



**IMO**  
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**SHIPPING (MARINE POLLUTION PREVENTION)  
REGULATIONS TO IMPLEMENT  
THE 1996 PROTOCOL TO THE CONVENTION ON  
THE PREVENTION OF MARINE POLLUTION BY  
DUMPING OF WASTES AND OTHER MATTER  
AS AMENDED INTO THE  
NATIONAL LAWS OF SAINT CHRISTOPHER AND NEVIS**

**A Legislation Drafting Project submitted in partial fulfilment  
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## EXPLANATORY NOTE

### 1.1 Purpose of these Regulations

The purpose of these Regulations is to enable Saint Christopher and Nevis to comply with its obligations under the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter as amended (hereinafter referred to as ‘the London Protocol’ or ‘the Protocol’).

The objective of the London Protocol, as its formal name suggests, is ‘to promote the effective control of all sources of marine pollution and to take all practicable steps to prevent pollution of the sea by dumping of wastes and other matter’.<sup>1</sup>

Saint Christopher and Nevis acceded to the Protocol in 2006. While the legislation incorporating same is still at the draft stage, it is anticipated that in order to give full effect to its provisions once finalised and passed into law, regulations will be needed with some degree of urgency.

### 1.2 Brief Historical Analysis of the Prevention of Marine Pollution and the Move Towards the Protection of the Marine Environment

Marine pollution is ‘the introduction, directly or indirectly, by human activity, of wastes or other matter into the sea which results or is likely to result in such deleterious effects as harm to living resources and marine ecosystems, hazards to human health... and other legitimate uses of the sea.’<sup>2</sup> Based on this definition, there are obvious implications flowing from the pollution of the marine environment ranging from the degradation of human health to the diminishing of the quality of life, particularly of those who rely on the resources of the sea.

In order for the marine environment to be used without being abused, its use must be regulated. This is particularly important today as States, such as Saint Kitts and Nevis, endeavour to achieve the sustainable development goals and move towards a blue economy.

Historically, the formal regulation of maritime activities did not take into account the preservation of the marine environment. Notably, protection of the environment was not one of the original mandates of the International Maritime Organization (hereinafter the IMO) which is the

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<sup>1</sup>Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, International Maritime Organization (IMO), <<https://www.imo.org/en/OurWork/Environment/Pages/London-Convention-Protocol.aspx> > accessed 14 November 2020.

<sup>2</sup> Protocol to the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter (adopted 8 November 1996 entered into force 24 March, 2006) (London Protocol) ILM 1 art 1.

specialized agency of the United Nations with responsibility for the safety and security of shipping and the prevention of marine pollution by ships. In fact, when the IMO was created, its main mandate was maritime safety.<sup>3</sup>

However, the deposit by the IMO of the Convention on the Prevention of Pollution from Oil (OILPOL)<sup>4</sup> in 1954 signalled the beginning of ascension to prominence of what would eventually become a regime for environmental protection.

In 1967 the *Torrey Canyon*, an oil tanker, ran aground and spilled 120,000 tons of crude oil into the sea. This event was described as, ‘one of the most serious oil pollution incidents ever recorded up to that time’.<sup>5</sup> The *Torrey Canyon* accident exposed *inter alia*, the inadequacies of measures at the time to prevent oil pollution from ships.<sup>6</sup>

Two years following the *Torrey Canyon* incident, the IMO Assembly convened an international conference to adopt a new convention which incorporated the regulations contained in the amended OILPOL Convention.<sup>7</sup> As part of this exercise, the mandate of the Sub-Committee on Oil Pollution was extended. The said Sub-Committee was renamed the Sub-Committee on Marine Pollution and later became the Marine Environment Protection Committee (the MEPC). The MEPC was established to deal with all matters relating to marine pollution. It is submitted that the creation of the MEPC cemented the growing importance of institutional support to the cause of marine environment protection and demonstrated the importance of combating the issue of marine pollution. Further, it is averred that the protection of the marine environment is now one of the most important activities of the IMO.<sup>8</sup> This view is buttressed by the fact that of the fifty-three treaties that have been adopted by the IMO, twenty-one or 41% of them directly relate to the marine environment.

In 1972 the thrust towards the protection of the marine environment gained more momentum. It was subsequent to the United Nations Conference on the Human Environment held in Stockholm that several key conventions were adopted. Most notable for the purpose of this explanatory note are: the International Convention for the Prevention of Pollution from Ships 1973,

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<sup>3</sup>Malgosia Fitzmaurice, The International Convention for the Prevention of Pollution from Ships (MARPOL) David Joseph Attard and others (eds) *The IMLI Manual on International Maritime Law Volume III: Marine Environmental Law and Maritime Security Law* (1st ed, Oxford University Press 2016) 33.

<sup>4</sup>Convention for the Prevention of Pollution from Oil (adopted 12 May 1954, entered into force 26 July 1958) UNTS 3 (OILPOL).

<sup>5</sup>Fitzmaurice (n3) 35.

