



# FALKLAND ISLANDS GAZETTE

## Supplement

PUBLISHED BY AUTHORITY

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*Vol. 35*

*31 January 2024*

*No. 1*

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**Maritime (Amendment) Bill 2024**

**(ORDINANCE No.        OF 2024)**

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13. Amendment of Law Revision and Publication Ordinance 2017

## **Maritime (Amendment) Bill 2024**

(assented to: 2024)  
(commencement: in accordance with section 2)  
(published: 2024)

### **A BILL**

for

### **AN ORDINANCE**

To amend the Maritime Ordinance 2017 in order to give effect in the Falkland Islands to the 2002 Protocol to the Athens Convention, the 1996 Protocol to the Limitation of Liability for Maritime Claims Convention and the Nairobi Wreck Removal Convention and for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands —

### **PART 1 - Introductory**

#### **1. Title**

This Ordinance is the Maritime (Amendment) Ordinance 2024.

#### **2. Commencement**

(1) This Ordinance comes into force on a date appointed by the Governor by notice in the *Gazette*.

(2) The Governor may appoint different dates to commence different provisions of the Ordinance.

### **PART 2 - Amendment of Maritime Ordinance 2017**

#### **3. Amendment of Maritime Ordinance 2017**

This Part amends the Maritime Ordinance 2017.

#### **4. Section 2 amended (interpretation)**

In section 2(1), insert in its correct alphabetical place —

““**offshore installation**” means a fixed or floating platform including a drilling rig, floating production, storage and offloading facility used for the offshore production and storage of oil

or noxious liquid substances, and a floating storage unit used for the offshore storage of produced oil or noxious liquid substances;”.

#### **5. Section 161 amended (annual report)**

In section 161(1) omit “Director of Natural Resources” and replace it with “Director of Emergency Services and Island Security”.

#### **6. Section 200 amended (limitation of liability: Authority)**

In section 200 after “Schedule 5”, wherever it appears, insert “read with paragraphs 5(1) and 5(2) of Part II of Schedule 5”.

#### **7. Part 9A inserted - Wrecks Convention**

After section 237 (Powers of Authority in relation to wrecks), insert —

### **“PART 9A - WRECKS CONVENTION**

#### **237A. Interpretation etc of Part 9A**

(1) In this Part —

“**Falkland Islands Convention area**” means the Convention area described in section 237C(1);

“**Falkland Islands Interim and Outer Conservation Zones**” means the waters within the area described in —

- (a) Proclamation No. 4 of 1986 dated 29 October 1986 establishing the Interim Fishery Conservation and Management Zone; and
- (b) Proclamation No. 2 of 1990 dated 26 December 1990 establishing the Fishery Conservation Outer Zone (as amended by Proclamation No. 1 of 1994);

“**harbour**” has the meaning given by section 3 of the Harbours and Ports Ordinance 2017;

“**Harbour Master**” has the meaning assigned to it by section 3 of the Harbours and Ports Ordinance 2017;

“**non-Falkland Islands registered ship**” means a ship that is not registered in the Falkland Islands;

“**port**” has the meaning given by section 3 of the Harbours and Ports Ordinance 2017;

“**wreck removal insurance**” means a contract of insurance or other security satisfying the requirements of Article 12 of the Wrecks Convention; and “**insurer**” means the person providing the insurance or other security;

“**wreck removal notice**” means a notice under section 237H;

“**wreck removal insurance certificate**” means a certificate required by section 237M(2)(b) or (3)(b);

“**Wrecks Convention**” means the Nairobi International Convention on the Removal of Wrecks 2007, done in Nairobi on 18 May 2007; and

“**Wrecks Convention State**” means a State which is a party to the Wrecks Convention.

(2) Words or expressions used in this Part which are defined in Article 1 of the Wrecks Convention have the meaning given in, and are to be construed in accordance with, that Article.

(3) References in this Part to entering or leaving a harbour or port include references to arriving at or leaving an offshore installation —

- (a) in relation to the Falkland Islands, in Falkland Islands waters; or
- (b) in relation to any other State or territory, the territorial sea of that State or territory.

(4) References in this Part to ships registered in a State include unregistered ships entitled to fly the flag of that State.

(5) If His Majesty by Order in Council declares that any State specified in the Order is a party to the Wrecks Convention, the Order, while in force, is conclusive evidence of that fact.

*[Merchant Shipping Act 1995 (UK), ss. 255A & 255R]*

### **237B. The Wrecks Convention to have force of law**

(1) Subject to and in accordance with the provisions of this Part, the provisions of the Wrecks Convention have the force of law in the Falkland Islands.

(2) The text of the Wrecks Convention is set out in Schedule 6A.

(3) In any provision of the Wrecks Convention which is given the force of law in the Falkland Islands by this Part, unless the context clearly indicates otherwise, a reference to a State Party is to be read as a reference to —

- (a) in relation to the Falkland Islands Convention area, the Governor;
- (b) in relation to any other State or territory, the Government of that State or territory.

### **237C. The Falkland Islands Convention Area**

(1) The Falkland Islands Convention Area comprises —

- (a) the Falkland Islands;
- (b) Falkland Islands waters; and
- (c) the Falkland Islands Interim and Outer Conservation Zones.

(2) The Governor may from time to time by order amend the description of the Falkland Islands Convention area in subsection (1).

### **237D. Application**

(1) This Part applies in respect of —

- (a) a Falkland Islands registered ship wherever it may be;
- (b) a non-Falkland Islands registered ship in the Falkland Islands Convention area; and

- (c) a wreck —
  - (i) that is located in the Falkland Islands Convention Area or, in the case of a wreck of a Falkland Islands registered ship, is located in the Convention area of a State Party to the Wrecks Convention; and
  - (ii) that is the result of a maritime casualty.
- (2) This Part does not apply —
  - (a) to measures taken under —
    - (i) the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (as amended from time to time); or
    - (ii) the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil 1973 (as amended from time to time); and
  - (b) in relation to a warship or ship for the time being used by a State for non-commercial purposes only, unless the State that owns or operates the ship has specified in a notice under Article 4(3) of the Wrecks Convention that the Wrecks Convention applies to the ship.

### **237E. Wreck reports**

- (1) Where a maritime casualty involving a Falkland Islands registered ship or a non-Falkland Islands registered ship results in a wreck in the Falkland Islands Convention area, the persons responsible for the ship must report the wreck without delay to the Harbour Master.
- (2) Where a maritime casualty involving a Falkland Islands registered ship results in a wreck in the Convention area of any other State Party, the persons responsible for the ship must report the wreck without delay to the government of that State.
- (3) The following are responsible for a ship —
  - (a) the master of the ship; and
  - (b) the operator of the ship.
- (4) A report under subsection (1) must include the information mentioned in Article 5(2) of the Wrecks Convention (so far as it is known).
- (5) If one of the persons responsible for a ship makes a report under subsection (1) or (2), the others are no longer under a duty to make a report.
- (6) A person who fails to comply with a reporting requirement contained in this section commits an offence.
- (7) An offence under this section is punishable on conviction by a fine not exceeding Level 6 on the scale set out in Schedule 7.

*[Merchant Shipping Act 1995 (UK), s. 255B]*

### **237F. Locating and marking wrecks**

(1) This section applies where a maritime casualty results in a wreck in the Falkland Islands Convention Area.

(2) The Harbour Master must ensure that the Falkland Islands complies with the obligations under Articles 7 and 8 of the Wrecks Convention (locating and marking of wrecks).

*[Merchant Shipping Act 1995 (UK), s. 255C]*

### **237G. Notification of wrecks involving non-Falkland Islands registered ships**

(1) This section applies where —

- (a) a maritime casualty results in a wreck in the Falkland Islands Convention area involving a non-Falklands Islands registered ship; and
- (b) the Harbour Master determines that the wreck constitutes a hazard.

(2) Where this section applies —

- (a) the Harbour Master must notify the Governor;
- (b) the Governor must inform the State of the ship's registry and the registered owner; and
- (c) the Governor must consult the State of the ship's registry and other States (if any) affected by the wreck regarding measures to be taken under this Part in relation to the wreck.

*[Merchant Shipping Act 1995 (UK), s. 255B]*

### **237H. Removal by registered owner**

(1) This section applies where —

- (a) a ship has been involved in a maritime casualty as a result of which the ship, or anything from it, has become a wreck in the Falkland Islands Convention Area; and
- (b) the Harbour Master has determined that the wreck poses a hazard, having taken into account the criteria specified in Article 6 of the Wrecks Convention (Determination of hazard).

