

M O N T S E R R A T

**MERCHANT SHIPPING (REGISTRATION)
(AMENDMENT) BILL**

No. 15 of 2023

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I ASSENT

Governor

DATE:

M O N T S E R R A T

No. 15 of 2023

A BILL FOR

AN ACT TO AMEND THE MERCHANT SHIPPING (REGISTRATION) ACT (CAP. 7.11) TO PROVIDE FOR THE ESTABLISHMENT OF A MARITIME ADMINISTRATION, THE APPOINTMENT OF SURVEYORS AND INSPECTORS, TO ENSURE SAFETY AT SEA AND THE PROTECTION OF THE MARINE ENVIRONMENT AND FOR RELATED MATTERS.

BE IT ENACTED by The King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat and by the authority of the same as follows:—

1 Short title

This Act may be cited as the Merchant Shipping (Registration) (Amendment) Act, 2023.

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2 Interpretation

In this Act, “**principal Act**” means the Merchant Shipping (Registration) Act (Cap. 7.11).

3 Section 2 amended

(1) Section 2(1) of the principal Act is amended—

(a) by inserting the following definitions in the correct alphabetical sequence—

“**Convention**” means an international convention or agreement concerning shipping, maritime safety or the marine environment;

“**dangerously unsafe**”, in relation to a ship, has the meaning given in section 105(7);

“**foreign ship**” means a ship which is not a Montserrat ship;

“**Government**” means the Government of Montserrat

“**harmful substance**” means a substance which, if introduced into the sea or other waters, is liable to—

- (a) create hazards to human health,
- (b) harm living resources and marine life,
- (c) damage property or the environment, or
- (d) interfere with other legitimate uses of the sea,

and includes oil;

“**Maritime Administration**” means the Maritime Administration established by section 3A(2);

“**Montserrat controlled waters**” means—

- (a) Montserrat waters, and
- (b) such other areas of water within which the jurisdiction and rights of

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Montserrat are exercisable in accordance with Part XII of the United Nations Convention on the Law of the Sea (protection and preservation of the marine environment);

“oil” means oil of any description and includes spirit produced from oil of any description, and a mixture of oil, and also includes coal tar;

“Receiver” means the Receiver of Wreck;

“Safety Convention” means the International Convention for the Safety of Life at Sea 1974 as given the force of law in Montserrat by section 122;

“ship” means a vessel used in navigation and, except where expressly provided otherwise, includes a fishing vessel and a pleasure vessel; and

“wreck”, which follows a maritime casualty, means—

- (a) a sunken or stranded ship;
- (b) part of a sunken or stranded ship, including an object that is or has been on board the ship;
- (c) an 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 includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water.”.

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- (b) by deleting the following definitions for “**fishing vessel**” and substituting the following—
- “**fishing vessel**” means a vessel used solely for fishing;
- (2) The principal Act is amended by inserting immediately after section 2(1) the following—
- “(2) A reference in this Act to a Convention or to a provision of or Annex to a Convention, is to be construed—
- (a) as a reference to the Convention, provision or Annex as modified from time to time, and
- (b) if the Convention, provision, or Annex is replaced, as a reference to the replacement.
- (3) Except as otherwise required in accordance with a Convention, no modification or replacement affects a right or liability arising before the date on which the modification or replacement takes effect.
- (4) The texts of the Conventions (as they have effect when this Act is passed) shall be published by the Maritime Administration as the Maritime Administration considers appropriate.
- (5) The Maritime Administration shall publish a modification or replacement of a Convention (or provision, including an Annex or other attachment) as the Maritime Administration considers appropriate.”.

4 Sections 3A to 3G inserted

The principal Act is amended by inserting the following as sections 3A to 3G—

“3A. Maritime Administration

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- (1)** The Minister shall be responsible for—

 - (a) the general superintendence and oversight of all matters relating to merchant shipping, seafarers and the safety of those at sea, and
 - (b) implementing and carrying into execution this Act and all statutory provisions relating to merchant shipping, seafarers, the safety of those at sea and the protection of the marine environment for the time being in force, except where otherwise provided.
- (2)** There shall be a Maritime Administration comprising—

 - (a) the Permanent Secretary;
 - (b) the Director of Agriculture;
 - (c) the Director of the Environment;
 - (d) the Harbour Master;
 - (e) the Registrar of Montserrat Ships;
 - (f) the Port Manager, if different from the Harbour Master;
 - (g) the Commissioner of the Royal Montserrat Police Service; and
 - (h) the Director of the Disaster Management Coordination Agency.
- (3)** The Governor, acting on the advice of the Cabinet, may by order amend the list of persons comprising the Maritime Administration.
- (4)** The Maritime Administration shall—

 - (a) exercise its functions as are conferred on it by this Act, any other enactment

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and under any regulations made under this Act, and

- (b) perform any other function as the Minister may direct.
- (5) A function conferred on the Maritime Administration by this Act, any other enactment or any regulations made under this Act may be exercised on behalf of the Maritime Administration by—

 - (a) the Harbour Master, and
 - (b) any other person listed in subsection (2) expressly authorised for the purpose by—

 - (i) the Minister,
 - (ii) the Maritime Administration, or
 - (iii) regulations made under this Act.
- (6) The Permanent Secretary—

 - (a) shall serve as Chairman of the Maritime Administration and of its meetings, and
 - (b) may nominate a member of the Maritime Administration to act as Chairman in his absence.
- (7) In this section—

 - “Commissioner of the Royal Montserrat Police Service”** means the Commissioner of Police appointed by the Governor under section 85(4) of the Montserrat Constitution Order and section 12 of the Police Act (Cap. 10.01);
 - “Director of Agriculture”** means the Director of Agriculture appointed

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under section 3 of the Agriculture Act (Cap. 9.08);

“Director of the Environment” means the Director of Environment referred to in section 10 of the Conservation and Environmental Management Act (Cap. 12.03);

“Director of the Disaster Management Coordination Agency” means the Director of Disaster Preparedness and Response appointed under section 3 of the Disaster Preparedness and Response Act (Cap 10.03)

“Permanent Secretary” means the Permanent Secretary in the Ministry responsible for merchant shipping, seafarers and the safety of those at sea.

3B. Harbour Master

- (1) There shall be a Harbour Master.
- (2) The Harbour Master shall be—
 - (a) the Port Manager, or
 - (b) any other person as the Governor, acting on the advice of the Cabinet, may appoint.
- (3) The Governor may, acting on the advice of the Cabinet, confer responsibilities or functions on the Harbour Master under—
 - (a) this Act,
 - (b) any other enactment, or
 - (c) any regulations made under this Act.
- (4) The Harbour Master may be given general or specific directions by—

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(a) the Governor, acting on the advice of the Cabinet; or

(b) the Minister,

in relation to the functions of the Harbour Master under this Act or under any other enactment.

- (5) The Governor, acting on the advice of the Cabinet, may appoint any number of public officers to be deputy Harbour Masters to assist the Harbour Master in carrying out the functions or responsibilities referred to in subsection (3).

3C. Receiver of Wreck

(1) There shall be a Receiver.

(2) The Receiver shall be—

(a) the Port Manager, or

(b) other person as the Governor, acting on the advice of the Cabinet, may appoint.

(3) The Receiver shall—

(a) exercise general direction and supervision over all matters relating to wrecks and salvage in—

(i) Montserrat,

(ii) Montserrat waters, and

(iii) the Fisheries Zone.

(b) discharge all powers and duties assigned to the Receiver under this Act or in any regulations made under it.

(4) The Governor, acting on the advice of the Cabinet, may appoint or designate a suitably qualified public officer as the Deputy Receiver of Wreck (“the Deputy Receiver”) to—

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- (a) act as Receiver, if—
 - (i) the office of Port Manager is vacant, or
 - (ii) the Receiver is unable to perform the functions conferred on the Receiver under this Act for whatever reason;
 - (b) assist the Receiver and act on the Receiver’s behalf in carrying out the functions or responsibilities referred to in subsection (3).
- (5) In this section “**Fisheries Zone**” means the fisheries zone contiguous to Montserrat waters established by the Proclamation defining the fishery limits of Montserrat under the S.R.O 4/1983.

3D. Maritime strategy

The Maritime Administration shall prepare, publish, implement and from time to time review a maritime strategy for Montserrat.

3E. Maritime advisory committees

- (1) The Minister may appoint committees for the purpose of advising the Minister and the Maritime Administration on—
 - (a) the development of a maritime strategy for Montserrat,
 - (b) the development of the Government’s policy with respect to merchant shipping, seafarers, the safety of those at sea and the protection of the marine environment,

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- (c) the making or alteration of any regulations, rules or other instruments made under this Act, and
 - (d) the implementation of or giving effect to any Convention which—
 - (i) is extended to Montserrat, or
 - (ii) may be extended to Montserrat.
- (2) A committee appointed under this section shall consist of persons representing the interests principally affected or having special knowledge of the subject matter on which the committee is requested to advise.

3F. Impersonation of a maritime official

- (1) A person who, with intent to deceive, impersonates a maritime official or makes a statement or does an act calculated falsely to suggest that he is an official, commits an offence.
- (2) A person who, with intent to deceive, makes a statement or does an act calculated falsely to suggest that he or it is, or is authorised to act as, or to act on behalf of, the Maritime Administration commits an offence.
- (3) A person who commits an offence under this section is liable—
 - (a) on summary conviction to a fine of \$5,000 or to imprisonment for a term of 18 months, or to both; or
 - (b) on conviction on indictment, to a fine of \$10,000 or to imprisonment for a term of 3 years, or to both.
- (4) In this section, “maritime official” means—
 - (a) the Port Manager;
 - (b) the Harbour Master;

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- (c) the Registrar;
- (d) a surveyor appointed under section 124(2);
- (e) an inspector appointed under section 124(1);
- (f) an investigator appointed under section 138(1); or
- (g) any person appointed or authorised to act on behalf any of the officials mentioned in subsections (a) to (f).

3G. Making or issuing false certificates, documents etc

- (1) A person who intentionally makes, issues or supplies a certificate or other instrument required by or under this Act or regulations made under it—
 - (a) knowing that the certificate or instrument is false, or
 - (b) knowing that he has no lawful authority to make, issue or supply the certificate or instrument,commits an offence.
- (2) A person who intentionally makes, issues or supplies a certificate or other instrument required in relation to a ship or seafarer by or under a Convention (whether or not the Convention has the force of law in Montserrat)—
 - (a) knowing that the certificate or instrument is false, or
 - (b) knowing that he has no lawful authority to make, issue or supply the certificate or instrument,commits an offence.

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(3) A person who commits an offence under this section is liable—

(a) on summary conviction to a fine of \$5,000 or to imprisonment for a term of 18 months, or to both; or

(b) on conviction on indictment, to a fine of \$10,000 or to imprisonment for a term of 3 years, or to both.”.