<sup>6</sup>J.V. Crayford, *Forthcoming Changes to the International Convention for the Prevention of Pollution from Ships* (MH Nordquist and JN Moore (eds), (as cited in *Current Maritime Issues and The International Maritime Organisation* (Kluwer La International/Martinus Nijhoff Publishers, 1999) 35).

<sup>7</sup>Fitzmaurice (n3) 35.

<sup>8</sup> *ibid.*

and its Protocol of 1978 (hereinafter MARPOL) and the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

### **1.3 MARPOL- A Precursor to the London Protocol**

MARPOL is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes.<sup>9</sup> MARPOL is particularly relevant to an assessment of the London Protocol because, it too, seeks to ‘reduce the amount of garbage being dumped into the sea from ships’.<sup>10</sup>

The MARPOL convention was adopted in 1973 and its Protocol in 1978. The Protocol of 1978 was adopted in response to a spate of tanker accidents in 1976-1977.<sup>11</sup> As the 1973 MARPOL Convention had not yet entered into force, the 1978 MARPOL Protocol absorbed the parent Convention.<sup>12</sup> On 2 October 1983, the combined instrument entered into force, but several amendments have been made over the years to tackle new issues as they arise.

There are currently six Annexes to MARPOL as follows; Annex I- Regulations for the Prevention of Pollution by Oil, Annex II- Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk, Annex III- Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form, Annex IV- Prevention of Pollution by Sewage from Ships, Annex V- Prevention of Pollution by Garbage from Ships and Annex VI- Prevention of Air Pollution from Ships.

In addition to the Annexes, MARPOL has two Protocols. The first one deals with Provisions concerning Reports on Incidents Involving Harmful Substances. This Protocol is established in accordance with Article 8 of MARPOL. The second Protocol deals with Arbitration.

Over 150 States have signed on to the MARPOL as well as its annexes. It has been noted that its Parties constitute ninety-eight percent<sup>13</sup> of the world’s merchant tonnage.<sup>14</sup> Saint Kitts and

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<sup>9</sup> “International Convention for the Prevention of Pollution from Ships” International Maritime Organization (IMO), <[https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx) > accessed 14 November 2020.

<sup>10</sup> *ibid.*

<sup>11</sup> *ibid.*

<sup>12</sup> *ibid.*

<sup>13</sup> Fitzmaurice (n3) 38.

<sup>14</sup> *ibid.*

Nevis has acceded to MARPOL Convention together with its Protocol and all of its Annexes. However, the legislation which purports to give effect to MARPOL is still currently in draft.

By becoming a signatory of MARPOL, States Parties, ‘undertake to give effect to the provisions of the Convention and those Annexes which bind them, in order to prevent pollution of the marine environment by the discharge of harmful substances...’.<sup>15</sup>

#### **1.4 The 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter as amended (London Protocol)**

In 1975, the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (hereinafter “the London Convention” or “the Convention”) came into force. The London Convention is said to be ‘one of the first global conventions to protect the marine environment from human activities’.<sup>16</sup> The objective of the London Convention is to ‘promote the effective control of all sources of marine pollution and to take all practicable steps to prevent pollution of the sea by dumping of wastes and other matter’.<sup>17</sup>

During the mid-1990s, the London Convention was subject to review. This was due in part to the *Brent Spar* incident which demonstrated a need for greater restrictions on dumping at sea.<sup>18</sup> States Parties negotiated changes to the Convention and the fruit of the negotiations was the Protocol to the London Convention. The Protocol has been described as a ‘more modern and comprehensive waste management regime that places greater emphasis on marine protection than the London Convention does. It is a more restrictive scheme than the London Convention’.<sup>19</sup> The Protocol also provides for ‘a wider application of the Convention to control the decommissioning at sea of offshore structures’.<sup>20</sup>

In March 2006, the Protocol to the London Convention entered into force. As it relates to States Parties to it, the London Protocol supersedes the London Convention.<sup>21</sup> It has been observed

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<sup>15</sup> Ibid.

<sup>16</sup> Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, International Maritime Organisation (IMO), <<https://www.imo.org/en/OurWork/Environment/Pages/London-Convention-Protocol.aspx>> accessed 22 November 2020.

<sup>17</sup> Ibid.

<sup>18</sup> Colin de la Rue, Charles B. Anderson, *Shipping and the Environment: Law and Practice* (2nd ed, Informa Law 2009) 1008.

<sup>19</sup> Hossein Esmaeili, Brendan Grigg, Pollution from Dumping (eds) The IMLI Manual on International Maritime Law Volume III: Marine Environmental Law and Maritime Security Law (1st ed, Oxford University Press 2016) 82.

<sup>20</sup> de la Rue, Anderson (n18) 1008.

<sup>21</sup> 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, (adopted 29 December 1972, entered into force 30 August 1975) UNTS 120 (London Convention) art 23.

that the Protocol 'is designed ultimately to replace the London Convention entirely'.<sup>22</sup> However, at present, both conventions are in force.

The Protocol Contains a total of 29 Articles and three Annexes. The Annexes address the following issues:

Annex 1- Wastes or Other Matter that may be Considered for Dumping;

Annex 2- Assessment of Wastes or Other Matter that may be Considered for Dumping; and

Annex 3- Arbitral Procedure.