(2) The Harbour Master must take all reasonable steps to give a notice (a “**wreck removal notice**”) requiring the registered owner to comply with the obligations imposed on registered owners by Article 9(2) and (3) of the Wrecks Convention (removal of wrecks and production of evidence of insurance).

(3) The notice must be in writing and —

- (a) specify the deadline set under Article 9(6)(a) for the removal of the wreck; and
- (b) inform the registered owner of the other matters set out in Article 9(6)(b) and (c).

(4) A registered owner who fails, without reasonable excuse, to comply with a notice by the specified deadline commits an offence.

(5) An offence under subsection (4) is punishable on conviction by a fine not exceeding Level 12 on the scale set out in Schedule 7.

*[Merchant Shipping Act 1995 (UK), s. 255D]*

### **237I. Imposition of conditions about removal**

(1) This section applies if the Harbour Master has given a registered owner a wreck removal notice.

(2) The Harbour Master may impose conditions as to the removal of the wreck in accordance with Article 9(4) of the Wrecks Convention.

(3) A condition is imposed by giving notice of it to the registered owner.

(4) A registered owner who fails, without reasonable excuse, to comply with a condition commits an offence.

(5) An offence under subsection (4) is punishable on conviction by a fine not exceeding Level 6 on the scale set out in Schedule 7.

*[Merchant Shipping Act 1995 (UK), s. 255E]*

### **237J. Removal in default**

The Harbour Master may remove a wreck in the Falkland Islands Convention Area in the circumstances set out in Article 9(7) or (8) of the Wrecks Convention.

*[Merchant Shipping Act 1995 (UK), s. 255F]*

### **237K. Liability for costs**

(1) This section applies where —

- (a) a ship has been involved in a maritime casualty as a result of which it or anything from it has become a wreck in the Falkland Islands Convention Area; and
- (b) costs have been incurred complying with section 237F or 237J (locating and marking and removal in default).

(2) The person who incurred the costs is entitled to recover them from the ship's registered owner unless the registered owner proves that an exception set out in Article 10(1)(a), (b) or (c) of the Wrecks Convention applies.

(3) The registered owner is not liable for costs under this section if, or to the extent that, liability would conflict with —

- (a) a convention listed in Article 11(1) of the Wrecks Convention (exceptions to liability);
- (b) an enactment implementing such a convention; or
- (c) any other provision specified by order made by the Governor.

(4) Where the registered owner of each of two or more ships is liable for costs under this section but the costs for which each is liable cannot reasonably be separated, the registered owners are jointly liable for the total costs.



(5) A registered owner may not limit their liability in respect of a claim under this section.

*[Merchant Shipping Act 1995 (UK), s. 255G]*

### **237L. Limitation period**

An action to recover costs under section 237K may not be brought after the end of whichever of the following ends earlier —

- (a) the period of 3 years beginning with the date on which a wreck removal notice was given in respect of the wreck; and
- (b) the period of 6 years beginning with the date of the maritime casualty which resulted in the wreck.

*[Merchant Shipping Act 1995 (UK), s. 255H]*

### **237M. Wreck removal insurance**

(1) This section applies to a ship of 300 gross tonnage or more.

(2) A Falkland Islands registered ship may not enter or leave a harbour or port in the Falkland Islands or elsewhere unless —

- (a) the ship has wreck removal insurance; and
- (b) the Harbour Master has certified that it has wreck removal insurance.

(3) A non-Falkland Islands registered ship may not enter or leave a harbour or port in the Falkland Islands unless —

- (a) the ship has wreck removal insurance; and
- (b) there is a certificate confirming that it has wreck removal insurance.

(4) For a ship registered in a Wrecks Convention State but not registered in the Falkland Islands, the certificate must be one that has been issued by or under the authority of the government of that State.

(5) For a ship registered in a State which is not a Wrecks Convention State, the certificate must be one that has been issued —

- (a) by the Harbour Master; or
- (b) by or under the authority of the government of a Wrecks Convention State.

(6) For the purposes of subsection (1) the gross tonnage of a ship is to be calculated in accordance with —

- (a) regulations made under section 19(1) (Tonnage regulations); or
- (b) if no such regulations have been made, the Merchant Shipping (Tonnage) Regulations 1997 (S.I. 1997/1510) as applied under section 21 of the Law Revision and Publication Ordinance 2017.

*[Merchant Shipping Act 1995 (UK), s. 255J]*

### **237N. Failure to insure**

- (1) The master and the operator of a ship each commit an offence if —
  - (a) the ship enters or leaves a harbour or port in contravention of section 237M; or
  - (b) anyone attempts to navigate the ship into or out of a harbour or port in contravention of that section.
- (2) An offence under subsection (1) is punishable on conviction by —
  - (a) in the case of the master, a fine not exceeding Level 5 on the scale set out in Schedule 7;
  - (b) in the case of the operator, a fine not exceeding Level 12 on that scale.

*[Merchant Shipping Act 1995 (UK), s. 255K]*

### **237O. Detention of ships**

- (1) A ship may be detained by a person mentioned in section 268(1) if anyone attempts to navigate the ship out of a harbour or port in contravention of section 237M.
- (2) The provisions of section 268(2) to (11) apply to a detention under this section.

*[Merchant Shipping Act 1995 (UK), s. 255L]*

### **237P. Issue of certificates**

- (1) This section applies where the registered owner applies to the Harbour Master for a wreck removal insurance certificate in respect of —
  - (a) a Falkland Islands registered ship; or
  - (b) a ship registered in a State other than a Wrecks Convention State.
- (2) In relation to a Falkland Islands registered ship, the Harbour Master must issue the certificate if satisfied —
  - (a) that the ship has wreck removal insurance in place for the period to which the certificate will relate;
  - (b) that the obligations of the person providing the wreck removal insurance will be met; and
  - (c) the prescribed fee has been paid.
- (3) In relation to a ship registered in a State other than a Wrecks Convention State, the Harbour Master may issue the certificate if satisfied of the matters in subsection (2)(a), (b) and (c).
- (4) A wreck removal insurance certificate must be issued in the form of the model certificate set out in the Annex to the Wrecks Convention.
- (5) The Harbour Master must ensure that a copy of a certificate issued in respect of a Falkland Islands registered ship is entered in the register.

(6) A certificate entered in the register under subsection (5) must be made available for public inspection.

(7) In this section, “**prescribed fee**” means a fee prescribed for the issue of a wreck removal insurance certificate in —

- (a) regulations made under section 298(1) (Fees); or
- (b) if no such regulations have been made, the Merchant Shipping (Fees) Regulations 2018 (S.I. 2018/1104) as applied under section 21 of the Law Revision and Publication Ordinance 2017.

*[Merchant Shipping Act 1995 (UK), s. 255N]*

### **237Q. Production of wreck removal insurance certificates**

(1) This section applies to a ship which is required to have a wreck removal insurance certificate before entering or leaving a harbour or port.

(2) The master of the ship must ensure that the certificate is carried on board.

(3) The master of the ship must, on request, produce the certificate to the Harbour Master.

(4) A person who fails to comply with subsection (2) or (3) commits an offence.

(5) An offence under subsection (4) is punishable on conviction by a fine not exceeding Level 3 on the scale set out in Schedule 7.

*[Merchant Shipping Act 1995 (UK), s. 255M]*

### **237R. Cancellation and surrender of wreck removal insurance certificates**

(1) The Harbour Master may cancel a wreck removal insurance certificate issued in respect of a Falkland Islands registered ship, if satisfied that —

- (a) the certificate was obtained on the basis of false or incorrect information;
- (b) the insurer or guarantor is unable to meet their obligations under the contract of insurance or other financial security referred to in Article 12 of the Wrecks Convention; or
- (c) the contract of insurance or other financial security does not satisfy the requirements of Article 12 of the Wrecks Convention.

(2) The Harbour Master may by notice to the ship’s registered owner require the wreck removal insurance certificate to be surrendered to the Harbour Master as soon as reasonably practicable.

(3) A person who fails to surrender a certificate in accordance with the subsection (2) commits an offence.

(4) An offence under subsection (3) is punishable on conviction by a fine not exceeding Level 1 on the scale set out in Schedule 7.

