, Part XII of the Merchant Shipping Act shall apply.

#### **98. Compulsory insurance and certification**

- (1) This section applies to –
  - (a) SKN ships operating anywhere, and
  - (b) ships registered in a State Party to the Wreck Convention which are operating in the exclusive economic zone of SKN.
- (2) The registered owner of a ship to which this section applies, and which is over 300 gross tonnage, calculated in accordance with the tonnage regulations made under section 48 of the Merchant Shipping Act, must maintain insurance or other financial security sufficient to cover liability under this Part.
- (3) A certificate issued by the Director or by a State Party to the Wreck Convention must be carried on board every ship to which this section applies.
- (4) Upon a determination by the Director that the requirements of sub-section 98(2)(1) have been satisfied by a ship to which this section applies, the Director, or a person authorised by the Director for the purpose, may issue to that ship a certificate in the form set out in the Wreck Convention and its annex, for a period of validity no longer than the period of validity of the insurance or other security.
- (5) An insurance or other financial security shall not satisfy the requirements of this section if it can cease, for reasons other than the expiry of the specified

period of validity, before three months have elapsed from the date on which notice of its termination is given to the Director, unless within that period the compulsory insurance certificate has been surrendered to the Director, or a new compulsory insurance certificate has been issued.

- (6) The Director may at any time request consultation with another State that has issued a certificate under the Wreck Convention should the Director believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this Part.
- (7) No SKN ship to which section 98(1) applies shall fly the flag of SKN unless a certificate has been issued under section 98(4).
- (8) No ship to which this section applies shall enter or leave a port or offshore facility in SKN unless there is in force in respect of that ship insurance or other security sufficient to cover liability under this Part.
- (9) The master or registered owner of any ship in contravention of sub-section 98(2) is guilty of an offence, and liable on summary conviction to a fine not exceeding [\$150,000].
- (10) The master or registered owner of any ship in contravention of sub-section 98(3) is guilty of an offence, and liable on summary conviction to a fine not exceeding [\$10,000].

## **99. Government ships**

In relation to a ship owned by a State Party to the Wreck Convention, it shall be sufficient compliance for the purposes of section 98(3) if there is in force a certificate issued by the government of that State showing that the ship is owned by that State and that the ship's liability under the Wreck Convention will be met.

## **100. Reporting wrecks**

- (1) The master or operator of any SKN ship involved in a maritime casualty resulting in a wreck within the exclusive economic zone of a State Party to the Wreck Convention must report without delay to that affected State Party and to the Director.
- (2) The master or operator of any ship registered in a State Party to the Wreck Convention, and involved in a maritime casualty resulting in a wreck within the exclusive economic zone of SKN, must report without delay to the Director.

## **101. Content of wreck reports**

A report made pursuant to section 100 of this Act must be made in writing and must

contain –

- (a) the name and principal place of business of the registered owner of the ship;
- (b) the precise location of the wreck;
- (c) the type, size and construction of the wreck;
- (d) the nature of the damage to, and the condition of, the wreck;
- (e) the nature and quantity of the cargo, in particular any hazardous and noxious substances;
- (f) the amounts and types of oil on board, including bunker oil and lubricating oil; and
- (g) any other relevant information that will assist the affected State Party to determine the extent to which the wreck poses a hazard.

**102. Locating and marking wrecks**

- (1) Upon becoming aware of a wreck within the exclusive economic zone of SKN the Director shall –
  - (a) use all practicable methods to warn mariners and other relevant persons, States or organisations of the nature and location of the wreck as a matter of urgency; and
  - (b) determine whether the wreck poses a hazard.
- (2) Where the Director determines that a wreck within the exclusive economic zone of SKN poses a hazard, the Director shall –
  - (a) take all practicable steps to establish the precise location of the wreck;
  - (b) take all reasonable steps to mark the wreck, in conformity insofar as is practicable with the internationally accepted system of buoyage in use within the exclusive economic zone of SKN;
  - (c) promulgate the particulars of the marking of the wreck by use of all appropriate means, including appropriate nautical publications; and
  - (d) immediately inform –
    - (i) the ship's registered owner, and in writing provide notice –
      - A. setting a reasonable deadline for the removal of the

wreck by the registered owner,

B. stating that if the registered owner does not remove the wreck within that deadline, the Director may remove the wreck at the registered owner's expense,

C. where the Director intends to intervene in the wreck removal; and

(ii) the State of the ship's registry and consult with that State, and any other affected State, regarding measures to be taken in relation to the wreck.