5 Section 4 amended

Section 4 of the principal Act is amended by deleting section 4 and substituting the following—

“4. Application of PART 2

This Part does not apply to fishing vessels.”.

6 Section 28 amended

Section 28 of the principal Act is amended—

(a) by deleting subsection (1) and substituting—

“(1) If a change in the registered ownership of a ship is approved by the Registrar in accordance with section 43 and regulations made under section 60, the Registrar shall—

(a) endorse the change on the certificate of registry, or

(b) issue a new certificate of registry.”; and

(b) in subsections (2) and (3), by deleting the word “master” wherever it appears and substituting “former owner”.

7 Section 43 replaced

The principal Act is amended by deleting section 43 and substituting the following—

“43. Change of ownership

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If the ownership of a ship changes, without prejudice to section 28—

- (a) the former owner and new owner shall—
 - (i) notify the Registrar of the change, and
 - (ii) provide s information as may be required by regulations made under section 60, and
- (b) the Registrar may register the ship anew or refuse to register the ship in accordance with those regulations.”.

8 Sections 58A and 58B inserted

The principal Act is amended by inserting immediately after section 58 the following as sections 58A and 58B—

“58A. Issue of false certificates of registry

- (1) A person, other than the Registrar or a person authorised by the Registrar, who, with intent to deceive, issues a document purporting to be a certificate of registry issued under section 23 commits an offence.
- (2) A person who commits an offence under this section is liable—
 - (a) on summary conviction to a fine of \$5,000 or to imprisonment for a term of 18 months, or to both; or
 - (b) on conviction on indictment, to a fine of \$10,000 or to imprisonment for a term of 3 years, or to both.

58B. Misuse of certificate of registry

- (1) A person who, with intent to deceive, uses or lends or allows to be used by another a

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certificate of registry (whether in force or not),
commits an offence.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction to a fine of \$5,000 or to imprisonment for a term of 18 months, or to both; or

(b) on conviction on indictment, to a fine of \$10,000 or to imprisonment for a term of 3 years, or to both.”.

9 Part 3A inserted

The principal Act is amended by inserting immediately after section 67 the following Part as Part 3A—

“PART 3A

CREW

67A. Operating a ship without a sufficient and competent crew

(1) This section applies to—

(a) a Montserrat ship wherever it may be, and

(b) a foreign ship in Montserrat or in Montserrat waters.

(2) The master of a ship shall not operate the ship unless it is staffed with a crew that is sufficient and competent for the safe operation of the ship on its intended voyage and is kept so staffed during the voyage.

67B. Positions on board ships

(1) This section applies to—

(a) a Montserrat ship wherever it may be, and

(b) a foreign ship in Montserrat or in Montserrat waters.

(2) The master and owner of a ship to which this section applies shall ensure that every person who is employed on

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board the ship in a position in respect of which a certificate or other qualification or experience is required by a relevant instrument—

- (a)* holds the certificate and complies with its terms and conditions, and
 - (b)* possesses the qualification or the experience.
- (3)** In this section, “relevant instrument” means—
- (a)* regulations made under section 67D;
 - (b)* any other relevant enactment; or
 - (c)* a Convention given effect in Montserrat.

67C. Offences relating to crew matters

- (1)** A person who contravenes section 67A or section 67B commits an offence is liable on summary conviction to a fine not exceeding \$10,000.
- (2)** If an offence under subsection (1) is continued for more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is continued.

67D. Regulations relating to masters and seafarers

The Governor, acting on the advice of Cabinet, may make regulations for carrying out the purposes and provisions of this Part, including regulations—

- (a)* specifying the positions that shall be occupied on board ships, or classes of ships, their minimum number and the types and classes of maritime documents that persons in those positions shall hold;
- (b)* specifying requirements in respect of a position on board ships or classes of ships;
- (c)* specifying the types and classes of certificates that may be issued in respect of positions on board ships or classes of ships;

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- (d) respecting the qualifications required of applicants for any type or class of certificate specified under paragraph (c), including medical fitness, minimum age, degree of knowledge, skill, training and experience;
- (e) respecting the manner of determining whether a person meets the requirements specified under paragraph (b) in relation to a position or the qualifications required under paragraph (d) for any type or class of certificate of competency or other maritime document;
- (f) specifying the terms and conditions of certificates of competency or other maritime documents issued under the regulations;
- (g) specifying the Montserrat ships or classes of Montserrat ships in respect of which the master or owner shall enter into agreements with crew members and the nature and content of the agreements;
- (h) respecting persons who enter into agreements to provide crew members, including requiring that those persons be licensed;
- (i) specifying the information to be included in agreements with crew members;
- (j) respecting the payment and allotment of crew members' wages;
- (k) respecting any occupational health, welfare or safety matter on board a vessel;
- (l) specifying the circumstances in which ensuring arrangements for a crew member's return and paying their expenses are required or not required;
- (m) respecting the fitness of crew members for duty on ships, including measures preventing drug and alcohol abuse; and

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- (n) creating criminal offences for non-compliance with the regulations and making provision for the imposition of penalties.”.

10 Parts 5 and 6 deleted and replaced

The principal Act is amended by deleting Parts 5 and 6 and inserting the following as Parts 5 to 12—

“PART 5

SAFETY MEASURES—GENERAL

Safety of ships and the health of those on board

104. Regulations relating to the safety of ships and the health of those on board

- (1) The Governor, acting on the advice of Cabinet, may make regulations for—
- (a) securing the safety of Montserrat ships and persons on them, and for protecting the health of persons on Montserrat ships;
- (b) securing the safety of other ships and persons on them while they are within Montserrat waters and for protecting the health of persons on ships other than Montserrat ships while they are within Montserrat waters.
- (2) Except as provided by subsection (3), regulations made under subsection (1) shall not apply in relation to—
- (a) a qualifying foreign ship while it is exercising—
- (i) the right of innocent passage, or
- (ii) the right of transit passage through straits used for international navigation, or
- (b) a person on a ship while it is exercising a right mentioned in subsection (2).
- (3) Regulations made under subsection (1) shall apply in relation to a foreign ship, and persons on a foreign ship, even though the ship is exercising a right mentioned in subsection (2)(a), to the extent that the regulations give

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effect to a provision of a Convention extended to Montserrat that relates to the safety of ships or persons on them or to the protection of the health of persons on ships.

- (4) Regulations made under subsection (1) may make provision with respect to any of the following matters—
- (a) the design, construction, maintenance, repair, alteration, inspection, surveying and marking of ships and their machinery and equipment;
 - (b) the packaging, marking, loading, placing, moving, inspection, testing and measuring of cargo and anything on a ship which is not cargo, machinery or equipment;
 - (c) the carrying out of an operation involving a ship;
 - (d) the use of the machinery and equipment of a ship and of anything on a ship which is not cargo, machinery or equipment;
 - (e) the manning of ships, including the employment on a ship of persons qualified to attend to the health and safety of persons on the ship;
 - (f) the arrangements for ensuring communication between persons in different parts of a ship and between persons in the ship and other persons;
 - (g) the access to, presence in and egress from a ship, and different parts of it, of persons of any description;
 - (h) the ventilation, temperature and lighting of different parts of a ship;
 - (i) the steps to be taken to prevent or control noise, vibration and radiation in and from a ship and the emission in or from a ship of smoke, gas and dust;
 - (j) the steps to be taken to prevent, detect and deal with outbreaks of fire on a ship;
 - (k) the steps to be taken to prevent a collision involving a ship and in consequence of a collision involving a ship;

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- (l)* the steps to be taken, in a case where a ship is in distress or stranded or wrecked, for the purpose of saving the ship and its machinery, equipment and cargo and the lives of persons on or from the ship, including the steps to be taken by other persons for giving assistance in such a case;
 - (m)* the removal, by jettisoning or otherwise, of its equipment and of other things from a ship for the purpose of avoiding, removing or reducing danger to persons or property;
 - (n)* the steps to be taken, in a case where danger of any kind occurs or is suspected on a ship, for removing or reducing the danger and for warning persons who are not on the ship of the danger or suspected danger;
 - (o)* the making of records and the keeping of documents relating to ships and the keeping and use on a ship of information to facilitate the navigation of the ship;
 - (p)* the keeping of registers and the issue, withdrawal, suspension or revocation of certificates in cases for which registration or a certificate is required by virtue of the regulations; and
 - (q)* the furnishing of information;
but the mention of specific matters in this subsection shall not be construed as restricting the generality of the power conferred by subsection (1)(a) or (b).
- (5)** The power to make regulations conferred by subsection (1) shall extend also to the making of regulations for the prevention of collisions between seaplanes on the surface of water and between ships and seaplanes and subsection (4)(k) has effect accordingly.
- (6)** The Governor, acting on the advice of Cabinet, may make regulations prescribing safety requirements and providing for the issue of local certificates in respect of—
- (a)* fishing vessels;
 - (b)* pleasure vessels; and

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(c) other classes of ship as may be specified in the regulations.

(7) Regulations made under subsection (6) may make provision with respect to any of the matters listed in subsection (4).

105. Owner and master liable in respect of dangerously unsafe ship

(1) If a ship which—

(a) is in a port in Montserrat, or

(b) is a Montserrat ship and is in any other port,

is dangerously unsafe, then, subject to subsections (3) and (4), the master and the owner of the ship each commit an offence.

(2) A person who commits an offence under this section is liable—

(a) on summary conviction to a fine not exceeding \$2,700;

(b) on conviction on indictment to imprisonment for a term not exceeding two years or a fine not exceeding \$18,000, or both.

(3) It shall be a defence in proceedings for an offence under this section to prove that at the time of the alleged offence—

(a) arrangements had been made which were appropriate to ensure that before the ship went to sea it was made fit to do so without serious danger to human life by reason of the matters relevant to its safety which are specified in the charge, or

(b) it was reasonable for arrangements not to have been made.