*[Merchant Shipping Act 1995 (UK), s. 255O]*

### **237S. Third parties’ rights against insurers**

(1) This section applies where —

- (a) a ship has been involved in a maritime casualty as a result of which it or anything from it has become a wreck in the Falkland Islands Convention Area;
- (b) at the time of the maritime casualty the ship had wreck removal insurance; and
- (c) there is a wreck removal insurance certificate in relation to the insurance.

(2) A person who is entitled to recover costs from the ship's registered owner under section 237K may recover them from the insurer.

(3) It is a defence for the insurer to prove that the maritime casualty was caused by the wilful misconduct of the ship's registered owner.

(4) The insurer may also rely on any defences available to the registered owner (including section 237L).

(5) The insurer may limit liability in respect of claims made under this section to the same extent as the registered owner would be able to limit liability under section 194 were it not for section 237K(5) or paragraph 3 of Part II of Schedule 5.

(6) An insurer may limit liability whether or not the maritime casualty is caused by an act or omission mentioned in Article 4 of the Wrecks Convention.

*[Merchant Shipping Act 1995 (UK), s. 255P]*

#### **237T. Electronic wreck removal insurance certificates**

(1) This section applies where, under this Part —

- (a) a notice may be given; or
- (b) a certificate may be issued,

to a ship's registered owner by the Harbour Master.

(2) The notice or certificate may be given or issued to the registered owner by sending it electronically to an electronic address if any of the following persons have, from that address, electronically communicated with the Harbour Master or the Authority for any purpose —

- (a) the registered owner; or
- (b) a person who had, or had apparently, been, authorised by the registered owner to communicate with the Harbour Master or the Authority on the registered owner's behalf.

(3) However, if there has been more than one such electronic address for a person mentioned in subsection (2), the notice can only be sent to the one that the person most recently used to communicate with the Harbour Master or the Authority.

(4) In this section, “**electronic address**” includes an email address, an internet protocol (IP) address and the address of a digital mailbox.

*[Merchant Shipping Act 1995 (UK), s. 255Q]*

### **237U. Government ships**

(1) This section applies in relation to a warship or a ship for the time being used by a State for non-commercial purposes only, where the State that owns or operates the ship has specified in a notice under Article 4(3) of the Wrecks Convention that the Wrecks Convention applies to the ship.

(2) Section 237N does not apply to a ship to which this section applies (an “**exempt ship**”) that is owned by a Wrecks Convention State.

(3) An exempt ship must have a certificate issued by the government of the State concerned and stating —

(a) that the ship is owned by that State; and

(b) that any liability under section 237K will be met up to the limits prescribed by Article 12(1) of the Wrecks Convention (compulsory insurance or other financial security).

(4) Section 237Q(2) to (5) applies to such a certificate.

(5) Where a ship is owned by a State and operated by a company which is registered in that State as operator of the ship, references in this Part to the registered owner are references to that company.

(6) In proceedings against a Wrecks Convention State for the recovery of costs under section 237K the State must be treated as having submitted to the jurisdiction of the court in which the proceedings are brought; but this does not authorise execution against the property of a State.

*[Merchant Shipping Act 1995 (UK), s. 255S]*

### **237V. Savings**

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

*[Merchant Shipping Act 1995 (UK), s. 255T]*

### **237W. Power to amend**

The Governor may by order amend this Part and Schedule 6A to reflect any amendment of the Wrecks Convention.

*[Merchant Shipping Act 1995 (UK), s. 255U]*”.

## **8. Section 290 amended (functions of Governor in relation to marine pollution)**

In section 290(6) omit the definition of “offshore installation”.

## **9. Section 309 amended (forms)**

In section 309(1) omit “Director of Natural Resources” and replace it with “Director of Emergency Services and Island Security”.

## **10. Schedule 4 amended**

(1) In the text of the Convention set out in Part I of Schedule 4 —

- (a) in the heading to Article 12 omit “aggravation of claims” and replace it with “aggregation of claims”;
- (b) in Article 17 paragraph 1(d) omit “is subject jurisdiction in that State” and replace it with “is subject to jurisdiction in that State”.

(2) In the text of the Convention set out in Part II of Schedule 4 —

- (a) omit paragraph 3 and replace it with —

“3. The reference to the law of the court in Article 6 must be construed as a reference to the Law Reform (Contributory Negligence) Act 1945 as applied by the Law Revision and Publication Ordinance 2017.”;

- (b) omit paragraph 4 and replace it with —

“4. The Governor may by order provide that, in relation to a carrier whose principal place of business is in the Falkland Islands, paragraph 1 of Article 7 has effect with the substitution for the limit for the time being specified in that paragraph of a different limit specified in the order (which must not be lower than 400,000 units of account).”;

- (c) in paragraph 5(2) omit “the Treasury” and replace it with “the Governor”;

- (d) omit paragraph 6 and replace it with —

“6. It is declared that by virtue of Article 12 the limitations on liability there mentioned in respect of a passenger or their luggage apply to the aggregate liabilities of the persons in question in all proceedings for enforcing the liabilities or any of them which may be brought whether in the Falkland Islands or elsewhere.”;

- (e) in paragraph 8 omit “the United Kingdom” wherever it appears and replace it with “the Falkland Islands”;

- (f) immediately after paragraph 9, insert —

“9A. The provisions of the Convention in Part I of this Schedule have effect subject to the following reservation —

**“Reservation in connection with the extension of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 (“the Convention”) to the Falkland Islands**

*Limitation of liability of carriers, etc.*

1. The Government of the Falkland Islands reserves the right to and undertakes to limit liability under paragraph 1 or 2 of Article 3 of the Convention, if any, in respect of death of or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the International Maritime Organisation (“IMO”) Guidelines for Implementation of the Athens Convention annexed to IMO Circular letter 2758 dated 20 November 2006 LEG 101/8/3 (“**the IMO Guidelines**”) to the lower of the following amounts —

- (a) 250,000 units of account in respect of each passenger on each distinct occasion; or

- (b) 340 million units of account overall per ship on each distinct occasion.
2. The Government of the Falkland Islands also reserves the right to and undertakes to apply the IMO Guidelines paragraphs 2.1.1 and 2.2.2, with necessary changes, to such liabilities.
  3. The liability of the performing carrier pursuant to Article 4 of the Convention, the liability of the servants and agents of the carrier or the performing carrier pursuant to Article 11 of the Convention and the limit of the aggregate of the amounts recoverable pursuant to Article 12 of the Convention are limited in the same way.
  4. The reservation and undertaking in paragraph 1 will apply regardless of the basis of liability under paragraph 1 or 2 of Article 3 and notwithstanding anything to the contrary in Article 4 or 7 of the Convention; but this reservation and undertaking do not affect the operation of Articles 10 and 13.

*Compulsory insurance and limitation of liability of insurers*

5. The Government of the Falkland Islands reserves the right to and undertakes to limit the requirement under paragraph 1 of Article 4bis to maintain insurance or other financial security for death or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines to the lower of the following amounts —

- (a) 250,000 units of account in respect of each passenger on each distinct occasion; or
  - (b) 340 million units of account overall per ship on each distinct occasion.
6. The Government of the Falkland Islands reserves the right to and undertakes to limit the liability of the insurer or other person providing financial security under paragraph 10 of Article 4bis, for death or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines, to a maximum limit of the amount of insurance or other financial security which the carrier is required to maintain under paragraph 5 of this reservation.

7. The Government of the Falkland Islands also reserves the right to and undertakes to apply the IMO Guidelines including the application of the clauses referred to in paragraphs 2.1 and 2.2 in the Guidelines in all compulsory insurance under the Convention.

8. The Government of the Falkland Islands reserves the right to and undertakes to exempt the provider of insurance or other financial security under paragraph 1 of Article 4bis from any liability for which the provider has not undertaken to be liable.

*Certification*

9. The Government of the Falkland Islands reserves the right to and undertakes to issue insurance certificates under paragraph 2 of Article 4bis of the Convention so as—

- (a) to reflect the limitations of liability and the requirements for insurance cover referred to in paragraphs 1, 5, 6 and 8; and

- (b) to include such other limitations, requirements and exemptions as it finds that the insurance market conditions at the time of the issue of the certificate necessitate.

10. The Government of the Falkland Islands reserves the right to and undertakes to accept insurance certificates issued by other States Parties issued pursuant to a similar reservation.