#### **1.4.1. The Precautionary Approach and the Polluter Pays Principle**

One of the most important features which distinguishes the Protocol from the London Convention is seen in its Preamble as well as in Article 3. There, the concept of the precautionary approach is expressly referred to. In this regard, the following observations have been made:

In addition to increasing the occasions on which dumping is prohibited, the Protocol obliges parties to adopt an enhanced precautionary approach to permitted dumping. The precautionary principle requires activities to be prohibited where it is shown that there is a harm which appears to be the result of a particular activity, albeit the actual link between the two need not be proved conclusively. The Protocol requires something more. Under it parties are obliged not only to prohibit dumping which may result in harm but also to prohibit dumping if there is insufficient information to assess the proposal adequately. This means that there need not even be a suggestion that the dumping is likely to have harmful effects for it to be prohibited: if its effects cannot be accurately assessed it must not proceed.<sup>23</sup>

To complement the precautionary approach, the Protocol also references the polluter pays principle in Article 3(2). This principle requires the person responsible for introducing pollutants into the environment to bear the burden of restoration or mitigation.

As will be expounded below, this focus on the precautionary approach and polluter pays principle is particularly relevant to Saint Kitts and Nevis, which, as a Small Island Developing State, does not necessarily produce the type of waste which threatens the marine environment when dumped in significant portions but which is still particularly vulnerable to pollution of the marine

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<sup>22</sup> *ibid.*

<sup>23</sup> Elizabeth A. Kirk; 'The 1996 Protocol to the London Dumping Convention and The Brent Spar' (1997) Vol 46 International and Comparative Law Quarterly 957- 964

space. Indeed, ‘the IMO has consistently designated the wider Caribbean as part of the world’s oceans most at risk from accidental discharges from ships’.<sup>24</sup>

#### **1.4.2. Definition of Pollution**

Another defining feature of the Protocol which presents early in the text is the inclusion of a definition of the word “pollution”. There, pollution is defined as

the introduction, directly or indirectly, by human activity, of wastes or other matter into the sea which results or is likely to result in such deleterious effects as harm to living resources and marine ecosystems, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.<sup>25</sup>

This addition is notable, first it demonstrates the need to clarify the definition of pollution. In the London Dumping Convention, the word was not defined which is arguably not ideal as far as interpreting the Convention is concerned. The definition proffered in the Protocol has been described as ‘very clear and very broad and will lead to a potentially increased level of responsibility for the effects of pollution being placed on parties to the Protocol’.<sup>26</sup>

Further, the definition is noteworthy because it bears appreciable similarity to that given in the 1982 United Nations Convention on the Law of the Sea<sup>27</sup> (hereinafter referred to as UNCLOS). The provisions of UNCLOS are binding on Saint Christopher and Nevis since the country is a party to the Convention and, through the Maritime Areas Act has passed national legislation giving effect to provisions of UNCLOS.

#### **1.4.3. Dumping of Wastes**

As part of their obligations under the Protocol, States Parties are required to prohibit the disposal of wastes and other matter at sea unless the dumping is done in accordance with the mandated controls.<sup>28</sup> In comparison to the London Convention, the Protocol mandates an overall

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<sup>24</sup> Winston Anderson, *The Law of Caribbean Marine Pollution* (International Environmental Law and Policy Series, 1st edn, Kluwer Law International 1997) 69.

<sup>25</sup> Protocol to the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter, 1996.

<sup>26</sup> Kirk (n23) 960.

<sup>27</sup> United Nations Convention on the Law of the Sea (10 December 1982, entered into force 16 November 1994) 1833 UNTS 31363.

<sup>28</sup> de la Rue, Anderson (n18) 1005.



ban on the disposal of wastes at sea through a reverse listing mechanism.<sup>29</sup> In this regard, it has been proffered that:

Whilst the LDC allows materials to be dumped at sea with a permit unless they are on the black list of substances for which dumping is prohibited, the Protocol where applicable prohibits dumping of all materials other than those on a limited list of substances for which dumping is permitted. Moreover, these substances, which are listed in Annex I to the Protocol, may be dumped only if a permit has been granted.<sup>30</sup>

The fact that dumping of Annex 1 substances requires a permit represents a reversal of the machinery implemented under the London Dumping Convention<sup>31</sup> as the latter was more permissive of dumping so long as it did not result in pollution whereas the Protocol is more restrictive. It also demonstrates an incorporation of the precautionary approach<sup>32</sup> as contemplated in Article 3 of the London Protocol and which has been addressed earlier in this Explanatory Note.

Pursuant to Article I of the Protocol, dumping is defined as:

1. any deliberate disposal into the sea of wastes or other matter from vessels; aircraft, platforms or other man-made structures at sea;
2. any deliberate disposal into the sea of vessels, aircraft, platforms or other man-made structures at sea;
3. any storage of wastes or other matter in the seabed and the subsoil thereof from vessels, aircraft, platforms or other man-made structures at sea; and
4. any abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal.<sup>33</sup>

It has been observed that the new definition of dumping is an expansion of the previous definition with the natural effect that more activities fall within its reach.<sup>34</sup> By way of illustration,

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<sup>29</sup> *ibid* 1013.