(4) It shall also be a defence in proceedings for an offence under this section to prove—

(a) that, under the terms of one or more charter-parties or management agreements entered into by the

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accused (“A”) the owner’s responsibilities relating to the ship’s safety had at the time of the alleged offence been wholly assumed by some other person or persons, and

- (b) that in all the circumstances of the case A—
 - (i) had taken steps as it was reasonable to take, and exercised diligence as it was reasonable to exercise, to secure the proper discharge of those responsibilities during the period for which those responsibilities had been assumed by some other person or persons as mentioned in paragraph (a), and
 - (ii) in determining whether A had taken steps, regard shall be had to the matters mentioned in subsection (5).
- (5) Those matters are—
 - (a) whether prior to the time of the alleged offence A was, or in all the circumstances ought reasonably to have been, aware of any deficiency in the discharge of the responsibilities relating to the ship’s safety, and
 - (b) the extent to which A was or was not able, in the event of a deficiency, under the terms of a charter-party or management agreement—
 - (i) to terminate it, or
 - (ii) to intervene in the management of the ship.
- (6) No proceedings for an offence under this section shall be instituted except by or with the consent of the Director of Public Prosecutions.
- (7) For the purposes of this section, a ship is “**dangerously unsafe**” if, having regard to the nature of the service for which it is being used or intended, the ship is, by reason of the circumstances referred in subsection (8)—
 - (a) unfit to go to sea without serious danger to human life,

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- (b) unfit to remain at sea without serious danger to human life, or
 - (c) unfit to go on a voyage without serious danger to human life.
- (8) The circumstances referred to in subsection (7) are—
 - (a) the condition, or the unsuitability for its purposes, of—
 - (i) the ship or its machinery or equipment, or
 - (ii) any part of the ship or its machinery or equipment;
 - (b) the operation of the ship without a sufficient and competent crew;
 - (c) overloading or unsafe or improper loading;
 - (d) any other matter relevant to the safety of the ship.
- (9) For the purposes of this section, going to sea shall, in a case where the service for which the ship is intended consists of going on voyages that do not involve going to sea, be construed as a reference to going on a voyage.
- (10) In this section, “**management agreement**”, in relation to a ship, means an agreement (other than a charter-party or a contract of employment) under which the ship is managed, either wholly or in part, by a person other than the owner (whether on behalf of the owner or on behalf of some other person).
- (11) References in this section to responsibilities being assumed by a person under the terms of a charter-party or management agreement are references to their being so assumed by that person whether or not the person has entered into a further charter-party or management agreement providing for them to be assumed by some other person.

Assistance at sea

106. Duty of ship to assist the other in case of collision

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- (1) The duties imposed on the master of a ship by subsection (2) apply to—
- (a) the master of a Montserrat ship, and
 - (b) the master of a foreign ship when in Montserrat waters.
- (2) In the event of a collision between two ships, the master of each ship shall, if and so far as it can be done without danger to the master's ship, crew and passengers (if any)—
- (a) render to the other ship, its master, crew and passengers (if any) assistance as may be practicable and necessary to save them from any danger caused by the collision;
 - (b) stay by the other ship until the master has ascertained that it has no need of further assistance, and
 - (c) give to the master of the other ship the name of the master's own ship and also the names of the ports from which that ship comes and to which it is bound.
- (3) The failure of the master of a ship to comply with the provisions of this section shall not raise any presumption of law that the collision was caused by the master's wrongful act, neglect, or default.
- (4) If a master fails without reasonable excuse to comply with this section, the master commits an offence and—
- (a) in the case of a failure to comply with subsection (2)(a) or (b), is liable—
 - (i) on summary conviction to a fine not exceeding \$5,400 or imprisonment for a term not exceeding six months or both;
 - (ii) on conviction on indictment to a fine not exceeding \$18,000 or imprisonment for a term not exceeding two years or both, and

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- (b) in the case of a failure to comply with subsection (2)(c), is liable—
 - (i) on summary conviction to a fine not exceeding \$540;
 - (ii) on conviction on indictment to a fine not exceeding \$5,400,

and, in either case, if the master is a certified officer, an inquiry into the master's conduct may be held, and a certificate held by the master may be ordered to be cancelled or suspended.

107. Duty to assist ships, etc. in distress

- (1) This section applies to—
 - (a) a master of a Montserrat ship wherever it may be, and
 - (b) a master of a foreign ship when in Montserrat waters.
- (2) The master of a ship, on receiving at sea a signal of distress or information from any source that a ship or aircraft is in distress, shall proceed with all speed to the assistance of the persons in distress unless the master—
 - (a) is unable to do so,
 - (b) in the special circumstances of the case, considers it unreasonable or unnecessary to do so, or
 - (c) is released from this duty by virtue of subsection (5) or (6).
- (3) The master of a ship in distress or a search and rescue service may, after consultation so far as possible with the master of a ship responding to a distress signal (“responding ship”), requisition the responding ship in order for it to render assistance, notwithstanding that the master of the responding ship considers it unnecessary or unreasonable for the ship to proceed to the assistance of the persons in distress.

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- (4) The master of a ship requisitioned under subsection (3) shall comply with the requisition by continuing to proceed with all speed to the assistance of the persons in distress.
- (5) A master shall be released from the duties imposed by subsections (2) and (4) as soon as the master is informed of—
 - (a) the requisition of a ship other than the master’s own ship, and
 - (b) that the requisition is being complied with by the ship requisitioned.
- (6) A master shall be released from the duty imposed by subsection (2), and, if the master’s ship has been requisitioned, from the duty imposed by subsection (4), if the master is informed by the persons in distress, or by the master of a ship that has reached the persons in distress, that assistance is no longer required.
- (7) A master who fails to comply with subsection (2) or (4) commits an offence and is liable—
 - (a) on summary conviction to imprisonment for a term not exceeding six months or to a fine of \$5,400, or both;
 - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine not exceeding \$18,000, or both.
- (8) If action is taken by a master of a ship in accordance with this section, the action shall not affect the master’s right, or the right of any other person, to salvage.
- (9) In this section, “**search and rescue service**” means a service provided by the Government or the government of another State which performs distress monitoring, communication, coordination and search and rescue functions.

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Temporary exclusion zones and safety directions

108. Power to establish temporary exclusion zones

- (1) Subsection (2) applies where a ship, structure or other thing—
 - (a) is in Montserrat waters, and
 - (b) is wrecked, damaged or in distress,and in this section “**the relevant casualty**” means that ship, structure or other thing.
- (2) The Maritime Administration may by direction in writing identify an area to which access is restricted (“a temporary exclusion zone”) if it appears to it that—
 - (a) significant harm will or may occur as a direct or indirect result of the relevant casualty being wrecked, damaged or in distress, and
 - (b) if access to an area around the relevant casualty were restricted in accordance with this section, significant harm, or the risk of harm, would be prevented or reduced.
- (3) In this section “**significant harm**” means—
 - (a) significant pollution in Montserrat or in Montserrat waters, or
 - (b) significant damage to persons or property.
- (4) A temporary exclusion zone may not include an area which is not within Montserrat waters.
- (5) If it appears to the Maritime Administration at any time after a temporary exclusion zone is established that the zone is larger than is needed for the purpose of preventing or reducing significant harm, or the risk of harm, the Maritime Administration shall by direction vary the direction establishing the zone accordingly.
- (6) A temporary exclusion zone may be identified by reference to the position of the relevant casualty from time to time.

- (7) If it appears to the Maritime Administration at any time after a temporary exclusion zone is established that the zone is not needed for the purpose of preventing or reducing significant harm, or the risk of harm, the Maritime Administration shall by direction revoke the direction establishing the zone.
- (8) If the Maritime Administration gives a direction under this section—
 - (a) the direction shall, as soon as practicable, be published in a manner as the Maritime Administration considers appropriate for bringing it to the attention of persons likely to be affected by it, and
 - (b) within the period of 24 hours from the giving of the direction, a copy of the direction shall be sent to the International Maritime Organisation.

109. Temporary exclusion zones: offences

- (1) Subject to the provisions of this section, no ship shall enter or remain in a temporary exclusion zone established under section 108.
- (2) A ship may enter or remain in a temporary exclusion zone or a part of a temporary exclusion zone if it does so—
 - (a) in accordance with the direction establishing the zone;
 - (b) with the consent of the Maritime Administration, or
 - (c) in accordance with regulations made by the Governor, acting on the advice of Cabinet, for the purposes of this section.
- (3) A foreign ship may enter a temporary exclusion zone or a part of a temporary exclusion zone if in doing so it is exercising the right of transit passage through straits used for international navigation.
- (4) If a ship enters or remains in a temporary exclusion zone or a part of a temporary exclusion zone in contravention

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of subsection (1), its owner and master each commit an offence and each is liable—

- (a) on summary conviction to a fine not exceeding \$600;
 - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine not exceeding \$18,000 or to both.
- (5) It shall be a defence for a person charged with an offence under this section to prove that the existence or area of the temporary exclusion zone was not, and would not on reasonable enquiry have become, known to the master.

110. Safety directions

- (1) The powers conferred by this section shall be exercisable where—
- (a) an accident has occurred to or in a ship to which this section applies;
 - (b) the accident has created or threatens to create—
 - (i) a risk to safety in Montserrat or Montserrat waters, or
 - (ii) a risk of pollution by a hazardous substance in Montserrat or in Montserrat controlled waters, and
 - (c) exercise of the powers is necessary to remove or reduce the risk.
- (2) The ships to which this section applies are—
- (a) a Montserrat ship—
 - (i) in Montserrat,
 - (ii) in Montserrat controlled waters, or
 - (iii) on the high seas, if the accident has created or threatens to create a risk of pollution by a hazardous substance in Montserrat or in Montserrat controlled waters;
 - (b) subject to subsection (3), a foreign ship—

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- (i) in Montserrat,
 - (ii) in Montserrat waters, or
 - (iii) in Montserrat controlled waters or on the high seas, if the accident has created or threatens to create a risk of pollution by a hazardous substance in Montserrat or in Montserrat controlled waters.
- (3) If an accident has created or threatens to create a risk to safety only, the powers conferred by this section may not be exercised in relation to a foreign ship if the ship is exercising—
- (a) the right of innocent passage, or
 - (b) the right of transit passage through straits used for international navigation.
- (4) The Maritime Administration may, in respect of an accident to which this section applies, for any one or more of the purposes specified in subsection (5), give directions to any of the persons specified in subsection (6) requiring that—
- (a) the ship is to be moved to, or is to be removed from, a specified place, area or locality;
 - (b) that the ship is not to be moved to a specified place, area or locality;
 - (c) that the ship is to be moved over a specified route;
 - (d) that a hazardous substance or cargo is to be, or is not to be, unloaded or discharged;
 - (e) that specified salvage measures are to be, or are not to be, taken;
 - (f) that a person is put ashore or on board a ship.
- (5) The purposes referred to in subsection (4) are—
- (a) securing the safety of the ship or of other ships,
 - (b) securing the safety of persons on the ship or other ships, or of any other persons or property,

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- (c)* preventing or reducing risk to safety,
 - (d)* preventing or reducing pollution in Montserrat or in Montserrat controlled waters, or
 - (e)* preventing or reducing the risk of pollution.
- (6)** A direction under this section may be given to—
- (a)* the owner of the ship or a person in possession of the ship,
 - (b)* the master of the ship,
 - (c)* a pilot of the ship,
 - (d)* the owner of a hazardous substance in the ship,
 - (e)* a salvor in possession of the ship, or
 - (f)* a person who is the servant or agent of a salvor in possession of the ship and who is in charge of the salvage operation.
- (7)** The power of the Maritime Administration under subsection (4)(*a*) to require a ship to be removed from Montserrat waters is not exercisable in relation to a Montserrat ship.
- (8)** If in the opinion of the Maritime Administration the powers conferred by subsection (4) are, or have proved to be, inadequate for any of the purposes specified in subsection (5), the Maritime Administration may for that purpose—
- (a)* take action as the Maritime Administration has power to require to be taken by a direction under this section,
 - (b)* undertake operations for the sinking or destruction of the ship, or any part of it, of a kind which is not within the means of a person to whom directions can be given, and
 - (c)* undertake operations which involve the taking over of control of the ship.