11. All such limitations, requirements and exemptions will be clearly reflected in the certificate issued or certified under paragraph 2 of Article 4bis of the Convention.

*Relationship between this Reservation and the IMO Guidelines for Implementation of the Athens Convention*

12. The rights retained by this reservation will be exercised with due regard to the IMO Guidelines, or to any amendments thereto, with an aim to ensure uniformity. If a proposal to amend the IMO Guidelines, including the limits, has been approved by the Legal Committee of the IMO, those amendments will apply as from the time determined by the Committee. This is without prejudice to the rules of international law regarding the right of a State to withdraw or amend its reservation.”;

- (g) in paragraph 11(b) omit “a fine of an amount not exceeding level 4 on the standard scale or not exceeding a lesser amount” and replace it with “a fine not exceeding Level 1 on the scale set out in Schedule 7”; and
- (h) omit paragraphs 12 and 13, including the heading, and replace them with —

*“Application of sections 194 and 195 of this Ordinance*

12. It is declared that nothing in the Convention affects the operation of section 194 (which limits a shipowner’s liability in certain cases of loss of life, injury or damage).

13. Nothing in section 195 (which among other things limits a shipowner’s liability for the loss or damage of goods in certain cases) relieves a person of any liability imposed on them by the Convention.”.

**11. Schedule 5 amended**

- (1) In the text of the Convention set out in Part I of Schedule 5, insert after Article 23 —

“DONE AT LONDON this nineteenth day of November one thousand nine hundred and seventy-six.

IN WITNESS WHEREOF the undersigned being duly authorized for that purpose have signed this Convention.”.

- (2) In Part II of Schedule 5 —

- (a) omit paragraph 3 and replace it with —

“3. Paragraph (1)(d) of article 2 (right to limit claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship) does not apply.”;

- (b) omit paragraph 6 and replace it with —



“6. (1) Article 7 does not apply in respect of any sea going ship; and has effect in respect of any ship which is not seagoing as if in paragraph 1 of that article —

- (a) after “thereof” there were inserted “in respect of each passenger,”;
- (b) the words from “multiplied” onwards were omitted.

(2) In paragraph 2 of Article 7 the reference to claims brought on behalf of a person includes a reference to any claim in respect of the death of a person under the Fatal Accidents Act 1976 (in its application to the Falkland Islands).”; and

- (c) at the end of the Part, omit —

“DONE AT LONDON this nineteenth day of November one thousand nine hundred and seventy-six.

IN WITNESS WHEREOF the undersigned being duly authorized for that purpose have signed this Convention.”.

## **12. Schedule 6A inserted - Text of the Wrecks Convention**

Immediately after Schedule 6, insert —

### **“SCHEDULE 6A - TEXT OF THE WRECKS CONVENTION**

*(section 237B(2))*

Preamble

THE STATES PARTIES TO THE PRESENT CONVENTION,

CONSCIOUS of the fact that wrecks, if not removed, may pose a hazard to navigation or the marine environment,

CONVINCED of the need to adopt uniform international rules and procedures to ensure the prompt and effective removal of wrecks and payment of compensation for the costs therein involved,

NOTING that many wrecks may be located in States’ territory, including the territorial sea,

RECOGNIZING the benefits to be gained through uniformity in legal regimes governing responsibility and liability for removal of hazardous wrecks,

BEARING IN MIND the importance of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982, and of the customary international law of the sea, and the consequent need to implement the present Convention in accordance with such provisions,

HAVE AGREED as follows:

#### **Article 1 Definitions**

For the purposes of this Convention:

1. “Convention area” means the exclusive economic zone of a State Party, established in accordance with international law or, if a State Party has not established such a zone, an area beyond and adjacent to the territorial sea of that State determined by that State in accordance

with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

2. “Ship” means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.

3. “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 its cargo.

4. “Wreck”, following upon a maritime casualty, means:

(a) a sunken or stranded ship; or

(b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or

(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.

5. “Hazard” means any condition or threat that:

(a) poses a danger or impediment to navigation; or

(b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States.

6. “Related interests” means the interests of a coastal State directly affected or threatened by a wreck, such as:

(a) maritime coastal, port and estuarine activities, including fisheries activities, constituting an essential means of livelihood of the persons concerned;

(b) tourist attractions and other economic interests of the area concerned;

(c) the health of the coastal population and the wellbeing of the area concerned, including conservation of marine living resources and of wildlife; and

(d) offshore and underwater infrastructure.

7. “Removal” means any form of prevention, mitigation or elimination of the hazard created by a wreck. “Remove”, “removed” and “removing” shall be construed accordingly.

8. “Registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty. However, in the case of a ship owned by a State and operated by a company which

in that State is registered as the operator of the ship, “registered owner” shall mean such company.

9. “Operator of the ship” means the owner of the ship or any other organization 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 duties and responsibilities established under the International Safety Management Code, as amended.

10. “Affected State” means the State in whose Convention area the wreck is located.

11. “State of the ship’s registry” means, in relation to a registered ship, the State of registration of the ship and, in relation to an unregistered ship, the State whose flag the ship is entitled to fly.

12. “Organization” means the International Maritime Organization.

13. “Secretary-General” means the Secretary-General of the Organization.

## **Article 2**

### **Objectives and general principles**

1. A State Party may take measures in accordance with this Convention in relation to the removal of a wreck which poses a hazard in the Convention area.

2. Measures taken by the Affected State in accordance with paragraph 1 shall be proportionate to the hazard.

3. Such measures shall not go beyond what is reasonably necessary to remove a wreck which poses a hazard and shall cease as soon as the wreck has been removed; they shall not unnecessarily interfere with the rights and interests of other States including the State of the ship’s registry, and of any person, physical or corporate, concerned.

4. The application of this Convention within the Convention area shall not entitle a State Party to claim or exercise sovereignty or sovereign rights over any part of the high seas.

5. States Parties shall endeavour to co-operate when the effects of a maritime casualty resulting in a wreck involve a State other than the Affected State.

## **Article 3**

### **Scope of application**

1. Except as otherwise provided in this Convention, this Convention shall apply to wrecks in the Convention area.

2. A State Party may extend the application of this Convention to wrecks located within its territory, including the territorial sea, subject to article 4, paragraph 4. In that case, it shall notify the Secretary-General accordingly, at the time of expressing its consent to be bound by this Convention or at any time thereafter. When a State Party has made a notification to apply this Convention to wrecks located within its territory, including the territorial sea, this is without prejudice to the rights and obligations of that State to take measures in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing them in accordance with this Convention. The provisions of articles 10, 11 and 12 of this Convention shall not apply to any measures so taken other than those referred to in articles 7, 8 and 9 of this Convention.

3. When a State Party has made a notification under paragraph 2, the “Convention area” of the Affected State shall include the territory, including the territorial sea, of that State Party.

4. A notification made under paragraph 2 above shall take effect for that State Party, if made before entry into force of this Convention for that State Party, upon entry into force. If notification is made after entry into force of this Convention for that State Party, it shall take effect six months after its receipt by the Secretary-General.

5. A State Party that has made a notification under paragraph 2 may withdraw it at any time by means of a notification of withdrawal to the Secretary-General. Such notification of withdrawal shall take effect six months after its receipt by the Secretary-General, unless the notification specifies a later date.

#### **Article 4 Exclusions**

1. This Convention shall not apply to measures taken under the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, as amended, or the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil, 1973, as amended.

2. This Convention shall not apply to any warship or other ship owned or operated by a State and used, for the time being, only on Government non-commercial service, unless that State decides otherwise.

3. Where a State Party decides to apply this Convention to its warships or other ships as described in paragraph 2, it shall notify the Secretary-General, thereof, specifying the terms and conditions of such application.

4. (a) When a State Party has made a notification under article 3, paragraph 2, the following provisions of this Convention shall not apply in its territory, including the territorial sea:

- (i) Article 2, paragraph 4;
- (ii) Article 9, paragraphs 1, 5, 7, 8, 9 and 10; and
- (iii) Article 15.

(b) Article 9, paragraph 4, insofar as it applies to the territory, including the territorial sea of a State Party, shall read:

Subject to the national law of the Affected State, the registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Affected State may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

#### **Article 5 Reporting wrecks**

1. A State Party shall require the master and the operator of a ship flying its flag to report to the Affected State without delay when that ship has been involved in a maritime casualty resulting in a wreck. To the extent that the reporting obligation under this article has been

fulfilled either by the master or the operator of the ship, the other shall not be obliged to report.