<sup>30</sup> *ibid*.

<sup>31</sup> Esmaeili, Grigg (n19) 82.

<sup>32</sup> *ibid*.

<sup>33</sup> London Protocol, Art 1.

<sup>34</sup> Kirk (n23) 961.

the new definition, ‘now covers the storage of waste in the seabed and subsoil and, more importantly, abandonment and toppling at site of platforms and other man-made structures at sea’.<sup>35</sup>

Annex 1 to the Protocol addresses those materials which may be considered for dumping.

These include:

- .1 dredged material;
- .2 sewage sludge;
- .3 fish waste, or material resulting from industrial fish processing operations;
- .4 vessels and platforms or other man-made structures at sea;
- .5 inert, inorganic geological material;
- .6 organic material of natural origin; and
- .7 bulky items primarily comprising iron, steel, concrete and similarly unarmful materials for which the concern is physical impact, and limited to those circumstances where such wastes are generated at locations, such as small islands with isolated communities, having no practicable access to disposal options other than dumping.<sup>36</sup>

In relation to vessels and platforms or other man-made structures at sea (paragraph 1.4) as well as bulky items primarily comprising iron, steel, concrete and similarly unarmful materials (paragraph 1.7), a further stipulation for dumping is established in Annex 1 Article 2. In order for dumping of such materials to be permitted it must be shown that, ‘material capable of creating floating debris or otherwise contributing to pollution of the marine environment has been removed to the maximum extent and...that the material dumped poses no serious obstacle to fishing or navigation’.<sup>37</sup> While this provision imports a high standard, the lack of guidance in relation to what satisfies the requirement of “to the maximum extent” leaves room for States to interpret the stipulation in a manner that suits interests other than protecting the environment. As an example, States might be guided by the most economical or convenient solution as regards their technical capabilities, ignoring all together the option that does the least damage to the environment.

Still, even with its limitations, the fact that the removal of such matter as listed in paragraphs 1.4 and 1.7 of Annex 1 of the Protocol has been made express and applicable in all situations represents a strengthening of the position when compared with the requirements under the London Convention.

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<sup>35</sup> *ibid.*

<sup>36</sup> London Protocol Annex 1.

<sup>37</sup> London Protocol Annex 1, art 2.

#### 1.4.4 Permits

The stipulation under the Protocol is that a permit has to be obtained before any of the listed waste or other matter can be disposed of by dumping.<sup>38</sup> For this purpose, the Protocol requires Contracting Parties to designate an appropriate authority or authorities to issue permits in their jurisdiction.<sup>39</sup>

A notable change under the Protocol is the fact that a permit is now also needed before man-made installations can be abandoned at sea. As has been pointed out:

this means that, whereas under the LDC [London Dumping Convention] owners could arguably abandon their installations without first obtaining a permit, they must now, under the Protocol, go through the same procedures as for all other types of dumping and so meet the same criteria prior to abandonment.<sup>40</sup>

Another change in the Protocol is that the factors to be considered before the issuance of a permit are far more extensive than those required by the London Dumping Convention.<sup>41</sup> To this extent, it has been observed that:

Whereas Annex III to the LDC relates purely to the physical characteristics of the material being dumped and the site at which it is being dumped, Annex 2 to the Protocol also details such things as the order in which waste-management options ought to be considered, the use of waste-reduction techniques and the possibility of process modification. It requires both an initial assessment of alternatives to dumping and a full assessment of the preferred option, which is to include consideration of certain factors. Authorities may refuse an application for a permit to dump if another more environmentally attractive option appears feasible to them. If, however, the possible alternatives are

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<sup>38</sup> London Protocol Art 4(2)

<sup>39</sup> London Protocol Art 9(1).

<sup>40</sup> Kirk (n23) 961.

<sup>41</sup> *ibid.*

disproportionately expensive or entail undue risks to human health a licence to dump may be granted.<sup>42</sup>

While this change is a welcomed one as it encourages a deeper assessment to be carried out in order to elect the most environmentally friendly solution, there are some evident hurdles. These stem from the fact that nowhere in the Protocol is guidance offered as to what “disproportionate costs” means. Neither is a definition given for what amounts to undue risks to human health. While the answers might seem obvious, leaving it for States to decide on a case-by-case basis could result in outcomes which are inconsistent.

Annex II to the Protocol specifies the data that is to be contained in any permit issued by the relevant authority. These include:

- .1 the types and sources of materials to be dumped;
- .2 the location of the dump-site(s);
- .3 the method of dumping; and
- .4 monitoring and reporting requirements.<sup>43</sup>

The issuance of a permit does not signal an end to regulation of dumping by the relevant authority. In fact, pursuant to Annex II, the issue of permits is to be reviewed and monitored. In relation to review, Article 18 of Annex II is instructive. It provides that, ‘Permits should be reviewed at regular intervals, taking into account the results of monitoring and the objectives of monitoring programmes.’<sup>44</sup>

#### **1.4.5 Monitoring**

Annex II to the Protocol also introduces the stipulation for monitoring to be done as part of the permit issuance process. As has been stated

the Annex introduces an ongoing requirement to monitor the dumped material to ensure compliance with the terms of the permit and to verify the

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<sup>42</sup> Kirk (n23) 961-962.