### **103. Requirements on a wreck's registered owner**

(1) Where the Director has determined that a wreck within the exclusive economic zone of SKN poses a hazard, the registered owner must –

(a) remove the wreck in accordance with the deadline provided by the Director, and may contract with a salvor or other person to perform the removal; and

(b) provide the Director with evidence of insurance or other financial security as required by section 98.

(2) A registered owner in contravention of sub-section 103(1)(a) or (b) is guilty of an offence, and liable on summary conviction to a fine not exceeding [\$150,000].

(3) Where –

(a) the registered owner cannot be contacted,

(b) the registered owner does not remove the wreck within the deadline set by the Director by notice pursuant to section 102(2)(2)(d)(i), or

(c) immediate action is required and the Director has complied with section 102(2)(2)(d);

the Director may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

### **104. Measures taken by the Director to remove a wreck**

The Director may intervene in a wreck removal, lay down conditions to the registered owner, or take any other such measures in relation to the removal of a

wreck within the exclusive economic zone of SKN, provided these –

- (a) are proportionate to the hazard posed;
- (b) do not go beyond what is reasonably necessary for the removal of the wreck; and
- (c) do not unnecessarily interfere with the rights and interests of other States, or any person concerned.

**105. Liability of a wreck's registered owner**

- (1) The registered owner shall be wholly liable for the costs of locating, marking and removed a wreck pursuant to this Act save –
  - (a) where the registered owner proves that the maritime casualty that caused the wreck –
    - (i) resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;
    - (ii) was wholly caused by an act or omission done with the intent to cause damage by a third party; or
    - (iii) was wholly caused by the negligence or wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function;
  - (b) insofar as the registered owner has legitimately limited liability in accordance with any applicable national or international regime; or
  - (c) to the extent that liability for such costs would be in conflict with –
    - (i) the International Convention on Civil Liability for Oil Pollution Damage 1969 as applicable to SKN,
    - (ii) other provisions of this Act,
    - (iii) provisions of the Merchant Shipping Act, or
    - (iv) any other national law in force governing limitation of liability for nuclear damage.
- (2) Nothing in this section shall prejudice any right of recourse against third parties.

**106. Compensation for damage under this Part**

Any claim for compensation for damage under this Part may be brought directly against the insurer or other person providing financial security for the registered owner's liability for damage (hereinafter 'the defendant'), and in such case –

- (a) the defendant may benefit from an applicable limit of liability under the laws of SKN, even if the registered owner is not entitled to limitation of liability;
- (b) the defendant may invoke the defences (other than the bankruptcy or winding up of the owner) which the owner would have been entitled to invoke, or may invoke the defence that the damage resulted from the wilful misconduct of the owner; and
- (c) the defendant may require the owner to be joined in the proceedings.

**PART XI - ENFORCEMENT, LEGAL PROCEEDINGS AND JURISDICTION**

**107. Powers of officers**

The Director, or a person authorised by the Director for the purpose, may board, inspect and survey any ship to which this Act affords jurisdiction, enter port facilities in SKN, demand the production of documents, records and other evidence, and take testimony of witnesses under oath, for the purpose of conducting inspections and surveys and for undertaking other activities authorised or required under this Act.

**108. Director action upon violation of this Act**

- (1) Where the Director has reason to believe that a ship proposing to enter a SKN port or offshore terminal is not in compliance with the requirements of this Act or any other law of SKN relating to seaworthiness of ships, and thereby threatens damage to the marine environment, the Director may deny entry of such ship to any SKN port or offshore terminal.
- (2) Where the Director has ascertained that a ship voluntarily within a port or offshore terminal in SKN is not in compliance with the requirements of this Act or any other law of SKN relating to seaworthiness of ships and thereby threatens damage to the marine environment, the Director shall, as far as practicable, prevent the ship from sailing, subject to sub-section 108(4) of this Act.
- (3) Where there are clear grounds for believing that a ship has committed a violation of this Act in SKN waters, the Director may –
  - (a) require the ship to give information regarding its identity and port of

registry, its last and its next port of call and other relevant information required to establish whether a violation has occurred;