2. Such reports shall provide the name and the principal place of business of the registered owner and all the relevant information necessary for the Affected State to determine whether the wreck poses a hazard in accordance with article 6, including:

- (a) the precise location of the wreck;
- (b) the type, size and construction of the wreck;
- (c) the nature of the damage to, and the condition of, the wreck;
- (d) the nature and quantity of the cargo, in particular any hazardous and noxious substances; and
- (e) the amount and types of oil, including bunker oil and lubricating oil, on board.

#### **Article 6** **Determination of hazard**

When determining whether a wreck poses a hazard, the following criteria should be taken into account by the Affected State:

- (a) the type, size and construction of the wreck;
- (b) depth of the water in the area;
- (c) tidal range and currents in the area;
- (d) particularly sensitive sea areas identified and, as appropriate, designated in accordance with guidelines adopted by the Organization, or a clearly defined area of the exclusive economic zone where special mandatory measures have been adopted pursuant to article 211, paragraph 6, of the United Nations Convention on the Law of the Sea, 1982;
- (e) proximity of shipping routes or established traffic lanes;
- (f) traffic density and frequency;
- (g) type of traffic;
- (h) nature and quantity of the wreck's cargo, the amount and types of oil (such as bunker oil and lubricating oil) on board the wreck and, in particular, the damage likely to result should the cargo or oil be released into the marine environment;
- (i) vulnerability of port facilities;
- (j) prevailing meteorological and hydrographical conditions;
- (k) submarine topography of the area;

- (l) height of the wreck above or below the surface of the water at lowest astronomical tide;
- (m) acoustic and magnetic profiles of the wreck;
- (n) proximity of offshore installations, pipelines, telecommunications cables and similar structures; and
- (o) any other circumstances that might necessitate the removal of the wreck.

**Article 7**  
**Locating wrecks**

1. Upon becoming aware of a wreck, the Affected State shall use all practicable means, including the good offices of States and organizations, to warn mariners and the States concerned of the nature and location of the wreck as a matter of urgency.
2. If the Affected State has reason to believe that a wreck poses a hazard, it shall ensure that all practicable steps are taken to establish the precise location of the wreck.

**Article 8**  
**Marking of wrecks**

1. If the Affected State determines that a wreck constitutes a hazard, that State shall ensure that all reasonable steps are taken to mark the wreck.
2. In marking the wreck, all practicable steps shall be taken to ensure that the markings conform to the internationally accepted system of buoyage in use in the area where the wreck is located.
3. The Affected State shall promulgate the particulars of the marking of the wreck by use of all appropriate means, including the appropriate nautical publications.

**Article 9**  
**Measures to facilitate the removal of wrecks**

1. If the Affected State determines that a wreck constitutes a hazard, that State shall immediately:
  - (a) inform the State of the ship's registry and the registered owner; and
  - (b) proceed to consult the State of the ship's registry and other States affected by the wreck regarding measures to be taken in relation to the wreck.
2. The registered owner shall remove a wreck determined to constitute a hazard.
3. When a wreck has been determined to constitute a hazard, the registered owner, or other interested party, shall provide the competent authority of the Affected State with evidence of insurance or other financial security as required by article 12.
4. The registered owner may contract with any salvor or other person to remove the wreck determined to constitute a hazard on behalf of the owner. Before such removal commences, the Affected State may lay down conditions for such removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with considerations of safety and protection of the marine environment.

5. When the removal referred to in paragraphs 2 and 4 has commenced, the Affected State may intervene in the removal only to the extent necessary to ensure that the removal proceeds effectively in a manner that is consistent with considerations of safety and protection of the marine environment.

6. The Affected State shall:

- (a) set a reasonable deadline within which the registered owner must remove the wreck, taking into account the nature of the hazard determined in accordance with article 6;
- (b) inform the registered owner in writing of the deadline it has set and specify that, if the registered owner does not remove the wreck within that deadline, it may remove the wreck at the registered owner's expense; and
- (c) inform the registered owner in writing that it intends to intervene immediately in circumstances where the hazard becomes particularly severe.

7. If the registered owner does not remove the wreck within the deadline set in accordance with paragraph 6(a), or the registered owner cannot be contacted, the Affected State may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

8. In circumstances where immediate action is required and the Affected State has informed the State of the ship's registry and the registered owner accordingly, it may remove the wreck by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment.

9. States Parties shall take appropriate measures under their national law to ensure that their registered owners comply with paragraphs 2 and 3.

10. States Parties give their consent to the Affected State to act under paragraphs 4 to 8, where required.

11. The information referred to in this article shall be provided by the Affected State to the registered owner identified in the reports referred to in article 5, paragraph 2.

#### **Article 10** **Liability of the owner**

1. Subject to article 11, the registered owner shall be liable for the costs of locating, marking and removing the wreck under articles 7, 8 and 9, respectively, unless the registered owner proves that the maritime casualty that caused the wreck:

- (a) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;
- (b) was wholly caused by an act or omission done with intent to cause damage by a third party; or
- (c) 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.

2. Nothing in this Convention shall affect the right of the registered owner to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

3. No claim for the costs referred to in paragraph 1 may be made against the registered owner otherwise than in accordance with the provisions of this Convention. This is without prejudice to the rights and obligations of a State Party that has made a notification under article 3, paragraph 2, in relation to wrecks located in its territory, including the territorial sea, other than locating, marking and removing in accordance with this Convention.

4. Nothing in this article shall prejudice any right of recourse against third parties.

### **Article 11** **Exceptions to liability**

1. The registered owner shall not be liable under this Convention for the costs mentioned in article 10, paragraph 1 if, and to the extent that, liability for such costs would be in conflict with:

- (a) the International Convention on Civil Liability for Oil Pollution Damage, 1969, as amended;
- (b) the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended;
- (c) the Convention on Third Party Liability in the Field of Nuclear Energy, 1960, as amended, or the Vienna Convention on Civil Liability for Nuclear Damage, 1963, as amended; or national law governing or prohibiting limitation of liability for nuclear damage; or
- (d) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, as amended;

provided that the relevant convention is applicable and in force.

2. To the extent that measures under this Convention are considered to be salvage under applicable national law or an international convention, such law or convention shall apply to questions of the remuneration or compensation payable to salvors to the exclusion of the rules of this Convention.

### **Article 12** **Compulsory insurance or other financial security**

1. The registered owner of a ship of 300 gross tonnage and above and flying the flag of a State Party shall be required to maintain insurance or other financial security, such as a guarantee of a bank or similar institution, to cover liability under this Convention in an amount equal to the limits of liability under the applicable national or international limitation regime, but in all cases not exceeding an amount calculated in accordance with article 6(1)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.

2. A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship of 300 gross tonnage and above by the appropriate authority of the State of the ship's registry after determining that the



requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This compulsory insurance certificate shall be in the form of the model set out in the annex to this Convention, and shall contain the following particulars:

- (a) name of the ship, distinctive number or letters and port of registry;
- (b) gross tonnage of the ship;
- (c) name and principal place of business of the registered owner;
- (d) IMO ship identification number;
- (e) type and duration of security;
- (f) name and principal place of business of insurer or other person giving security and, where appropriate, place of business where the insurance or security is established; and
- (g) period of validity of the certificate, which shall not be longer than the period of validity of the insurance or other security.

3. (a) A State Party may authorize either an institution or an organization recognized by it to issue the certificate referred to in paragraph 2. Such institution or organization shall inform that State of the issue of each certificate. In all cases, the State Party shall fully guarantee the completeness and accuracy of the certificate so issued and shall undertake to ensure the necessary arrangements to satisfy this obligation.

- (b) A State Party shall notify the Secretary-General of:
  - (i) the specific responsibilities and conditions of the authority delegated to an institution or organization recognized by it;
  - (ii) the withdrawal of such authority; and
  - (iii) the date from which such authority or withdrawal of such authority takes effect.

An authority delegated shall not take effect prior to three months from the date on which notification to that effect was given to the Secretary-General.

- (c) The institution or organization authorized to issue certificates in accordance with this paragraph shall, as a minimum, be authorized to withdraw these certificates if the conditions under which they have been issued are not maintained. In all cases the institution or organization shall report such withdrawal to the State on whose behalf the certificate was issued.