<sup>43</sup> London Protocol Annex 2, art 17.

<sup>44</sup> London Protocol Annex 2, art 18.

assumptions made during the assessment process. It is no longer enough simply to dump and be done with it.

The implications for the implementation of a scheme for monitoring is of tremendous importance as regards determining how dumping has and will affect the marine environment in the future. For this reason, the requirement of monitoring is highly regarded. In fact, it has been posited that it 'is the most important provision in the Protocol as it is only through continued monitoring and collection of data that any real assessment of the impacts of the various options for disposal can be made'.<sup>45</sup>

#### **1.4.6 Exceptions to the Rule Against Dumping**

Undoubtedly, there are circumstances under which dumping, though it endangers the marine environment, may be necessary. Further, there will inevitably be occasions where the urgency of the situation does not permit an opportunity for the mandated controls to be complied with. Article 8 of the London Protocol envisages such and addresses the circumstances under which dumping and incineration at sea may be allowed even where no permit for same has been issued.

As it relates to the requirements for dumping, the said articulate indicates that those requirements

shall not apply when it is necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea.<sup>46</sup>

Notwithstanding the latitude given by the Protocol to permit dumping where life is endangered, the exceptions are not without limitations. The said Article 8 (1) provides that dumping or incineration at sea may only be done in such cases if 'if dumping or incineration at sea appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping or incineration at sea will be less than would otherwise occur.'<sup>47</sup> The provision

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<sup>45</sup> Kirk (n.20) 963.

<sup>46</sup>Protocol to the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter (adopted 8 November 1996, entered into force 24 March, 2006) (London Protocol) ILM 1 art 8(1).

<sup>47</sup> *ibid.*

goes further. It also mandates that ‘dumping or incineration at sea shall be conducted so as to minimise the likelihood of damage to human or marine life’.<sup>48</sup>

The inference to be drawn from the permitted exceptions is that while the preservation of the marine environment is important, in the grand hierarchy, it falls below the preservation of human life and industry. However, the fact that Article 8 (2) imposes a ‘general obligation to avoid damage to the marine environment’<sup>49</sup> means that a great degree of effort must be exerted to limit the negative impacts on the marine space.

### **1.4.7 Application and Enforcement**

Article 10 of the Protocol provides that

Each Contracting Party shall apply the measures required to implement this Protocol to all:

- .1 vessels and aircraft registered in its territory or flying its flag;
- .2 vessels and aircraft loading in its territory the wastes or other matter which are to be dumped or incinerated at sea; and
- .3 vessels, aircraft and platforms or other man-made structures believed to be engaged in dumping or incineration at sea in areas within which it is entitled to exercise jurisdiction in accordance with international law.<sup>50</sup>

In Article 10(4) it is noted that the Protocol ‘shall not apply to those vessels and aircraft entitled to sovereign immunity under international law.’<sup>51</sup> This article bears similarity to provisions of MARPOL which, it has been noted, ‘does not apply to any warship, naval auxiliary, or other ship owned or operated by the State and used on government non-commercial service’.<sup>52</sup> Perhaps, the same observations made about these exclusions under MARPOL bears repetition here and may be equally applicable. In this regard, it is averred that since ‘national governments and their agencies are quite prodigious polluters, provision excluding such entities undermines the purpose’.<sup>53</sup>

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<sup>48</sup> *ibid.*

<sup>49</sup> London Protocol Art 8(2).

<sup>50</sup> London Protocol Art 10(1).

<sup>51</sup> London Protocol Art 10(2).

<sup>52</sup> Fitzmaurice (n3) 41-42.

<sup>53</sup> Fitzmaurice (n3) 42.

While Article 10(2) does go on to require each Contracting Party to ‘ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by it act in a manner consistent with the object and purpose of this Protocol’<sup>54</sup>, it begs the question whether this caveat is sufficient to secure State compliance.

## **1.5 The Shipping (Marine Pollution Prevention) Bill of Saint Christopher and Nevis**

### **1.5.1 Introduction**

The Shipping (Marine Pollution Prevention) Bill (hereinafter “the Shipping Bill”) of Saint Christopher and Nevis was prepared in 2015 under the auspices of the Oceans and Natural Resources Division of the Commonwealth Secretariat. The long title of the Bill succinctly describes its purpose. It states, ‘An Act to incorporate into the national law of Saint Christopher and Nevis various international conventions relating to the prevention of marine pollution from ships.’<sup>55</sup>