(b) where there are clear grounds for believing that the violation –

- i. occurred within SKN's territorial sea; or
- ii. has or will result in discharge causing or threatening significant pollution of the marine environment, and the ship has refused to give information or information supplied by the ship is manifestly at variance with the evident factual situation, and the circumstances of the case justify such inspection,

undertake inspection of the ship for matters relating to the violation;  
and

(c) in instances of –

- i. suspected violation of Part V of this Act;
- ii. major damage or threat of major damage to the coastline or related interests of SKN; or
- iii. a ship voluntarily within a port of offshore terminal in SKN,

institute proceedings or other regulatory action or sanction, including monetary penalties, detention or exclusion of the ship, in accordance with this Act and the laws of SKN, provided that the evidence so warrants.

(4) The Director may permit a ship detained under this Act, or may limit a ship in violation of this Act and present in any SKN port or offshore terminal, only to proceed to the nearest repair yard or reception facility, where the Director deems appropriate, and provided doing so does not present a threat of harm to the environment, human health, property or resources.

(5) Where a violation of this Act relates to a ship operating under another State's authority, regulatory action taken by the Director may include furnishing the Government of that other State with evidence as to the violation, in order for that State to take further action.

(6) SKN ships shall comply with reasonable requests for information similar to that referred to in sub-section 108(3)(a) of this Act, made by the relevant authorities of other States who are parties to an international convention referred to on this Act, and pursuant to which the information is requested.

(7) In the event that any enforcement action is taken by SKN Government under

this Act in relation to a ship operating under the authority of another State, the Director shall immediately provide notice in writing, describing the circumstances in which the action was deemed necessary, to –

- (a) the Government of the State under whose authority the ship is operating, and particularly the consular or diplomatic representative of the State concerned,
- (b) the organisation responsible for the issue of any certificate to which the violation pertains, and
- (c) the next port of call, where applicable.

#### **109. Regulatory Provisions in Existing Acts**

Parts XVI to XVIII inclusive of the Merchant Shipping Act [and Part IX of the Marine Pollution Management Act 2002] shall apply mutatis mutandis to all matters falling within the scope of this Act insofar as the application of any provision of those Parts is appropriate.

#### **110. Service of documents on owners, application of fines, etc.**

Any document served in accordance with section 443 of the Merchant Shipping Act shall be treated as duly served for the purposes of this Act; and any person authorised to serve any document for the purposes of this Act shall have the right to go on board the ship in question for that purpose.

#### **111. Detention of ships during proceedings under this Act**

- (1) A person exercising the power of detention of a ship in respect of an alleged contravention of this Act shall immediately release the ship where –
  - (a) no proceedings for the offence in question are instituted within seven days from the day on which the ship is detained;
  - (b) proceedings against the ship for the offence in question are concluded without the master or owner of the ship being convicted;
  - (c) security is given by or on behalf of the master or owner to the Minister for an amount that is satisfactory in the opinion of the Minister, and is no less than one hundred thousand dollars;
  - (d) the master or owner is convicted of the offence in question and any costs, expenses or fine ordered to be paid by the master or owner have been paid; or
  - (e) the release is ordered by a court or tribunal referred to in Article 292 of UNCLOS, and any bond or other financial security ordered by such a

**Comment [LH15]:** These are the Parts relating to Enforcement Officers and Powers, Inquiries and Investigations into Marine Casualties and Legal Proceedings.

**Comment [LH16]:** This Part relates to Monitoring, Enforcement and Evidence. Check with SKN Maritime that these provisions should apply equally to this Act, and that there is no risk of ambiguity or overlap referring to these provisions in this Act.

court or tribunal is posted.