4. The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one

of these languages and, where the State so decides, the official language(s) of the State may be omitted.

5. The certificate shall be carried on board the ship and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authorities issuing or certifying the certificate.

6. An insurance or other financial security shall not satisfy the requirements of this article if it can cease for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate under paragraph 2 before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5 unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification, which results in the insurance or security no longer satisfying the requirements of this article.

7. The State of the ship's registry shall, subject to the provisions of this article and having regard to any guidelines adopted by the Organization on the financial responsibility of the registered owners, determine the conditions of issue and validity of the certificate.

8. Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organization or other international organizations relating to the financial standing of providers of insurance or financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate required by paragraph 2.

9. Certificates issued and certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them, even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor named in the certificate is not financially capable of meeting the obligations imposed by this Convention.

10. Any claim for costs arising under this Convention may be brought directly against the insurer or other person providing financial security for the registered owner's liability. In such a case the defendant may invoke the defences (other than the bankruptcy or winding up of the registered owner) that the registered owner would have been entitled to invoke, including limitation of liability under any applicable national or international regime. Furthermore, even if the registered owner is not entitled to limit liability, the defendant may limit liability to an amount equal to the amount of the insurance or other financial security required to be maintained in accordance with paragraph 1. Moreover, the defendant may invoke the defence that the maritime casualty was caused by the wilful misconduct of the registered owner, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the registered owner against the defendant. The defendant shall in any event have the right to require the registered owner to be joined in the proceedings.

11. A State Party shall not permit any ship entitled to fly its flag to which this article applies to operate at any time unless a certificate has been issued under paragraphs 2 or 14.

12. Subject to the provisions of this article, each State Party shall ensure, under its national law, that insurance or other security to the extent required by paragraph 1 is in force in respect of any ship of 300 gross tonnage and above, wherever registered, entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea.

13. Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 12, ships are not required to carry on board or to produce the certificate required by paragraph 2, when entering or leaving a port in its territory, or arriving at or leaving from an offshore facility in its territorial sea, provided that the State Party which issues the certificate required by paragraph 2 has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 12.

14. If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authority of the State of registry, stating that it is owned by that State and that the ship's liability is covered within the limits prescribed in paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

### **Article 13** **Time limits**

Rights to recover costs under this Convention shall be extinguished unless an action is brought hereunder within three years from the date when the hazard has been determined in accordance with this Convention. However, in no case shall an action be brought after six years from the date of the maritime casualty that resulted in the wreck. Where the maritime casualty consists of a series of occurrences, the six-year period shall run from the date of the first occurrence.

### **Article 14** **Amendment provisions**

1. At the request of not less than one-third of States Parties, a conference shall be convened by the Organization for the purpose of revising or amending this Convention.
2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to this Convention, as amended.

### **Article 15** **Settlement of disputes**

1. Where a dispute arises between two or more States Parties regarding the interpretation or application of this Convention, they shall seek to resolve their dispute, in the first instance, through negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice.
2. If no settlement is possible within a reasonable period of time not exceeding twelve months after one State Party has notified another that a dispute exists between them, the provisions relating to the settlement of disputes set out in Part XV of the United Nations Convention on the Law of the Sea, 1982, shall apply *mutatis mutandis*, whether or not the

States party to the dispute are also States Parties to the United Nations Convention on the Law of the Sea, 1982.

3. Any procedure chosen by a State Party to this Convention and to the United Nations Convention on the Law of the Sea, 1982, pursuant to Article 287 of the latter, shall apply to the settlement of disputes under this article, unless that State Party, when ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, chooses another procedure pursuant to Article 287 for the purpose of the settlement of disputes arising out of this Convention.

4. A State Party to this Convention which is not a Party to the United Nations Convention on the Law of the Sea, 1982, when ratifying, accepting, approving or acceding to this Convention or at any time thereafter shall be free to choose, by means of a written declaration, one or more of the means set out in Article 287, paragraph 1, of the United Nations Convention on the Law of the Sea, 1982, for the purpose of settlement of disputes under this Article. Article 287 shall apply to such a declaration, as well as to any dispute to which such State is party, which is not covered by a declaration in force. For the purpose of conciliation and arbitration, in accordance with Annexes V and VII of the United Nations Convention on the Law of the Sea, 1982, such State shall be entitled to nominate conciliators and arbitrators to be included in the lists referred to in Annex V, Article 2, and Annex VII, Article 2, for the settlement of disputes arising out of this Convention.

5. A declaration made under paragraphs 3 and 4 shall be deposited with the Secretary-General, who shall transmit copies thereof to the States Parties.

#### **Article 16**

##### **Relationship to other conventions and international agreements**

Nothing in this Convention shall prejudice the rights and obligations of any State under the United Nations Convention on the Law of the Sea, 1982, and under the customary international law of the sea.

#### **Article 17**

##### **Signature, ratification, acceptance, approval and accession**

1. This Convention shall be open for signature at the Headquarters of the Organization from 19 November 2007 until 18 November 2008 and shall thereafter remain open for accession.

(a) States may express their consent to be bound by this Convention by:

- (i) signature without reservation as to ratification, acceptance or approval; or
- (ii) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or
- (iii) accession.

(b) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

**Article 18**  
**Entry into force**

1. This Convention shall enter into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance or approval or have deposited instruments of ratification, acceptance, approval or accession with the Secretary-General.
2. For any State which ratifies, accepts, approves or accedes to this Convention after the conditions in paragraph 1 for entry into force have been met, this Convention shall enter into force three months following the date of deposit by such State of the appropriate instrument, but not before this Convention has entered into force in accordance with paragraph 1.

**Article 19**  
**Denunciation**

1. This Convention may be denounced by a State Party at any time after the expiry of one year following the date on which this Convention comes into force for that State.
2. Denunciation shall be effected by the deposit of an instrument to that effect with the Secretary-General.
3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, following its receipt by the Secretary-General.

**Article 20**  
**Depositary**

1. This Convention shall be deposited with the Secretary General.
2. The Secretary-General shall:
  - (a) inform all States which have signed or acceded to this Convention of:
    - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
    - (ii) the date of entry into force of this Convention;
    - (iii) the deposit of any instrument of denunciation of this Convention, together with the date of the deposit and the date on which the denunciation takes effect; and
    - (iv) other declarations and notifications received pursuant to this Convention;
  - (b) transmit certified true copies of this Convention to all States that have signed or acceded to this Convention.
3. As soon as this Convention enters into force, a certified true copy of the text shall be transmitted by the Secretary-General to the Secretary-General of the United Nations, for registration and publication in accordance with Article 102 of the Charter of the United Nations.

**Article 21  
Languages**

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE IN NAIROBI this eighteenth day of May two thousand and seven.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments for that purpose, have signed this Convention.”.

**PART 3 - Amendment of Law Revision and Publication Ordinance 2017**

**13. Amendment of Law Revision and Publication Ordinance 2017**

In Schedule 1 Part 2 of the Law Revision and Publication Ordinance 2017 insert in its correct alphabetical place —

| <i>Column 1<br/>Instrument</i>  |      | <i>Column 2<br/>Provisions Applying<br/>to the Falkland<br/>Islands</i> | <i>Column 3<br/>Exclusions, modifications<br/>and other qualifications</i>   |
|---|------|---|--|
| “Merchant Shipping (Liability of Shipowners and Others) (New Rates of Interest) Order (SI 2004/931) | 2004 | Whole Regulations   | The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992”. |

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**OBJECTS AND REASONS**

This Bill amends the Maritime Ordinance 2017 (“**the Maritime Ordinance**”) principally to give legal effect in the Falkland Islands to the Nairobi International Convention on the Removal of Wrecks 2007 (“**the Wrecks Convention**”). It also amends the Maritime Ordinance to update provision in that Ordinance to enable the Falkland Islands to give full effect to two further international conventions: the International Convention on the Limitation of Liability for Maritime Claims 1976 and its 1996 Protocol (“**the LLMC Convention**”) and the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974 and its 2002 Protocol (“**the Athens Convention**”).

The Bill also makes amendments to the Maritime Ordinance 2017 as a consequence of the transfer of responsibility for the Maritime Authority from the Director of Natural Resources to the Director of Emergency Services and Island Security.