The Conventions which the Bill seeks to incorporate are: MARPOL and all of its annexes, the London Protocol, the International Convention on Oil Pollution Preparedness, Response and Cooperation 1990 acceded to by Saint Christopher and Nevis in 2005, the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 which Saint Christopher and Nevis acceded to in 2010, the International Convention on Liability and Compensation or Damages in connection with the Carriage of Hazardous and Noxious Substances by sea 1996 to which Saint Christopher and Nevis also became a party in 2010, the International Convention for the Control and Management of Ships’ Ballast Water and Sediments 2004 acceded to by Saint Christopher and Nevis in the same year, the International Convention on the Control of Harmful Anti-Fouling Systems on Ships 2001 acceded to in 2008, the Nairobi International Convention on the Removal of Wrecks 2007 and the 1969 International Convention relating to the Intervention on the High Seas in Cases of Oil Pollution Casualties and its 1973 Protocol relating to Pollution by Substances Other than Oil. The Bill also seeks to grant powers and responsibilities to the relevant authority concerning the prevention of marine pollution in accordance with UNCLOS.

In addition to bringing the aforementioned conventions (or parts of Convention in the case of UNCLOS) into force, the Bill also addresses; enforcement, legal proceedings and jurisdiction

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<sup>54</sup>Protocol Art 10(4).

<sup>55</sup> Shipping (Marine Pollution Prevention) Bill 2015

under the act<sup>56</sup>, administration of the act<sup>57</sup> and makes express reference to the precautionary approach to the protection of the marine environment. <sup>58</sup>

### 1.5.2 A Comparative Analysis of the Provisions of the London Protocol vis-a-vis the Saint Christopher and Nevis Shipping (Marine Pollution Prevention) Bill

A Comparative Analysis of the Provisions of the London Protocol vis-a-vis the Saint Christopher and Nevis Shipping (Marine Pollution Prevention) Bill		
Relevant Provisions of the London Protocol	Corresponding Provisions in the Shipping (Marine Pollution Prevention) Bill	Comments
<p><b>Article 1 Definitions</b></p> <p>4. “Dumping” means:</p> <p>.1 any deliberate disposal into the sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea;</p> <p>.2 any deliberate disposal into the sea of vessels, aircraft, platforms or other man-made structures at sea;</p> <p>.3 any storage of wastes or other matter in the seabed and the subsoil thereof from vessels, aircraft, platforms or other man-made structures at sea; and</p> <p>.4 any abandonment or toppling at site of platforms or other man-made structures at sea, for the sole purpose of deliberate disposal.</p> <p>.</p>	<p><b>S. 13- Interpretation of Part III</b></p> <p>In this Part-</p> <p>“dumping” means-</p> <p>(a) any deliberate disposal into the sea of wastes from ships, aircraft, platforms or other man-made structures at sea, or</p> <p>(b) any storage of wastes in the seabed and the subsoil thereof from ships, aircraft, platforms or other man-made structures at sea, and</p> <p>(c) any deliberate disposal, abandonment or toppling at site of ships, aircraft, platforms or other man-made structures at sea;</p> <p>but does not include -</p> <p>(d) The disposal into the sea of wastes incidental to, or derived from the normal operations of ships, aircraft, platforms or other man-made structures at sea and their equipment, other than where those operations are for the specific purpose of transport, disposal or treatment of waste,</p>	<p>1. The definition of dumping differs slightly from the one in the London Protocol. Instead of ‘vessel’ it refers to ‘ship’, which is logical since only the latter is defined in the Shipping Bill.</p> <p><u>2. Notably, Article 4.2 of the London Protocol is omitted such that no provision for deliberate disposal of the vessels (ships), aircrafts and platforms themselves is made under the Shipping Bill. Instead, only wastes from these sources are contemplated.</u></p> <p>Perhaps this was done in the context of there being no ( or very little) practice of such dumping in the area currently.</p> <p>3. The definition of sea used are identical to the London Protocol.</p> <p>4. The materials excepted under the definition of dumping is substantially the same in both documents.</p> <p>5. A definition of aircraft has been inserted and is identical to the definition of “aircraft” used in the Dumping at Sea Control Act of South Africa.</p>

<sup>56</sup> Shipping (Marine Pollution Prevention) Bill 2015 Part XII

<sup>57</sup> Shipping (Marine Pollution Prevention) Bill 2015, Part XIII

<sup>58</sup>Shipping (Marine Pollution Prevention) Bill 2015, Part 1



**A Comparative Analysis of the Provisions of the London Protocol vis-a-vis the Saint Christopher and Nevis Shipping (Marine Pollution Prevention) Bill**