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- (9)** The powers of the Maritime Administration under this section may be exercisable by a person as may be authorised for the purpose by the Maritime Administration.
- (10)** Every person concerned with compliance with directions given, or with action taken, under this section shall use their best endeavours to avoid risk to human life.
- (11)** An action taken under this section in relation to a ship which is under arrest or as respects the cargo of such a ship, being action duly taken in pursuance of a direction given under this section, or being an action taken under subsection (8)—
- (a)* does not constitute contempt of court, and
 - (b)* does not make an Admiralty Marshal (if any) liable in any civil proceedings.
- (12)** A direction given under this section may be varied or revoked by a further direction.
- (13)** Subsection (14) applies if the Maritime Administration proposes to take action under this section in relation to a ship which is outside Montserrat waters.
- (14)** Subject to subsection (15), before taking action under this section, the Maritime Administration—
- (a)* shall consult with any State or territory that may be affected by the accident, including the State or territory in which the ship is registered;
 - (b)* shall notify the proposed action to a person who has an interest which can reasonably be expected to be affected by the action and take account of any comments made by that person;
 - (c)* may consult with independent experts whose names are on a list maintained for the purpose by the International Maritime Organization.
- (15)** The duties to consult or notify in subsection (14)(*a*) or (*b*) do not apply if, in the opinion of the Maritime Administration, the extreme urgency of the situation and

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the need to take immediate action under this section makes it impracticable to consult States or to notify affected persons.

(16) In this section—

“**accident**” means a collision of ships, a stranding, another incident of navigation or another event (whether on board a ship or not) which results in—

- (a) material damage to a ship or its cargo, or
- (b) an imminent threat of material damage to the ship or its cargo;

“**high seas**” means all parts of the sea that—

- (a) are outside the seaward limits of Montserrat controlled waters, and
- (b) are not subject to the jurisdiction and rights of another State exercisable in accordance with Part XII of the United Nations Convention on the Law of the Sea (protection and preservation of the marine environment); and

“**risk to safety**” means a risk to the safety of persons, property or anything navigating in or using Montserrat waters.

111. Service of directions under section 110

- (1) If the Maritime Administration is satisfied that the owner of a ship on which a direction under section 110 may be served is a company or other body, that direction may be served on the master of the ship.
- (2) For the purpose of giving or serving a direction under section 110 to or on any person on a ship, a person acting on behalf of the Maritime Administration has the right to go on board the ship.

112. Right to recover in respect of unreasonable loss or damage

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- (1) If an action duly taken by a person in pursuance of a direction given under section 110, or an action taken under section 110(8)—
- (a) was not reasonably necessary to—
- (i) secure the safety of the ship or of other ships, or of persons on the ship or other ships, or of any other persons or property, or
- (ii) prevent or reduce pollution, or the risk of pollution, or
- (b) was such that the good it did, or was likely to do, was disproportionately less than the expense incurred, or damage suffered, as a result of the action,
- a person incurring expense or suffering damage as a result of, or by taking, the action shall be entitled to recover compensation from the Maritime Administration.
- (2) In considering whether subsection (1) applies, account shall be taken of—
- (a) the extent and risk to safety or of pollution if the action had not been taken,
- (b) the likelihood of the action being effective, and
- (c) the extent of the damage which has been caused by the action.
- (3) A reference in this section to the taking of an action includes a reference to complying with a direction not to take some specified action.
- (4) The Admiralty jurisdiction of the Court shall include jurisdiction to hear and determine a claim arising under this section.

113. Offences in relation to section 110

- (1) A person to whom a direction is given under section 110 who contravenes, or fails to comply with, any requirement of the direction, commits an offence.
- (2) A person who intentionally obstructs another person who is—

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- (a) acting on behalf of the Maritime Administration in connection with the giving or service of a direction under section 110,
 - (b) acting in compliance with a direction under that section, or
 - (c) acting under section 110(8),
commits an offence.
- (3) In proceedings for an offence under subsection (1), it shall be a defence for the accused to prove that all due diligence has been used to ensure compliance with the direction, or that there was reasonable cause for believing that compliance with the direction would have involved a serious risk to human life.
- (4) A person who commits an offence under this section is liable—
- (a) on summary conviction to a fine not exceeding \$2,700, or
 - (b) on conviction on indictment to a fine not exceeding \$15,000.

Safety of navigation

114. Charts and other information

- (1) The Governor, acting on the advice of Cabinet, may make regulations specifying the charts, directions or information which are necessary or expedient for the safe operation of ships.
- (2) Regulations under this section may require Montserrat ships, or such descriptions of Montserrat ships as may be specified in the regulations, to carry (either at all times or on voyages as may be specified in the regulations) copies of the charts, directions or information so specified.
- (3) If a ship goes to sea or attempts to go to sea without carrying copies of the charts, directions or information which it is required to carry by regulations under this section, the master and owner each commits an offence and each is liable—

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- (a) on summary conviction to a fine not exceeding \$600, or
- (b) on conviction on indictment to a fine not exceeding \$1000.

115. Report of dangers to navigation

- (1) The master of a Montserrat ship, on meeting with any of the dangers to navigation specified in subsection (2), shall send information, by all means of communication at the master's disposal and in accordance with regulations to be made for the purposes of this section, to ships in the vicinity and to the relevant authorities on shore as may be prescribed by those regulations.
- (2) The dangers to navigation referred to in subsection (1) are any of the following—
 - (a) a dangerous derelict;
 - (b) a tropical storm;
 - (c) winds of force 10 or above on the Beaufort Scale for which no storm warning has been received;
 - (d) any other direct danger to navigation.
- (3) Regulations for the purposes of this section may be made by the Governor, acting on the advice of Cabinet.
- (4) A master of a ship who fails to comply with the provisions of this section, commits an offence and is liable—
 - (a) on summary conviction to a fine not exceeding \$600, or
 - (b) on conviction on indictment to a fine not exceeding \$2,000.

PART 6
PREVENTION OF POLLUTION

116. General provisions for preventing pollution from ships

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- (1) The Governor, acting on the advice of Cabinet, may make regulations—
- (a) to prevent, reduce or control pollution of the sea or other waters by the discharge of harmful substances from Montserrat ships and from other ships while they are in Montserrat controlled waters;
 - (b) to prevent, reduce or control pollution of the environment by the discharge of harmful substances from Montserrat ships and from other ships while they are in Montserrat controlled waters;
 - (c) to prevent, reduce or control pollution, danger to health or to navigation, or hazards to the environment or to natural resources in relation to the transfer of cargo, stores, bunker fuel, ballast or other harmful substances between ships while within Montserrat controlled waters;
 - (d) to require records relating to the carriage or discharge of harmful substances to be maintained;
 - (e) to require the discharge of harmful substances in Montserrat controlled waters to be reported;
 - (f) in relation to the provision at ports in Montserrat of facilities for the reception of waste from ships and the use of waste reception facilities.
- (2) Regulations made under subsection (1) may, in particular, include provision specifying areas of sea as waters within which the jurisdiction and rights of Montserrat are exercisable in accordance with Part XII of the United Nations Convention on the Law of the Sea (protection and preservation of the marine environment).
- (3) In this section, a reference to the discharge of a harmful substance from a ship, includes a reference to the escape of a harmful substance, or (as the case may be) to its escaping, from that ship.

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117. Discharge of harmful substances from ships into Montserrat controlled waters

- (1) If a harmful substance is discharged into Montserrat controlled waters which are navigable by sea-going ships, then, subject to the provisions of this Part, the following persons commit an offence—
- (a) if the discharge is from a ship, the owner or master of the ship, unless the discharge took place and was caused as mentioned in paragraph (b);
 - (b) if the discharge is from a ship but takes place in the course of a transfer of a harmful substance to or from another ship or a place on land and is caused by the act or omission of a person in charge of an apparatus in that other ship or that place, the owner or master of that other ship or, as the case may be, the occupier of that place.
- (2) Subsection (1) does not apply to a discharge which—
- (a) is made into the sea; and
 - (b) is of a kind or is made in circumstances for the time being prescribed by regulations made by the Governor on the advice of the Cabinet.
- (3) A person who commits an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding \$15,000, and
 - (b) on conviction on indictment, to an unlimited fine.
- (4) In this section—
- “**sea**” includes an estuary or arm of the sea;
- “**place on land**” includes anything resting on the bed or shore of the sea, or of any other waters included in Montserrat controlled waters, and also includes anything afloat (other than a ship) if it is anchored or attached to the bed or shore of the sea or any such waters; and

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“**occupier**”, in relation to a place on land, if it has no occupier, means the owner.

118. Defences of owner or master charged with offence under section 117

(1) If a person is charged with an offence under section 117 as the owner or master of a ship, it shall be a defence to prove that the harmful substance was discharged for the purpose of—

- (a) securing the safety of a ship;
- (b) preventing damage to a ship or cargo; or
- (c) saving life;

unless the court is satisfied that the discharge of the harmful substance was not necessary for that purpose or was not a reasonable step to take in the circumstances.

(2) If a person is charged with an offence under section 117 as the owner or master of a ship, it shall also be a defence to prove—

- (a) that the harmful substance escaped in consequence of damage to the ship, and that as soon as practicable after the damage occurred all reasonable steps were taken for preventing, or, if it could not be prevented, for stopping or reducing, the escape of the substance, or
- (b) that the harmful substance escaped by reason of leakage, that neither the leakage nor any delay in discovering it was due to want of reasonable care, and that as soon as practicable after the escape was discovered all reasonable steps were taken for stopping or reducing it.

119. Defences of occupier charged with offence under section 117

If a person is charged, in respect of the escape of a harmful substance, with an offence under section 117 as the occupier of a place on land, it shall be a defence to prove that neither the escape nor delay in discovering it

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was due to any want of reasonable care and that as soon as practicable after it was discovered all reasonable steps were taken for stopping or reducing it.