The Wrecks Convention was adopted by the International Maritime Organisation on 18 May 2007. It provides a legal basis for States to remove, or have removed, shipwrecks that may adversely affect the safety of ships or the marine environment. The Wrecks Convention also makes shipowners liable for the costs of removing wrecks and requires the owners of ships over

300 gross tonnage to take out insurance or provide other financial security to cover the costs of wreck removal. The text of the Wrecks Convention is set out in new Schedule 6A to the Maritime Ordinance which is inserted by *clause 12*.

The Wrecks Convention was ratified by the United Kingdom in 2011 but has not to date been extended to the Falkland Islands. The Bill will enable a request to be made through the Foreign, Commonwealth and Development Office for the extension of the Convention to the Falkland Islands.

*Clauses 1 and 2* provide for the title of the Bill and its commencement, which will be on a day, or days, appointed by the Governor by notice in the *Gazette*.

*Clause 3* provides that the Maritime Ordinance will be amended by the following provisions of the Bill.

*Clause 4* amends section 2 of the Maritime Ordinance to add a new definition of “offshore installation”. This term is used in relation to the new provisions implementing the Wrecks Convention, but it also replaces, and updates, the existing definition of “offshore installation” found in section 290 of the Ordinance.

*Clause 5* amends section 161 (annual report) of the Maritime Ordinance 2017 to substitute reference to the Director of Emergency Services and Island Security following a change of structure of the Falkland Islands Government in which the Maritime team was relocated from the Directorate of Natural Resources.

*Clause 6* amends section 200(4) of the Maritime Ordinance. It adds wording that was omitted from the original text of the Maritime Ordinance and ensures that the provisions limiting the liability of the Maritime Authority are consistent with the other provisions limiting liability.

*Clause 7* inserts a new Part 9A (new sections 237A to 237W) into the Maritime Ordinance which implements the Wrecks Convention and provides for the marking and removal of wrecks in the Falkland Islands Convention Area and the recovery of the costs of so doing. The following paragraphs refer to the new sections in new Part 9A.

New section 237A contains definitions used in Part 9A. Words or expressions used in this Part which are defined in Article 1 of the Wrecks Convention have the meaning given in that article and those definitions are not repeated here.

New section 237B provides that the Wrecks Convention is to have the force of law in the Falkland Islands.

New section 237C declares the Falkland Islands Convention Area for the purposes of the Wrecks Convention. It defines this area as comprising: (a) the Falkland Islands; (b) Falkland Islands waters; and (c) the Falkland Islands Inner and Outer Conservation Zones. The description of the Convention Area may be amended from time to time by the Governor by Order.

New section 237D specifies the ships to which Part 9A will apply. These are (a) Falkland Islands registered ships wherever they may be; (b) non-Falkland Islands registered ships in the Falkland Islands Convention Area; and (c) wrecks in the Falkland Islands Convention Area. Part

9A does not apply to measures taken under the International Convention relating to the Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 or its Protocol of 1973 relating to Pollution by Substances other than by Oil (these measures are implemented in the Falkland Islands under section 147 of the Maritime Ordinance). Part 9A also does not apply to warships or ships for the time being used by a State for non-commercial purposes (although States may opt to apply the provisions of the Wrecks Convention to these ships).

New section 237E requires the master and the operator of (a) a ship registered in the Falkland Islands or (b) a non-Falkland Islands registered ship in the Falkland Islands Convention Area, to report an accident, which results in the ship, or any part of the ship or cargo becoming a wreck. If the wreck is within the Falkland Islands Convention Area, it must be reported to the Harbour Master (subsection (1)). If the wreck is located in another State's Convention area, then the wreck must be reported to the Government of that State (subsection (2)).

The information that has to be reported is the information required under Article 5(2) of the Wrecks Convention. This includes the wreck's type, size and construction, the damage, details of the cargo and details of all oil on board (subsection (4)). The new section makes it an offence for the master and operator not to report a wreck. If neither makes a report, then each is guilty of an offence. If one has reported it, the other is no longer under a duty to report it (subsection (5)). An offence is punishable on conviction by a fine not exceeding level 6 on the scale set out in Schedule 7 to the Maritime Ordinance ("**the Schedule 7 Scale**") (£100,000) (subsection (7)).

New section 237F applies where an accident occurs in the Falkland Islands' Convention area. This new section imposes a duty on the Harbour Master to ensure that the Falkland Islands complies with its obligations under Articles 7 (location) and 8 (marking) of the Wrecks Convention.

New section 237G applies where a maritime casualty results in a wreck in the Falkland Islands' Convention Area of a non-Falkland Islands registered ship which the Harbour Master determines constitutes a hazard (subsection (1)). A "hazard" is any condition or threat that: (a) poses a danger or impediment to navigation; or (b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States (see article 1.5 of the Wrecks Convention).

Where this new section applies the Harbour Master must notify the Governor who, in turn, must notify the State of the ship's registry and the ship's registered owner. The Governor must consult that state and owner and any other States (if any) that may be affected by the wreck regarding any measures to be taken by the Harbour Master (subsection (2)).

New section 237H applies in respect of a wreck in the Falkland Islands' Convention area which the Harbour Master has determined to be a hazard (subsection (1)). The Harbour Master must take all reasonable steps to give the registered owner notice in writing (a "**wreck removal notice**") to comply with the obligations imposed upon the owner by the Wrecks Convention both to arrange for the removal of the wreck and to provide evidence that they have sufficient insurance to cover their liability under the Convention (subsection (2)).

The wreck removal notice must include the timescale for removal and inform the registered owner of the other matters set out in Article 9(6)(b) and (c) of the Wrecks Convention (subsection (3)).



A registered owner who does not comply with a wreck removal notice without reasonable excuse commits an offence which is punishable on conviction by a fine not exceeding Level 12 on the Schedule 7 Scale (£6,500,000) (subsections (4) and (5)).

New section 237I applies if the Harbour Master has given a registered owner a wreck removal notice (subsection (1)). The Harbour Master may impose conditions in the wreck removal notice in accordance with Article 9(4) of the Wrecks Convention to ensure removal is consistent with safety or protection of the marine environment (subsection (2)). A registered owner who does not comply with a condition under this section without reasonable excuse commits an offence. Such an offence is punishable on conviction by a fine not exceeding Level 6 on the Schedule 7 Scale (£100,000) (subsections (4) and (5)).

New section 237J enables the Harbour Master to remove a wreck in the Falkland Islands' Convention Area in the circumstances set out in Article 9(7) (registered owner does not meet deadline or is uncontactable) or (8) (immediate action is needed) of the Wrecks Convention.

New section 237K deals with the liability for the costs incurred in the locating, marking or removal of any wreck in the Falkland Islands' Convention Area (subsection (1)). These costs may be recovered directly from the ship's registered owner (and, if new section 237S applies, directly from the owner's insurer) unless the owner (or the owner's insurer) proves that (a) any of the exceptions provided for under Article 10(1)(a), (b) or (c) of the Convention are applicable, or (b) the liability would conflict with other Conventions detailed in Article 11(1) of the Wrecks Convention or any other provision that the Governor may specify by order (subsection (3)). Where two ships are involved and costs cannot reasonably be separated, the registered owner's liability is to be joint and several (subsection (4)).

Although, in principle, under the Wrecks Convention and Article 4(2)(d) of the LLMC Convention an owner may limit their liability for claims relating to wreck, under those Conventions a State may nonetheless decide not to allow such a limitation of liability. When ratifying the LLMC Convention the UK determined on behalf of the Overseas Territories that owners should not be allowed to limit their liability for wreck claims. Consequently, subsection (5) of new section 237K and paragraph 3 of Part II of Schedule 5 to the Maritime Ordinance (as it will be amended by *clause 9(2)* of the Bill) provide that owners will not be able to limit their liability for claims made under section 237K.

New section 237L provides that claims under new section 237K for recovery of costs associated with locating, marking or removing a wreck are subject to a time limit. The claim must be brought within 6 years of the accident or, if sooner, within 3 years from the date on which a wreck removal notice was issued under new section 237H.

New section 237M implements the compulsory insurance and state certification requirements in the Wrecks Convention. It applies to ships of 300 gross tonnage and above (subsection (1)). A Falkland Islands registered ship may not enter or leave a port, harbour or offshore installation unless (a) the ship has wreck removal insurance; and (b) the Harbour Master has certified that it has wreck removal insurance (subsection (2)). A non-Falkland Islands registered ship may not enter or leave a port or harbour in the Falkland Islands or an offshore installation in the Falkland Islands Convention area unless (a) the ship has wreck removal insurance; and (b) there is a certificate confirming that it has such insurance (subsection (3)). Wreck removal insurance for

these purposes requires insurance or other security compatible with Article 12 of the Wrecks Convention.