- (2) The Minister shall promptly release security given under sub-section 111(1)(c) of this Act where –
  - (a) no proceedings for the offence in question are instituted within seven days from the day on which the sum is paid; or
  - (b) proceedings against the ship for the offence in question are concluded without the master or owner of the ship being convicted.
- (3) Where security is given under sub-section 111(1)(c) of this Act to secure the release of a ship, and the master or owner of the ship is convicted of the offence in question, the amount of the security shall be applied as follows –
  - (a) first in payment of any costs or expenses ordered by the Court to be paid by the master or owner;
  - (b) next in payment of any fine imposed by the Court; and with
  - (c) any balance repaid to the person who gave the security.
- (4) Where a fine imposed by a Court in proceedings against the owner or master of a ship for an offence under this Act is not paid, or where any costs or expenses ordered by the Court to be paid by the owner or master of a ship are not paid at the time ordered by the Court, the Court shall, in addition to any other powers for enforcing payment, have power to direct the amount remaining unpaid to be levied by distress or arrestment and sale of the ship, her tackle, furniture and apparel.
- (5) Where a person is convicted of an offence under this Act, and the Court imposes a fine in respect of the offence, then if it appears to the Court that any person has incurred, or will incur, expenses in removing any pollution, or making good any damage, which is attributable to the offence, the Court may order the whole or part of the fine to be paid to that person for or towards defraying those expenses.

**112. No enforcement where sovereign immunity**

No enforcement action shall be taken by the Director under this Act against a ship entitled to sovereign immunity under international law.

**113. Restriction on jurisdiction over offences outside SKN**

- (1) Where an offence is committed under this Act by a ship not being a SKN ship, which relates to a discharge in the maritime jurisdiction of another State, no proceedings shall be instituted in SKN unless –

- (a) that State, the flag State or a State damaged or threatened by the discharge requests that proceedings be taken; or
  - (b) the discharge has caused or is likely to cause pollution in SKN waters.
- (2) Any proceedings instituted pursuant to sub-paragraph 113(1)(a) shall be suspended if so requested by the same State; in which case the Director shall transmit all the evidence and Court records and documents relating to the case, together with any sum paid or security given under this Part, to that State.
- (3) It shall be a defence to a person charged with contravening any provision of this Act to show –
- (a) that the ship is not a SKN ship;
  - (b) the discharge took place outside of SKN waters; and
  - (c) the ship was in a port in SKN at the time of institution of proceedings by reason only of stress of weather or other reason beyond the control of the master, owner or charterer.

**114. Suspension of proceedings at flag State request**

- (1) Any proceedings for an alleged offence or violation of any provision of this Part by a ship which is not a SKN ship shall be stayed where the Court is satisfied that the flag State has instituted proceedings corresponding to the proceedings in SKN within six months of the institution of proceedings in SKN, unless –
- (i) the alleged offence or violation resulted in major damage to SKN; or
  - (ii) the Director certifies that the flag State has repeatedly disregarded its obligation to enforce effectively the requirements of any Convention referred to in this Act in respect of its ship.
- (2) Where proceedings are stayed pursuant to sub-section 1, any money paid or security given under this Part shall be released, once the Director has been paid the costs incurred in respect of the stayed proceedings.

**PART XII - ADMINISTRATION**

**115. Power of Minister**

The Minister shall be responsible for the administration and implementation of this Act.

**116. Delegation by Minister**

- (1) The Minister and the Director may, in writing or by publication in the Gazette, delegate any of their powers or duties under this Act to any person appointed or authorised to perform any functions under this Act.
- (2) Any power or duty lawfully exercised or performed by the officer to whom it is delegated under this section, shall be deemed to have been exercised as fully and effectively as if it had been exercised by the Minister or the Director, as the case may be.

**117. Undue delay or endangerment**

- (1) In exercising powers under this Act, the Director shall make every possible effort –
  - (a) not to endanger the safety of navigation or otherwise create any hazard to a ship; and
  - (b) to avoid unduly delaying any ship.
- (2) Any ship that is unduly delayed under this Act shall be entitled to compensation for any loss or damage suffered, in accordance with the laws of SKN.

**118. Inspections**

- (1) All inspection of ships under this Act shall be carried out in accordance with any relevant regulations made under this Act or the Merchant Shipping Act or that are otherwise in force in SKN.
- (2) Any inspection carried out pursuant to section 108(3)(b) of this Act, must be limited to an examination of the ship's certificates, records or other documents, except insofar as the Director has clear grounds to believe that –
  - (a) the ship is not carrying valid certificates or records;
  - (b) the ship or its equipment dose not correspond to the particulars of the documents; or
  - (c) the content of the documents is not sufficient to confirm or verify a suspect violation.