120. Duty to report discharge of harmful substance into Montserrat controlled waters

- (1) If a harmful substance—
- (a) is discharged from a ship into Montserrat controlled waters, or
 - (b) is found to be escaping or to have escaped from a ship into Montserrat controlled waters,
- the owner or master of the ship shall forthwith report the occurrence to the Maritime Administration.
- (2) A report made under subsection (1) shall state whether the occurrence falls within subsection (1)(a) or (b).
- (3) A person who fails to make a report as required by this section commits an offence and is liable on summary conviction to a fine not exceeding \$15,000.

121. Oil records

- (1) The Governor, acting on the advice of Cabinet, may make regulations requiring oil record books to be carried in Montserrat ships and requiring the master of a Montserrat ship to record in the oil record book carried by it—
- (a) the carrying out, on board or in connection with the ship, of such of the following operations as may be prescribed relating to—
 - (i) the loading of oil cargo;
 - (ii) the transfer of oil cargo during a voyage;
 - (iii) the discharge of oil cargo;
 - (iv) the ballasting of oil tanks, whether cargo or bunker fuel tanks, and the discharge of ballast from, and cleaning of, such tanks;
 - (v) the separation of oil from water, or from other substances, in a mixture containing oil;

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- (vi) the disposal of oil or water, or other substance, arising from operations relating to the matters specified in sub-paragraphs (i) to (v); or
 - (vii) the disposal of any other oil residues.
 - (b) any occasion on which oil or a mixture containing oil is discharged from the ship for the purpose of securing the safety of any ship, or of preventing damage to any ship or cargo, or of saving life; and
 - (c) any occasion on which oil or a mixture containing oil is found to be escaping, or to have escaped, from the ship in consequence of damage to the ship, or by reason of leakage.
- (2) The Governor, acting on the advice of Cabinet, may make regulations requiring the keeping of records relating to the transfer of oil to and from ships while they are within Montserrat controlled waters; and the requirements of regulations made under this subsection shall be in addition to the requirements of regulations made under subsection (1).
- (3) Records required to be kept in pursuance of the regulations made under subsection (2) shall—
- (a) unless the ship is a barge, be kept by the master of the ship; and
 - (b) if the ship is a barge, be kept, in so far as they relate to the transfer of oil to the barge, by the person supplying the oil and, in so far as they relate to the transfer of oil from the barge, by the person to whom the oil is delivered.
- (4) Regulations made under this section requiring the carrying of oil record books or the keeping of records may—
- (a) prescribe the form of the oil record books or records and the nature of the entries to be made in them;
 - (b) require the person providing or keeping the books or records to retain them for a prescribed period;

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- (c)* require that person, at the end of the prescribed period, to transmit the books or records to a place or person determined by or under the regulations;
 - (d)* provide for the custody or disposal of the books or records after their transmission to such a place or person.
- (5)** Regulations made under this section may—
 - (a)* be made with respect to all or with respect to any one or more of the classes of ship or other matters to which this section relates;
 - (b)* make different provision for different classes of ship or otherwise for different classes of case or different circumstances.
- (6)** If a ship fails to carry such an oil record book as it is required to carry under this section the owner and master each commit an offence and each is liable on summary conviction to a fine not exceeding \$15,000.
- (7)** A person who fails to comply with requirements imposed by or under this section commits an offence and is liable on summary conviction to a fine not exceeding \$15,000.
- (8)** A person who makes an entry in an oil record book carried or record kept under this section which to that person's knowledge is false or misleading in any material particular, commits an offence and is liable—
 - (a)* on summary conviction to a fine not exceeding \$15,000 or imprisonment for a term not exceeding six months, or both; or
 - (b)* on conviction on indictment to a fine not exceeding \$27,000 or to imprisonment for a term not exceeding two years, or both.
- (9)** In proceedings under this Part—
 - (a)* an oil record book carried or record kept in pursuance of the regulations made under this section shall be admissible as evidence of the facts stated in it;

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- (b) a copy of an entry in such an oil record book or record which is certified by the master of the ship in which the book is carried or by the person by whom the record is required to be kept to be a true copy of the entry shall be admissible as evidence;
 - (c) a document purporting to be an oil record book carried or record kept in pursuance of regulations made under this section, or purporting to be such a certified copy as is mentioned in paragraph (b), shall, unless the contrary is proved, be presumed to be such a book, record or copy, as the case may be.
- (10) In this section “**barge**” includes a lighter and any similar vessel.

PART 7

IMPLEMENTATION OF CONVENTIONS

122. Conventions

- (1) Subject to the provisions of this Act, and regulations made under it, the Conventions listed in subsection (2) shall, in so far as they are extended to Montserrat, have the force of law.
- (2) The Conventions are—

 - (a) the International Convention on Load Lines, 1966, and the 1988 Protocol to the International Convention on Load Lines;
 - (b) the International Convention on Civil Liability for Oil Pollution Damage, 1969 and the 1992 Protocol to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969;
 - (c) the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 and the 1973 Protocol relating to Intervention on the High Seas in Cases of Marine Pollution other than Oil;

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- (d) the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 and the Protocols of 1976, 1992, 2000 and 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971;
 - (e) the Convention on the International Regulations for Preventing Collisions at Sea, 1972;
 - (f) the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974;
 - (g) the International Convention for the Safety of Life at Sea 1974, and the Protocols of 1978 and 1988 to the International Convention for the Safety of Life at Sea (“the Safety Convention”);
 - (h) the Convention on Limitation of Liability for Maritime Claims, 1976 and the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976;
 - (i) the International Convention on Salvage, 1989;
 - (j) the International Convention on Oil Pollution Preparedness, Response and Cooperation 1990;
 - (k) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001; and
 - (l) the Nairobi International Convention on the Removal of Wrecks, 2007.
- (3) The Governor, acting on the advice of Cabinet, may by order amend the list of Conventions in subsection (2) by adding any Convention which concerns—
- (a) shipping,
 - (b) ship safety,
 - (c) maritime pollution, or

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- (d)* other aspects of the marine environment.
- (4)** An order under subsection (3) shall be subject to affirmative resolution.
- (5)** In this section, a reference to a Convention includes a reference to—
 - (a)* a provision or part of a Convention,
 - (b)* a protocol, appendix, annex or other addition to a Convention, and
 - (c)* a code, scheme or other instrument which has effect under or by virtue of a Convention.

123. Regulations implementing conventions

- (1)** The Governor, acting on the advice of Cabinet, may by regulations provide for the implementation of a Convention which is given the force of law in Montserrat by section 122.
- (2)** If a Convention includes a mechanism for its amendment, regulations may provide for the Convention to have effect as amended from time to time.
- (3)** Regulations made under subsection (1) may—
 - (a)* make transitional provision in respect of rights or liabilities arising before the date on which an amendment takes effect;
 - (b)* require the Maritime Administration or another specified public authority to publicise an amendment by notice in the Gazette, by oral or written statement to the Assembly or in another specified way;
 - (c)* include a Schedule setting out the text of the Convention in the form in which it has effect when the regulations are made;
 - (d)* provide for publication of the text of the Convention in another specified way, as it has effect when the regulations are made and with or without provision

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for re-publication of the text of the Convention as it has effect from time to time;

- (e) authorise a person publishing a text of the regulations (whether under authority or not) to substitute, for any version of the Convention set out in a schedule to the regulations, the version having effect from time to time in accordance with the regulations.
- (4) Regulations made under subsection (1) may include a provision required for dealing with matters arising in consequence of the Convention or other provisions of the regulations.
- (5) In giving effect to a Convention under this Act regulations may provide for a specified code, scheme or other instrument referred to in the Convention to be treated or not to be treated as part of the Convention for the purposes of the regulations.

PART 8
ENFORCEMENT

Inspectors and surveyors

124. Appointment of inspectors and surveyors

- (1) The Maritime Administration may appoint an inspector (“**an inspector**”) for the purposes of this Act, or regulations made under it, to report to it on the following—
 - (a) the nature and causes of any accident or damage which any ship has or is alleged to have sustained or caused;
 - (b) whether any requirements, restrictions or prohibitions imposed by or under this Act, or regulations made under it, have been complied with or (as the case may be) contravened;
 - (c) whether the hull and machinery of a ship are sufficient and in good condition;

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- (d)* what measures have been taken to prevent the escape of harmful substances;
 - (e)* for the purposes of sections 130 to 135.
- (2)** The Maritime Administration may appoint persons to be surveyors of ships (“**a surveyor**”) for the purposes of this Act, or y regulations made under it, and may remove a person so appointed.
 - (3)** A surveyor may be appointed either as a ship surveyor or as an engineer surveyor or as both.
 - (4)** A surveyor may be appointed either generally or for a particular case or purpose.
 - (5)** Every surveyor shall be treated as a person appointed generally under subsection (1) to report to the Maritime Administration in every kind of case falling within paragraphs *(b)* and *(d)* of that subsection.

125. Authorisation of surveyor organisations

- (1)** For the purposes of section 124(2), the Maritime Administration may, subject to the provisions of this section, authorise a surveyor organisation listed in subsection (2) to carry out a surveyor function.
- (2)** The surveyor organisations that may be authorised under subsection (1), are—
 - (a)* a class society, subject to subsection (3);
 - (b)* the MCA; or
 - (c)* the maritime administration of a British possession.
- (3)** A class society may only be authorised under subregulation (1) to carry out a Convention survey function if—
 - (a)* the class society has been approved as a recognised organisation under subsection (4); and
 - (b)* the authorisation is in accordance with—

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- (i) a relevant agreement between the Government and the MCA relating to ship surveying and certification; and
 - (ii) the RO Code.
- (4) A class society may be approved by the Maritime Administration as a recognised organisation if it—
 - (a) is on a list maintained by the MCA of class societies that are qualified to act as recognised organisations;
 - (b) complies with the requirements of the RO Code; and
 - (c) has entered into an authorisation agreement with the Maritime Administration.
- (5) An authorisation under subsection (1) may be made conditionally or unconditionally and is subject to subsections (6) and (7).
- (6) Without prejudice to the generality of subsection (5), conditions may impose limitations on an authorisation under subsection (1) relating to—
 - (a) individual ships;
 - (b) classes of ships; and
 - (c) the extent of a survey to be carried out by the surveyor organisation.
- (7) Notwithstanding the terms of an authorisation agreement, the Maritime Administration may direct that the Maritime Administration, or one of its employees, servants or agents, shall carry out a surveyor function.
- (8) When carrying out a surveyor function, an authorised surveyor organisation, and its servants or agents, shall—
 - (a) in the case of a Convention survey function, act in accordance with—
 - (i) the RO Code; and
 - (ii) the provisions of the applicable Convention;

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- (b) in any other case, act in accordance with such conditions as the Maritime Administration may specify.
- (8)** If the Maritime Administration authorises a surveyor organisation under subsection (1), the Maritime Administration shall make arrangements—
- (a) in the case of—
- (i) an approved recognised organisation, for the organisation’s performance to be monitored and audited in accordance with the RO Code; or
- (ii) any other authorised surveyor organisation, for the organisation’s performance to be monitored and audited in accordance with such requirements as the Maritime Administration may specify; and
- (b) for the International Maritime Organisation to be notified of—
- (i) the authorisation of an approved recognised organisation, and
- (ii) the specific responsibilities and conditions contained in the authorisation.
- (9)** If an authorised surveyor organisation carries out a surveyor function, a reference to the Maritime Administration in relation to the function includes a reference to the authorised surveyor organisation.
- (10)** If an authorised surveyor organisation carries out a surveyor function on behalf of the Maritime Administration, the organisation and its employees have the same powers as the Maritime Administration under this Act, or regulations made under it, in relation to that function.
- (11)** An authorised surveyor organisation is not to be regarded as the servant or agent of the Government or as enjoying any status, immunity or privilege of the Government and

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its property is not to be regarded as property of, or held on behalf of, the Government.