New section 237N provides that if a ship enters or leaves (or attempts to enter or leave) a port, harbour or offshore installation without the required certificate attesting that insurance is in place, the master and operator will commit an offence. The offence is punishable, in the case of the master, by a fine not exceeding Level 5 on the Schedule 7 Scale (£40,000) and, in the case of the registered owner, by a fine not exceeding Level 12 on that scale (£6,500,000).

New section 237O makes provision for a vessel to be detained if either the insurance or wreck removal insurance certification requirements are not complied with. Section 268 of the Maritime Ordinance already provides for the enforcement of any detention under the Act.

New section 237P makes provision for the issue of wreck removal insurance certificates by the Harbour Master. It requires the Harbour Master to issue a wreck removal insurance certificate for a Falkland Islands registered ship on application by the registered owner if the Harbour Master is satisfied that the insurance in place will cover the liability under the Wrecks Convention and the prescribed fee has been paid (subsections (1) and (2)). If the Harbour Master is not satisfied that this is the case, then he or she can refuse to issue a certificate. The form of the certificate must be in the form of certificate set out in the Annex to the Wrecks Convention (subsection (4)). The Harbour Master must ensure a copy of the certificate is entered in the register and made available for public inspection (subsections (5) and (6)). The Harbour Master may also issue a certificate for a ship registered in a State which is not party to the Wrecks Convention (subsection (3)).

New section 237Q requires the master of the ship to ensure the wreck removal insurance certificate is carried on board, and to produce it when requested to the Harbour Master (subsections (1) to (3)). Failure to comply is an offence (subsection (4)) which is punishable on conviction by a fine not exceeding Level 1 on the Schedule 7 Scale (£2,500).

New section 237R empowers the Harbour Master to cancel a wreck removal insurance certificate issued in respect of a Falkland Islands registered ship, if satisfied that (a) the certificate was obtained on the basis of false or incorrect information; (b) the insurer or guarantor is unable to meet their obligations under the contract of insurance or other financial security referred to in Article 12 of the Wrecks Convention; or (c) the contract of insurance or other financial security does not satisfy the requirements of Article 12 of the Wrecks Convention (subsection (1)). The Harbour Master may by notice to the ship's registered owner require the wreck removal insurance certificate to be surrendered to the Harbour Master as soon as reasonably practicable (subsection (2)). A person who fails to surrender a certificate in accordance with subsection (2) commits an offence which is punishable on conviction by a fine not exceeding Level 1 on the Schedule 7 Scale (£2,500).

New section 237S provides that a person who is entitled to recover costs from a shipowner under new section 237K has the right of direct action against that shipowner's wreck removal insurer. The insurer is allowed to limit liability in the same manner and to the same extent as the shipowner, and claim defences which would be available to the shipowner. In addition, the insurer may limit liability where the shipowner is not entitled to limit liability under the LLMC Convention. The insurer also has an additional defence if the incident was due to the wilful misconduct of the shipowner.

Article 12(13) of the Wrecks Convention allows for the use of electronic insurance certificates, which would mean ships not being required to have a paper certificate of insurance when entering or leaving a port or arriving or leaving an offshore facility. It is not currently intended that certificates will be issued electronically but new section 237T will enable the Harbour Master to issue electronic certificates in the future if or when the Falkland Islands decides it may wish to do so. It should be noted that to enable such electronic certificates to be used in the Falkland Islands, in addition to this provision being enacted, the Secretary-General of the International Maritime Organisation will need to be notified that the Falkland Islands maintains records in an electronic format, accessible to all State Parties, attesting to the existence of the certificate.

New section 237U makes provision in respect of government ships i.e. warships or ships for the time being used by a State for non-commercial purposes only. Although, as noted above, the Wrecks Convention does not automatically apply to such ships, it is possible for a State to give notice that it will apply the Convention to them. This new section therefore makes provision to deal with, and modify the provisions of Part 9A that relate to, these ships.

New section 237V will make saving provision. It provides that nothing in new Part 9A affects any claim, or the enforcement of any claim, a person incurring any liability under this Part may have against any other person in respect of that liability.

New section 237W contains an order making power under which the Governor may amend Part 9A and Schedule 6A to reflect any future amendments to the Wrecks Convention.

*Clause 8* amends section 290 of the Maritime Ordinance by omitting the existing definition of “offshore installation” which, as mentioned above, is replaced by the new definition inserted in section 2(1) of the Ordinance.

*Clause 9* amends section 309 (forms) of the Maritime Ordinance 2017 to substitute reference to the Director of Emergency Services and Island Security following a change of structure of the Falkland Islands Government in which the Maritime team was relocated from the Directorate of Natural Resources.

*Clause 10* amends Schedule 4 to the Maritime Ordinance. *Subsections (1) and (2)(a) to (e) and (g) to (h)* add wording omitted from the original text of Parts I and II Schedule 4 or to correct that text to ensure that the Schedule gives full effect to the Athens Convention in the Falkland Islands and reflects the Falkland Islands’ circumstances.

*Clause 10(2)(d)* inserts a new paragraph 9A into Part II of Schedule 4. This sets out a reservation that will need to be made when the 2002 Protocol to the Athens Convention is extended to the Falkland Islands. This reservation was made by the UK when it ratified the 2002 Protocol.

When the 2002 Protocol was agreed by States it was recognised that although the Protocol should ensure greater protection for passengers by requiring mandatory insurance, the insurance market might not be willing to provide insurance to cover all potential risks or, if they did, it would be at premiums unacceptable to many shipowners. It was therefore provided that States could reserve their position and provide that different liability limits and insurance levels could

be applied in respect of different risks. The main risks that the insurance market were reluctant to cover were war risks.

Consequently, when the European Union ratified the 2002 Protocol, all EU States including the UK lodged a reservation to the effect that they would not fully implement the 2002 Protocol in effect, in respect of the certain risk which they identified as those contained in paragraph 2.2 of the International Maritime Organisation (“IMO”) Guidelines for Implementation of the Athens Convention annexed to IMO Circular letter 2758 dated 20 November 2006 LEG 101/8/3. Paragraph 2.2 refers principally to “war insurance”, namely insurance which “covers liability, if any, for the loss suffered as a result of death or personal injury to a passenger caused by: (a) war, civil war, revolution, rebellion, insurrection, or civil strife arising there from, or any hostile act by or against a belligerent power; (b) capture, seizure, arrest, restraint or detainment, and the consequences thereof or any attempt thereat; (c) derelict mines, torpedoes, bombs or other derelict weapons of war; (d) act of any terrorist or any person acting maliciously or from a political motive and any action taken to prevent or counter any such risk; (e) confiscation and expropriation.”

Instead, in respect of these risks/insurance, different provisions, set out in the reservation, would apply to the insurance required for these risks.

The reservation provided for in new paragraph 9A therefore makes equivalent provision to that made by the UK. It follows the wording of the template reservation provided by the International Maritime Organisation and the actual reservation made by the United Kingdom and European Union States. It is designed to secure enhanced insurance protection for passengers on ships but within limits that the insurance market will be willing to cover.

*Clause 11* amends Schedule 5 to the Maritime Ordinance. *Subsection (1) and (2)(b) and (c)* correct typographical errors in the original text of the Schedule. As already noted in respect of new section 237K, *subsection (2)(a)* amends paragraph 3 of Part II of Schedule 5 to clarify that an owner may not limit their liability under the LLMC Convention for claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned.

*Clause 12* inserts the text of the Wrecks Convention as new Schedule 6A.

*Clause 13* amends Part 2 of Schedule 1 to the Law Revision and Publication Ordinance by inserting reference to the United Kingdom Merchant Shipping (Liability of Shipowners and Others) (New Rates of Interest) Order 2004 into the table in Part 2 of that Schedule. The effect is that this Order will be adopted in the Falkland Islands with the result that the rates of interest set out in the Order for claims against shipowners will apply in the event of any such claims under the Maritime Ordinance or its associated regulations.

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Published by the Attorney General’s Chambers, Stanley, Falkland Islands

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