Relevant Provisions of the London Protocol	Corresponding Provisions in the Shipping (Marine Pollution Prevention) Bill	Comments
<p>2 "Dumping" does not include:</p> <p>.1 the disposal into the sea of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of disposal of such matter or derived from the treatment of such wastes or other matter on such vessels, aircraft, platforms or other man-made structures;</p> <p>2 placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Protocol; and</p> <p>.3 notwithstanding paragraph 4.1.4, abandonment in the sea of matter (e.g., cables, pipelines and marine research devices) placed for a purpose other than the mere disposal thereof.</p> <p>.3 The disposal or storage of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of seabed mineral resources is not covered by the provisions of this Protocol.</p> <p>.2 "Incineration at sea" does not include the incineration of wastes or other matter on board a vessel, platform, or other man-made structure at sea if such wastes or other matter were generated during the normal operation of that vessel, platform or other man-made structure at sea.</p>	<p>(e) Placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to this Part,</p> <p>(f) abandonment at sea of items such as cables, pipelines and marine research devices placed for a purpose other than the mere disposal thereof, and</p> <p>(g) disposal or storage of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of seabed mineral resources;</p> <p>“sea” means all marine waters other than the internal waters of States, as well as the seabed and the subsoil thereof, but does not include sub-seabed repositories accessed only from land.</p> <p>“aircraft” means airborne craft of any type whatsoever, whether self-propelled or not.</p>	<p>Under the London Protocol, a joint definition of vessels and aircraft is given whereas, no definition of vessel is given under Draft Shipping (Marine Pollution Prevention) Act. Instead, a definition of ship is substituted and reads, “any description of vessel used in navigation and any sea-going vessel or any floating craft or platform of any type whatsoever”.</p>

**A Comparative Analysis of the Provisions of the London Protocol vis-a-vis the Saint Christopher and Nevis Shipping (Marine Pollution Prevention) Bill**

Relevant Provisions of the London Protocol	Corresponding Provisions in the Shipping (Marine Pollution Prevention) Bill	Comments
<p><b>Article 10- Application and Enforcement</b></p> <p>Each Contracting Party shall apply the measures required to implement this Protocol to all:</p> <p>.1 vessels and aircraft registered in its territory or flying its flag;</p> <p>.2 vessels and aircraft loading in its territory the wastes or other matter which are to be dumped or incinerated at sea; and</p> <p>.3 vessels, aircraft and platforms or other man-made structures believed to be engaged in dumping or incineration at sea in areas within which it is entitled to exercise jurisdiction in accordance with international law.</p> <p>.2 ...</p> <p>.3 ...</p> <p>.4 This Protocol shall not apply to those vessels and aircraft entitled to sovereign immunity under international law. However, each Contracting Party shall ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by it act in a manner consistent with the object and purpose of this Protocol and shall inform the Organization accordingly.</p>	<p><b>S. 14- Application of Part III</b></p> <p>(1) This Part shall apply to all-</p> <p>(a) SKN ships and aircraft that are registered in SKN or are otherwise entitled to fly the flag of SKN, including ships under Government use;</p> <p>(b) ships and aircraft loading wastes or other matter in the territory of SKN which are to be dumped or incinerated at sea; and,</p> <p>(c) ships, aircraft and platforms or other man-made structures believed to be engaged in dumping or incineration at sea within SKN waters.</p> <p>(2) This Part shall not apply to-</p> <p>(a) the disposal or storage of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of seabed mineral resources;</p> <p>(b) ships and aircraft entitled to sovereign immunity under international law.</p>	<p><b>6.</b> The scope of application of the Shipping Bill is substantially the same as the London Protocol.</p> <p><b>7.</b> However, in respect to inapplicability, there is some minor variation.</p> <p>First, the Shipping Bill makes its provisions inapplicable to wastes or matters arising directly from the associated permitted activity. This was already effectively done by excluding such matters from the definition of “dumping”. However, there appears to be no evident harm in reiterating the inapplicability of such wastes from the Shipping Bill under this section also.</p> <p>Second, while, consistent with the London Protocol, ships and aircraft entitled to sovereign immunity have been exempted, <u>there is no requirement for those ships and aircrafts to nevertheless act in a manner consistent with the London Protocol. Perhaps, out of an abundance of caution, a provision should be inserted containing this requirement.</u></p>