(12) In this section—

“approved recognised organisation” means a class society approved as a recognised organisation by the Maritime Administration under subsection (4);

“authorisation agreement” means an agreement in writing between the Maritime Administration and the approved recognised organisation which—

- (a) is in writing;
- (b) sets out the terms of the authorisation under subsection (1); and
- (c) contains the same or equivalent terms to an agreement between the organisation and the MCA relating to the survey or certification of ships by that organisation in the United Kingdom.

“authorised surveyor organisation” means a surveyor organisation authorised under subsection (1);

“class society” means a corporation or society for the survey and classification of ships;

“Convention survey function” means a surveyor function which comprises or relates to the survey or certification of a ship under or in accordance with a Convention;

“MCA” means the United Kingdom’s Maritime and Coastguard Agency;

“RO Code” means the Code for Recognised Organisations (RO Code) as adopted by the Marine Environment Protection Committee of the IMO by resolution MEPC.237(65) on 17 May 2013, as may be amended from time to time;

“surveyor function” means a function of a surveyor under this Act, or any regulations made under it.

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Inspection etc powers of inspectors and surveyors

126. Powers of inspectors, etc. to require production of ships' documents

(1) The powers conferred by this section are conferred in relation to Montserrat ships and any other ships in Montserrat or Montserrat waters and are available to any of the following officers, namely—

- (a) an inspector; or
- (b) a surveyor;

whenever the officer has reason to suspect that any provision of this Act, or of any regulations made under it, is not complied with.

(2) The powers are—

- (a) to require the owner, master, or any of the crew to produce any official log-books or other documents relating to the crew or any member of the crew in their possession or control;
- (b) to require the master to produce a list of all persons on board the ship, and take copies of or extracts from the official log-books or other such documents;
- (c) to muster the crew; and
- (d) to require the master to appear and give any explanation concerning the ship or its crew or the official log-books or documents produced or required to be produced.

(3) If any person, on being duly required by an officer under this section to produce a log-book or any document, fails without reasonable excuse to produce the log-book or document, that person commits an offence and is liable on summary conviction to a fine not exceeding \$15,000.

(4) If any person, on being duly required by any officer under this section—

- (a) to produce a log-book or document, refuses to allow the log-book or document to be inspected or copied;
- (b) to muster the crew, impedes the muster; or
- (c) to give any explanation, knowingly misleads or deceives the officer;

that person commits an offence and is liable on summary conviction to a fine not exceeding \$15,000.

127. Powers of inspectors, etc. to inspect ships and their equipment, etc.

- (1) For the purposes of being satisfied that the provisions of this Act, and of any regulations made under it, are complied with or that the terms of any approval, licence, consent, direction or exemption given by virtue of such regulations are duly complied with—

- (a) a surveyor, and
- (b) an inspector,

may at all reasonable times go on board a ship in Montserrat or in Montserrat waters and inspect the ship and its equipment, any articles on board and any document carried in the ship in pursuance of this Act, or of regulations or rules made under it.

- (2) The powers conferred by subsection (1) are not exercisable in relation to a foreign ship while the ship is exercising—

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

- (3) The powers conferred by subsection (1) are, if the ship is a Montserrat ship, also exercisable outside Montserrat waters and may be so exercised by a proper officer as well as the persons mentioned in that subsection.

- (4) A person exercising powers under this section shall not unnecessarily detain or delay a ship but may, if that person considers it necessary in consequence of an

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accident or for any other reason, require a ship to be taken into dock for a survey of its hull or machinery.

- (5) If a person mentioned in subsection (1) has reasonable grounds for believing that there are on any premises provisions or water intended for supply to a Montserrat ship which, if provided on the ship, would not be in accordance with regulations containing requirements as to provisions and water to be provided on ships, that person may enter the premises and inspect the provisions or water for the purpose of ascertaining whether they would be in accordance with the regulations.
- (6) Any person who obstructs a person in the exercise of powers under this section commits an offence and is liable on summary conviction to a fine not exceeding \$15,000.

128. Powers of inspectors in relation to premises and ships

- (1) The powers conferred by this section are conferred in relation to—
 - (a) any premises in Montserrat;
 - (b) any Montserrat ship wherever it may be; and
 - (c) any other ship which is present in Montserrat or in Montserrat waters;

and are available to an inspector for the purpose of performing the inspector's functions under this Act, or any regulations made under it.

- (2) An inspector may—
 - (a) at any reasonable time (or, in a situation which in the inspector's opinion is or may be dangerous, at any time)—
 - (i) enter any premises; and
 - (ii) board any ship;

if the inspector has reason to believe that it is necessary to do so;

- (b) on entering any premises by virtue of paragraph (a) or on boarding a ship by virtue of that paragraph, be

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- accompanied by any other person authorised for the purpose by the Maritime Administration and any equipment or materials the inspector requires;
- (c) make such examination and investigation as the inspector considers necessary;
 - (d) give a direction requiring that the premises or ship or any part of the premises or ship or anything in the premises or ship or such a part shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under paragraph (c);
 - (e) take such measurements and photographs and make such recordings as the inspector considers necessary for the purpose of any examination or investigation under paragraph (c);
 - (f) take samples of any articles or substances found in the premises or ship and of the atmosphere in or in the vicinity of the premises or ship;
 - (g) in the case of any article or substance which the inspector finds in the premises or ship and which appears to the inspector to have caused or to be likely to cause danger to health or safety, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is in the circumstances necessary);
 - (h) in the case of any such article or substance as is mentioned in paragraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
 - (i) to examine it and do to it anything which the inspector has power to do under that paragraph;
 - (ii) to ensure that it is not tampered with before any examination of it is completed; or

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- (iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Act, or any regulations made under it;
 - (i) require any person who the inspector has reasonable cause to believe is able to give any information relevant to any examination or investigation under paragraph (c)—
 - (i) to attend at a place and time specified by the inspector;
 - (ii) to answer (in the absence of persons other than any persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the inspector thinks fit to ask; and
 - (iii) to sign a declaration of the truth of that person's answers;
 - (j) require the production of, and inspect and take copies of or of any entry in—
 - (i) any books or documents which by virtue of any provision of this Act, or any regulations made under it, are required to be kept;
 - (ii) any other books or documents which the inspector considers it necessary to see for the purposes of any examination or investigation under paragraph (c);
 - (k) require any person to afford the inspector such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable the exercise of any of the powers conferred by this section.
- (3)** The powers conferred by subsection (2)(a), (c) and (j) shall also be exercisable, in relation to a ship in a port in Montserrat, by the Maritime Administration, for the

purpose of ascertaining the circumstances relating to an alleged discharge of oil or a mixture containing oil from the ship into a harbour.

- (4) The Governor, acting on the advice of Cabinet, may by regulations make provision—
- (a) as to the procedure to be followed in connection with the taking of samples under subsection (2)(f) and subsection (7); and
 - (b) provision as to the way in which samples that have been so taken are to be dealt with.
- (5) If an inspector proposes to exercise the power conferred by subsection (2)(g) in the case of an article or substance found in any premises or ship, the inspector shall, if so requested by a person who at the time is present in and has responsibilities in relation to the premises or ship, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of that person.
- (6) Before exercising the power conferred by subsection (2)(g), an inspector shall consult such persons as the inspector considers appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which the inspector proposes to do under that power.
- (7) If under the power conferred by subsection (2)(h) an inspector takes possession of any article or substance found in any premises or ship, the inspector shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that possession of it has been taken under that power; and before taking possession of any such substance an inspector shall, if it is practicable to do so, take a sample of the substance and give to a responsible person at the premises or on board the ship a

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portion of the sample marked in a manner sufficient to identify it.

- (8) No answer given by a person in pursuance of a requirement imposed under subsection (2)(i) shall be admissible in evidence against that person in any proceedings except proceedings in pursuance of section 129(1)(c) in respect of a statement in or a declaration relating to the answer; and a person nominated as mentioned in subsection (2)(i) shall be entitled, on the occasion on which the questions mentioned are asked, to make representations to the inspector on behalf of the person who nominated him or her.

129. Provisions supplementary to section 128

- (1) A person commits an offence if that person—
- (a) intentionally obstructs an inspector exercising any power under section 128;
 - (b) without reasonable excuse, does not comply with a requirement imposed in pursuance of section 128 or prevents another person from complying with such a requirement; or
 - (c) without prejudice to the generality of paragraph (b), makes a statement or signs a declaration which that person knows is false, or recklessly makes a statement or signs a declaration which is false, in purported compliance with a requirement made in pursuance of section 128(2)(i).
- (2) A person who commits an offence under subsection (1) is liable —
- (a) on summary conviction to a fine not exceeding \$15,000; or
 - (b) on conviction on indictment to imprisonment for a term not exceeding two years, or a fine not exceeding \$27,000 or both.
- (3) Nothing in section 128 shall be taken to compel the production by any person of a document of which the

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person would, on grounds of legal professional privilege, be entitled to withhold production on an order for discovery in an action in the High Court.

Improvement notices and prohibition notices

130. Improvement notices

- (1) If an inspector is of the opinion that a person—
- (a) is contravening one or more provisions of this Act, or any regulations made under it; or
 - (b) has contravened one or more of those provisions or regulations in circumstances that make it likely that the contravention will continue or be repeated;

the inspector may serve on that person a notice under this section, (referred to in this Part as an “**improvement notice**”).

- (2) An improvement notice shall—
- (a) state that the inspector is of the opinion referred to in subsection (1), specify the provision or provisions that are contravened, and provide reasons, and
 - (b) require the person on whom the notice is served to remedy the contravention in question or (as the case may be) the matters occasioning it within such period as may be specified in the notice.
- (3) The period specified in pursuance of subsection (2)(b) shall not expire before the end of the period within which a notice can be given under section 136 requiring questions relating to the improvement notice to be referred to arbitration.