### **119. Surveys and certification**

Surveys and certification required under this Act can only be carried out in SKN by

–

- (a) surveyors of ships appointed under section 411 of the Merchant Shipping Act; or
- (b) other such surveyors or organisations as may be expressly appointed and empowered by the Director for the purpose, subject to such conditions as the Director may impose in order to guarantee the completeness or efficiency of the surveys, or as may be recognised by the Director in accordance with guidelines and specifications adopted by the IMO.

### **120. Investigations**

- (1) The Director shall conduct an investigation into any maritime casualty or incident occurring within SKN waters or to any SKN ship that has produced a major deleterious effect on the marine environment.
- (2) The Director shall provide the IMO with the findings of an investigation conducted under sub-section (1) where such information is likely to be of assistance in determining changes to international conventions or instruments managed by the IMO.

### **121. Director to maintain documents**

The Director shall maintain in a designated public office, library or repository, a copy of –

- (a) all conventions and international instruments referred to in this Act that have application in SKN, and
- (b) all regulations and notices made pursuant to this Act;

and these shall be made available for inspection or, upon payment of a prescribed fee, for the taking of copies thereof by members of the public or other interested persons.

### **122. Communication of information to the IMO**

The Director shall communicate to the IMO –

- (a) the texts of this Act and any subsidiary legislation promulgated pursuant to this Act;

- (b) reports and information as required by sections:10, 12, **Error! Reference source not found.**, 17, 20(2), 23(2), 33(3)(c), 34(3)(b), 39(1)(1)(b), 40(5), 44 and 84 of this Act;
- (c) a sufficient number of specimens of certificates issued under this Act;
- (d) a list of reception facilities in SKN including their location, capacity and available facilities and other characteristics;
- (e) any allegation made to the Director that reception facilities provided under this Act or in other MARPOL member States are alleged to be inadequate;
- (f) official reports or summaries of official reports insofar as they show the results of the application of this Part;
- (g) an annual statistical report, in a form standardised by the IMO, of penalties imposed for violations of this Act; and
- (h) a list of nominated surveyors or recognised organisations authorised to act on SKN Government's behalf in the administration of matters relating to this Act, and their specific responsibilities and conditions of the authority delegated to them under this Act.

### **123. Communication, co-operation and consultation**

The Director may communicate, co-operate and consult as necessary and appropriate for the purpose of furthering the objects of, or performing functions under, this Act with –

- (a) portfolios, departments and agencies of the Government;
- (b) Governments of other States who are parties to the international conventions referred to in this Act;
- (c) Governments of other States of the wider Caribbean region;
- (d) international inter-governmental and non-governmental organisations; and
- (e) owners, seafarers' associations, ship's agents and other organisations involved or interested in shipping or in protection of the marine environment or related interests.

### **124. Protection of Government and public officers**

No suit shall be maintained against the Government or any public officer or other

person appointed or authorised to perform any function under this Act in respect of anything done or omitted to be done by that person in good faith in the exercise or performance of any power, authority or duty conferred or imposed under this Act.

#### **125. Power of the Minister to make regulations**

The Minister may make regulations generally for the administration of this Act, and in particular, for the following purposes:

- (a) the extent to which this Act may be applicable to ships of the Government which are engaged in government non-commercial service;
- (b) to give effect to, or to facilitate the enforcement of, any relevant international convention or instrument relating to this Act;
- (c) fees, stamp duties and all other payments required under this Act;
- (d) the holding of enquiries and investigations under this Act;
- (e) prescribing anything that is to be prescribed under this Act;
- (f) the prevention, reduction and control of pollution of the marine environment arising from or in connection with seabed activities subject to the jurisdiction of SKN;
- (g) the prevention and control of ship generated air pollution;
- (h) port state control of ships in SKN ports; and
- (i) prescribing standards or other rules for reception facilities at SKN ports and terminals, and prescribing penalties for provision of inadequate facilities.

#### **126. Repeals**

[To be completed by SKN Government – e.g. Part] are hereby repealed, notwithstanding that any Regulations or Orders made under the repealed Acts shall continue in force, until revoked or replaced with Regulations or Orders made under this Act.