131. Prohibition notices

- (1) If, as regards any activities which are being or are likely to be undertaken on board any ship by or under the control of any person, an inspector is of the opinion that, as so

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carried on or as likely to be so carried on, the activities involve or (as the case may be) will involve the risk of—

- (a) serious personal injury to any person (whether on board the ship or not); or
- (b) serious pollution of any navigable waters;

the inspector may serve on that person a notice (referred to in this Part as a “**prohibition notice**”).

(2) A prohibition notice shall—

- (a) state that the inspector is of the opinion referred to in subsection (1);
- (b) specify the matters which in the inspector’s opinion give or (as the case may be) will give rise to the risk;
- (c) if in the inspector’s opinion any of those matters involve or (as the case may be) will involve a contravention of any of the provisions of this Act, or of any regulations made under it, state that the inspector is of that opinion and provide reasons, and
- (d) direct—
 - (i) that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served; or
 - (ii) that the ship shall not go to sea;

(or both of those things) unless the matters specified in the notice in pursuance of paragraph (b), and any associated contraventions of any provision so specified in pursuance of paragraph (c), have been remedied.

(3) A direction contained in a prohibition notice in pursuance of subsection (2)(d) shall take effect—

- (a) at the end of a period specified in the notice; or
- (b) if the direction is given in pursuance of subsection (2)(d)(ii) or the notice so declares, immediately.

132. Provisions supplementary to sections 130 and 131

- (1) An improvement notice or a prohibition notice may include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.
- (2) An improvement notice or a prohibition notice shall not direct any measures to be taken to remedy the contravention of any provisions that are more onerous than those necessary to secure compliance with that provision.
- (3) If an improvement notice or a prohibition notice that is not to take immediate effect has been served—
 - (a) the notice may be withdrawn by an inspector at any time before the end of the period specified in it, and
 - (b) the period so specified may be extended or further extended by an inspector at any time when a reference to arbitration in respect of the notice is not pending under section 136.

133. Offences

- (1) This section applies to a person who contravenes—
 - (a) a requirement imposed by an improvement notice; or
 - (b) a prohibition contained in a prohibition notice.
 - (2) A person to whom subsection (1) applies commits an offence and is liable—
 - (a) on summary conviction to a fine not exceeding \$15,000; or
 - (b) on conviction on indictment to a fine not exceeding \$27,000.
 - (3) It shall be a defence for a person charged with an offence under this section to prove that he or she exercised all due diligence to avoid a contravention of the notice in question.
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- (4) In this section any reference to an improvement notice or a prohibition notice includes a reference to any such notice issued under this Act, or any regulations made under it, and as modified under section 136(3).

Power of detention

134. Power to detain

- (1) This section applies to a ship which is—
- (a) in Montserrat; or
 - (b) at sea in Montserrat waters.
- (2) If it appears to a surveyor or inspector that a ship to which this section applies—
- (a) is a dangerously unsafe ship, or
 - (b) does not comply with a requirement of this Act, or any regulations made under it, if it is provided that non-compliance with that requirement is a ground for detention,
- the ship may be detained.
- (3) Subject to subsection (4), the power of detention conferred by subsection (2) is exercisable in relation to a foreign ship as well as a Montserrat ship.
- (4) The power of detention conferred by subsection (2) is not exercisable in relation to a foreign ship while the ship is exercising—
- (a) the right of innocent passage; or
 - (b) the right of transit passage through straits used for international navigation;
- except to the extent that the power is being exercised for the purpose of giving effect to any relevant provision of a Convention extended to Montserrat.
- (5) If under this section, or any regulations made under this Act, a ship is to be or may be detained, any of the following officers may detain the ship—

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- (a) a commissioned naval or military officer;
 - (b) an inspector or surveyor;
 - (c) the Harbour Master.
- (6) The person detaining the ship shall serve on the master of the ship a detention notice which shall—
 - (a) state the reasons why that person is of the opinion that the ship is—
 - (i) dangerously unsafe; or
 - (ii) does not comply with a requirement of this Act or regulations;
 - (b) specify what action is required to make the ship—
 - (i) safe; or
 - (ii) compliant with the requirement of the Act or regulations; and
 - (c) require the ship to comply with the terms of the notice before it is released from detention.
- (7) A notice of detention may—
 - (a) include a direction that the ship—
 - (i) shall remain in a particular place; or
 - (ii) shall be moved to a particular anchorage or berth, and
 - (b) if it includes such a direction, specify circumstances relating to safety or the prevention of pollution in which the master may move the ship from that place, anchorage or berth.
- (8) In the case of a foreign ship, the person detaining the ship shall cause a copy of the detention notice to be sent as soon as practicable to the nearest consular officer of the State to which the ship belongs.

135. Enforcing detention of a ship

- (1) If a ship, in respect of which a notice of detention has been served, proceeds to sea otherwise than in accordance with

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such a notice before it is released by the Maritime Administration, the master of the ship commits an offence and is liable—

- (a) on summary conviction to a fine not exceeding \$15,000; or
 - (b) on conviction on indictment to a fine not exceeding \$45,000.
- (2) If a ship, in respect of which a notice of detention has been served, fails to comply with a direction given under section 134(7)(a), the master of the ship commits an offence and is liable—
- (a) on summary conviction to a fine not exceeding \$15,000; or
 - (b) on conviction on indictment to a fine not exceeding \$45,000.
- (3) The owner of a ship, and any person who sends to sea a ship, in respect of which an offence is committed under subsection (1) or (2), if party or privy to the offence, also commits an offence under that subsection and is liable accordingly.
- (4) Subsection (5) applies if a ship carries away any person authorised by section 134(5) to detain the ship who is on board the ship in the execution of their duty, without the person's consent.
- (5) The owner and master of the ship—
- (a) is each liable to pay all expenses of and incidental to the person being so carried away, and
 - (b) each commit an offence and each is liable on—

 - (i) summary conviction to a fine not exceeding \$15,000; or
 - (ii) conviction on indictment to a fine not exceeding \$45,000.
- (6) If under this Act, or any regulations made under it, a ship is to be detained, an officer of customs and excise may

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refuse to clear the ship outwards or grant a transire to the ship.

- (7) When any provision of this Act, or any regulations made under it, provide that a ship may be detained until any document is produced to the proper officer of customs and excise, the officer able to grant a clearance or transire of the ship is (unless the context otherwise requires) that officer.
- (8) Any reference in this section to proceeding to sea includes a reference to going on a voyage that does not involve going to sea, and references to sending or taking to sea shall be construed accordingly.

136. References of improvement, prohibition and detention notices to arbitration

- (1) This section applies if—
 - (a) an improvement notice has been issued under section 130;
 - (b) a prohibition notice has been issued under section 131; or
 - (c) a detention notice has been issued under section 134.
- (2) Any question as to whether any of the matters specified in such a notice constituted a valid basis for the issue of the notice shall be referred to a single arbitrator appointed by agreement between the parties if the master or owner of the ship (“**the complainant**”) notifies the inspector or surveyor within the period of 21 days beginning with the date of service of the notice.
- (3) If a notice is given by a complainant in accordance with subsection (2)—
 - (a) in the case of an improvement notice, the giving of the notice shall have the effect of suspending the operation of the improvement notice until the decision of the arbitrator is published to the parties or the reference is abandoned by the complainant;

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- (b) in the case of a prohibition notice or detention notice, the giving of the notice shall have the effect of suspending the operation of the prohibition notice or detention notice only if, on the application of the complainant, the arbitrator so directs and only from the giving of the direction.
- (4) In the case of a prohibition notice or a detention notice, the arbitrator shall—
- (a) have regard, in coming to a decision, to any other matters not specified in the notice which appear to the arbitrator to be relevant to whether the ship was or was not—
- (i) a dangerously unsafe ship; or
- (ii) compliant with a requirement of this Act or any regulations made under this Act; and
- (b) include in the decision a finding whether there was or was not a valid basis for the notice.
- (5) If on a reference under this section the arbitrator decides as respects any matter to which the reference relates that in all the circumstances the matter did not constitute a valid basis for the inspector's opinion, the arbitrator shall either cancel the notice or affirm it with such modifications as the arbitrator may in the circumstances think fit; and in any other case the arbitrator shall affirm the notice in its original form.
- (6) A person shall not be qualified for appointment as an arbitrator under this section unless the person is—
- (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate;
- (b) a naval architect;
- (c) an inspector or surveyor employed and authorised by—
- (i) the Secretary of State; or

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(ii) the Governor or Minister responsible for maritime affairs of a British possession which maintains a shipping registry assigned as a category one registry under the Merchant Shipping (Categorisation of Registries of Relevant British Possessions) Order 2003 (S.I. 2003 No. 1248);

(d) a lawyer with at least 5 years' experience in the field of maritime law; or

(e) a person with special experience of shipping matters, of the fishing industry, or of activities carried on in ports.

(7) An arbitrator shall have the powers conferred on an inspector by sections 126 to 128.

137. Compensation in connection with invalid prohibition or detention notices

(1) If on a reference under section 136 relating to a prohibition notice or a detention notice—

(a) the arbitrator decides that any reason or matter did not constitute a valid basis for the inspector's opinion; and

(b) it appears to the arbitrator that there were no reasonable grounds for the inspector to form that opinion;

the arbitrator may, subject to subsection (3), award the person on whom the notice was served such compensation in respect of any loss suffered by that person in consequence of the service of the notice as the arbitrator thinks fit.

(2) If on any such reference the arbitrator decides that any direction included in the notice was unreasonable, the arbitrator may, subject to subsection (3), award the person on whom the notice was served such compensation in respect of any loss suffered by that person in consequence of the direction as the arbitrator thinks fit.

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- (3) An arbitrator shall not award any compensation in the case of any prohibition notice or detention notice unless the arbitrator determines that—
- (a) a direction—
 - (i) if given under section 131(2)(d), contained a requirement mentioned in subparagraph (ii) of that provision; or
 - (ii) if given under section 134(7)(a), contained a requirement mentioned in that paragraph; and
 - (b) either—
 - (i) the inspector was of the opinion that there would be such a risk of injury or pollution as is referred to in the notice if the ship went to sea; and
 - (ii) the effect of the direction was to prohibit the departure of the ship unless the matters, or (as the case may be) the matters and contraventions, referred to in the direction were remedied.
- (4) Any compensation awarded under this section shall be payable by the Maritime Administration and is enforceable as a debt.

PART 9

ACCIDENT INVESTIGATIONS AND INQUIRIES

Marine accident investigations

138. Investigation of marine accidents

- (1) The Governor, acting on the advice of Cabinet, shall, for the purpose of the investigation of an accident mentioned in subsection (2), appoint—
- (a) a person to be Chief Marine Accident Investigator; and

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- (b) authorise the Chief Marine Accident Investigator to appoint persons as are required as investigators of marine accidents generally or in relation to a specific accident.
- (2) The accidents referred to in subsection (1) are—

 - (a) an accident involving a ship or ship’s boat if, at the time of the accident—

 - (i) the ship is a Montserrat ship; or
 - (ii) the ship, or in the case of an accident involving a ship’s boat, that boat, is within Montserrat waters;
 - (b) an incident involving the death of or injury to a person in a ship, if, at the time of the accident—

 - (i) the ship is a Montserrat ship; or
 - (ii) the ship, or in the case of an accident involving a ship’s boat, that boat, is within Montserrat waters; and
 - (c) an accident involving ships or ships’ boats as the Governor may determine.
- (3) The Governor, acting on the advice of Cabinet, may by regulations make provision with respect to the investigation of an accident.
- (4) Regulations made under subsection (3) may, in particular, make provision—

 - (a) with respect to the definition of “accident” for the purposes of this section and the regulations;
 - (b) imposing requirements as to the reporting of accidents;
 - (c) prohibiting, pending investigation, access to or interference with any ship or ship’s boat involved in an accident;
 - (d) authorising a person, so far as may be necessary for the purpose of determining whether an investigation should be carried out, to have access to, examine,

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- remove, test, take measures for the preservation of, or otherwise deal with, a ship or boat or any other ship or ship's boat;
- (e) specifying, with respect to the investigation of accidents, the functions of the Chief Marine Accident Investigator (which may include the function of determining whether, and if so by whom, particular accidents should be investigated), the functions of other inspectors of marine accidents, and the manner in which any such functions are to be discharged;
 - (f) for the appointment by the Chief Marine Accident Investigator, in such circumstances as may be specified in the regulations, of persons to carry out investigations under this section who are not investigators of marine accidents;
 - (g) for the appointment by the Governor of persons to review any findings or conclusions of a person carrying out an investigation under this section;
 - (h) for the procedure to be followed in connection with investigations or reviews under this section;
 - (i) for conferring on persons discharging functions under the regulations all or any of the powers conferred on an inspector by section 128;
 - (j) for the submission to the Governor, and the publication by the Governor, of reports of investigations or reviews; and
 - (k) for the publication of reports and other information relating to accidents.
- (5) The regulations may apply to any specified class or description of incidents or situations which involve, or occur on board, ships or ships' boats but are not accidents for the purposes of the regulations, being a class or description framed by reference to any of the following, namely—

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- (a) the loss or destruction of or serious damage to any ship or structure;
- (b) the death of or serious injury to any person; or
- (c) environmental damage;

whether actually occurring or not, and (subject to such modifications as may be specified in the regulations) for those provisions to apply in relation to any such incidents or situations as they apply in relation to accidents.

- (6) Regulations under this section may provide that a contravention of the regulations is an offence punishable on conviction by a fine.
- (7) The Chief Marine Accident Investigator and investigators of marine accidents shall discharge such functions in addition to those conferred by or under the preceding provisions of this section as the Governor may determine.
- (8) Any investigator of marine accidents shall, for the purpose of discharging any functions conferred by or under this section, have the powers conferred on an inspector by section 128.
- (9) In this section—
 - (a) references to an accident involving a ship or ship's boat include references to an accident occurring on board a ship or ship's boat (and any reference to a ship or ship's boat involved in an accident shall be construed accordingly); and
 - (b) “**ship's boat**” includes a life-raft.

139. Reports of and inquiries into injuries on Montserrat fishing vessels

- (1) Without prejudice to section 138, if the skipper or a member of the crew of a Montserrat fishing vessel is injured during a voyage, an inquiry into the cause and nature of the injury may be held by the Maritime Administration.
- (2) When holding an inquiry under this section, the Maritime Administration shall have the powers conferred on an

inspector by section 128 and shall make a report of the findings to the Governor.

PART 10
WRECK AND SALVAGE

140. Regulations relating to wrecks and salvage

The Governor, acting on the advice of Cabinet, may by regulations provide for—

- (a) the powers of the Receiver of Wreck;
- (b) the duties imposed on a person who finds or takes possession of wreck;
- (c) liability and claims in respect of wreck and for the marking and removal of wrecks, and the maintenance of insurance in respect of such liability and claims;
- (d) the handling and disposal of wreck and the proceeds of sale of wreck;
- (e) the holding of inquiries into wreck and the causes of wreck;
- (f) the fees to be charged and the expenses and remuneration of persons appointed in respect of wreck;
- (g) the powers and duties of persons relating to salvage;
- (h) liability and claims in respect of salvage;
- (i) the fees to be charged and the expenses and remuneration of persons appointed in respect of salvage.

PART 11

**SUBORDINATE LEGISLATION- GENERAL
PROVISIONS**

141. Regulations - offences and penalties

- (1) Regulations made under this Act may—
- (a) create criminal offences;
 - (b) extend the scope of criminal offences;
 - (c) make provision for the imposition of penalties by the Governor or a specified authority (which may include an authority created by an Act, a Convention or the regulations, and which may involve arbitration).
- (2) Regulations by virtue of subsection (1) may include provision—
- (a) for interest or surcharges in specified circumstances;
 - (b) for enforcement of penalties;
 - (c) conferring rights of appeal or review;
 - (d) that, in such cases as are prescribed by the regulations, such persons as are so prescribed shall each commit an offence.

142. Regulations - civil liability

- (1) Regulations made under this Act may create civil liability.
- (2) The regulations may, in particular—
- (a) impose liability in respect of costs incurred by a public authority or other specified class of person in respect of non-compliance with this Act, a Convention or the regulations;
 - (b) confer jurisdiction on a specified court or tribunal;
 - (c) make provision for arbitration;
 - (d) confer jurisdiction on any other specified public authority;
 - (e) create a court or tribunal;
 - (f) confer rights of appeal or review;

- (g) make provision for the recognition and enforcement of foreign judgements and orders;
- (h) make provision for the recognition and enforcement of judgments and orders of the courts or authorities of Montserrat in other States.

143. Regulations - guidance

- (1) Regulations made under this Act may require or permit the Minister, Maritime Administration or another specified authority to issue guidance about the application of the Act, a Convention or the regulations.
- (2) The regulations may, in particular—
 - (a) require a specified class of person to have regard to guidance issued;
 - (b) specify the consequences of a failure to have regard to guidance issued, which may include permitting a court to draw inferences as to compliance with the Act, a Convention or the regulations.
- (3) Guidance—
 - (a) may take the form of notices, circulars, or any other form specified in the regulations;
 - (b) shall be reviewed in accordance with the regulations;
 - (c) shall be published in accordance with the regulations.

144. Regulations - application of legislation

Without prejudice to the generality of the previous provisions of this Act, regulations made under this Act may apply or replicate (with or without modifications) a provision of any enactment relating to—

- (a) shipping;
- (b) maritime pollution;
- (c) the marine environment;
- (d) other kinds of pollution; and

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(e) regulation or enforcement in relation to any of those matters.

145. Regulations - other consequential and supplementary provision

- (1) Regulations may, in particular, include provision—
 - (a) establishing a body for the purposes of monitoring compliance with the Act, a Convention or the regulations, or for other purposes in connection with the Act, Convention or the regulations; and
 - (b) conferring legal capacity, privileges, rights and immunities on a body established under a Convention or by virtue of paragraph (a).
- (2) Regulations may, in particular, include provision—
 - (a) imposing compulsory requirements as to insurance; and
 - (b) enacting penalties or other sanctions in relation to non-compliance.
- (3) Regulations may, in particular—
 - (a) make provision which applies generally or only in relation to specified classes or descriptions of ships or other specified cases or circumstances;
 - (b) make different provision in relation to different classes or descriptions of ships or different cases or circumstances; and
 - (c) provide for specified provisions to apply with modifications, or not to apply, in relation to specified classes or description of ships or in other specified cases or circumstances.
- (4) The regulations may include consequential, incidental, supplemental or transitional provision.
- (5) Regulations—
 - (a) may make provision in terms of approvals given by the Governor or the Minister, Maritime Administration or another person and in terms of

any document which the Governor, Minister, Maritime Administration or other person considers relevant from time to time;

- (b) may provide for the cancellation of an approval given in pursuance of the regulations and for the alteration of the terms of such an approval;
 - (c) may provide for the granting by the Governor, Minister, Maritime Administration or another person, on such terms (if any) as they may specify—
 - (i) of exemptions from specified provisions of the regulations for classes of cases or individual cases;
 - (ii) for the alteration or cancellation of exemptions granted in pursuance of the regulations; and
 - (d) shall provide for any approval or exemption in pursuance of the regulations to be given in writing and to specify the date on which it takes effect and the conditions (if any) on which it is given.
- (6) Regulations may provide that in such cases as are prescribed by the regulations a ship may be issued with an improvement or prohibition notice or may be liable to be detained and that sections 130 to 135 shall have effect, with such modifications (if any) as are prescribed by the regulations, in relation to the ship.

146. Consultation

- (1) Before making regulations, the Governor shall consult organisations appearing to the Governor to represent the interests of—
 - (a) ship owners and operators;
 - (b) other users of the marine environment; and
 - (c) any other classes of person who in the Governor's opinion are likely to be affected by the regulations.

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- (2) Before making the regulations, the Governor may publish and lay before the Assembly a summary of the responses received to the consultation.

PART 12
SUPPLEMENTARY PROVISIONS

147. Repeals

In so far as not already repealed, the following Acts are repealed—

- (a) the Merchant Shipping (Agreements) Act, 1888;
- (b) the Harbour Master Act (Cap. 7.02);
- (c) the Passengers Ordinance, 1899 (Act 5/1929); and
- (d) the Passengers (Unseaworthy Ships) Ordinance, 1910 (Act 3/1910).

148. Transitional provisions

- (1) Any registration, licence, certificate, endorsement, permit, order or notice issued, and any regulations, rules or orders made, under the principal Act or a repealed Act shall, to the extent that they are not inconsistent with the provisions of this Act, continue to have effect until their expiration or revocation, as the case may be, as if they were issued or made under the principal Act as amended by this Act.
- (2) Any designation or appointment made under the principal Act or a repealed Act shall, if in force on the date of the coming into force of this Act, continue to be valid until substituted under the principal Act as amended by this Act.
- (3) If, prior to the coming into force of the amendments or repeals effected by this Act, any legal proceedings, investigation or inquiry had been commenced under the principal Act or a repealed Act such proceedings, investigation or inquiry shall continue in accordance with the principal Act or repealed Act as if amendments or repeals effected by this Act had not come into operation.

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- (4) In this section, “**repealed Act**” means an Ordinance or Act repealed by section 147.”.

SPEAKER

Passed by the Legislative Assembly this day of , 2023.

CLERK OF THE LEGISLATIVE ASSEMBLY