## A Comparative Analysis of the Provisions of the London Protocol vis-a-vis the Saint

### Christopher and Nevis Shipping (Marine Pollution Prevention) Bill

Relevant Provisions of the London Protocol	Corresponding Provisions in the Shipping (Marine Pollution Prevention) Bill	Comments
<p><b>Article 4- Dumping of Wastes or Other Matter</b></p> <p>.1 Contracting Parties shall prohibit the dumping of any wastes or other matter with the exception of those listed in Annex 1.</p>	<p><b>S. 15 - Prohibition on dumping of wastes</b></p> <p>Subject to section 23 or sub-section 27(2) of this Act, the dumping of any wastes-</p> <p>(at) at sea by the persons to whom this Part applies, or,</p> <p>(b) at sea within SKN waters by any person,</p> <p>is prohibited except where dumping is otherwise permitted under this part.</p>	<p><b>8.</b> The Shipping Bill is commendably more specific in relation to the prohibition of dumping to the extent that it specifies who is prohibited from dumping and where. While it makes no specific reference to the exceptions in Annex 1, it references that dumping may be allowed in permitted circumstances.</p> <p><u>It would be prudent to make a direct reference to Annex 1 to ensure that its provisions are properly incorporated into the Shipping Bill.</u></p>
<p><b>Article 9 -Issuance of Permits and Reporting</b></p> <p>.2 The appropriate authority or authorities of a Contracting Party shall issue permits in accordance with this Protocol in respect of wastes or other matter intended for dumping or, as provided for in article 8.2, incineration at sea:</p> <p>.1 loaded in its territory; and</p> <p>.2 loaded onto a vessel or aircraft registered in its territory or flying its flag, when the loading occurs in the territory of a State not a Contracting Party to this Protocol.</p> <p>3 In issuing permits, the appropriate authority or authorities shall comply with the requirements of article 4, together with such additional criteria, measures and requirements as they may consider relevant.</p>	<p><b>S. 16- Dumping or incineration at sea permits</b></p> <p>(1) The dumping of wastes listed in Annex 1 to the London Convention, or the incineration of waste at sea in the force majeure circumstances provided for in sub-section 27(2) of this Act, may be permitted subject to the issue of a permit by the Director of Environment where such wastes are-</p> <p>(a) loaded in the territory of SKN; or,</p> <p>(b) loaded onto a ship or aircraft registered in SKN or flying SKN's flag, when the loading occurs in the territory of a State not a Party to the London Convention.</p> <p>(2) In issuing a permit under this section, the Director of Environment shall impose conditions in accordance with Annex 2 to the London Convention and may impose additional relevant criteria, measures and requirements.</p>	<p><b>9.</b> These provisions are the same in substance.</p> <p><b>10.</b> Reference to “London Convention” in this context refers to the London Protocol (and not the London Convention of 1972) based on the definition of London Convention in the Shipping Bill.</p> <p>While section 16(2) of the Shipping Bill gives the Director of Environment the discretion to impose conditions on the grant of permits to dump wastes or incinerate at sea, there is nothing requiring the authorised persons to comply with the conditions. This is an area where amendment might be desirable.</p>

**A Comparative Analysis of the Provisions of the London Protocol vis-a-vis the Saint Christopher and Nevis Shipping (Marine Pollution Prevention) Bill**

Relevant Provisions of the London Protocol	Corresponding Provisions in the Shipping (Marine Pollution Prevention) Bill	Comments
	(3) The Director of Environment shall not issue a dumping permit where an environmentally preferable alternative is available.	
<p><b>Article 9 -Issuance of Permits and Reporting</b></p> <p>.2 The appropriate authority or authorities of a Contracting Party shall issue permits in accordance with this Protocol in respect of wastes or other matter intended for dumping or, as provided for in article 8.2, incineration at sea:</p> <p>.1 loaded in its territory; and</p> <p>.2 loaded onto a vessel or aircraft registered in its territory or flying its flag, when the loading occurs in the territory of a State not a Contracting Party to this Protocol.</p> <p>.3 In issuing permits, the appropriate authority or authorities shall comply with the requirements of article 4, together with such additional criteria, measures and requirements as they may consider relevant.</p> <p>.4 Each Contracting Party, directly or through a secretariat established under a regional agreement, shall report to the Organization and where appropriate to other Contracting Parties:</p> <p>.1 the information specified in paragraphs 1.2 and 1.3;.</p> <p>.2 the administrative and legislative measures taken to implement the provisions of this Protocol, including a summary of enforcement measures; and</p>	<p><b>S. 17- Duty to notify IMO</b></p> <p>Where a permit is issued under section 23 of this Act, the Director of Environment shall inform the Director and shall communicate details of any dumping or incineration carried out pursuant to the permit, and the Director shall notify the IMO.</p>	<p><b>11.</b> Based on the Shipping Bill, the Director of Maritime Affairs has the responsibility to report to the IMO. Section 17 of the Shipping Bill seems to limit the duty to report to the issue of permits and related matters. However, the other reporting requirements are dealt with under section 23 of the Shipping Bill.</p> <p>The issue of the time within which such reporting is to be done is also dealt with under section 23 of the Shipping Bill.</p>

**A Comparative Analysis of the Provisions of the London Protocol vis-a-vis the Saint Christopher and Nevis Shipping (Marine Pollution Prevention) Bill**

Relevant Provisions of the London Protocol	Corresponding Provisions in the Shipping (Marine Pollution Prevention) Bill	Comments
<p>1.3 the effectiveness of the measures referred to in paragraph 4.2 and any problems encountered in their application.</p> <p>The information referred to in paragraphs 1.2 and 1.3 shall be submitted on an annual basis. The information referred to in paragraphs 4.2 and 4.3 shall be submitted on a regular basis.</p>		
<p><b>Article 5- Incineration at Sea</b></p> <p>Contracting Parties shall prohibit incineration at sea of wastes or other matter.</p>	<p><b>S. 18- Prohibition of incineration at sea</b></p> <p>Subject to section 27 of this Act, the incineration of wastes-</p> <p>(a) at sea by the persons to whom this Part applies, or,</p> <p>(b) Within SKN waters by any person,</p> <p>is hereby prohibited.</p>	<p><b>12.</b> The Shipping Bill is again commendably more specific in relation to the prohibition against incineration of wastes to the extent that it specifies who is prohibited from incinerating wastes and where.</p>
<p><b>Article 6- Export of Waste or Other Matter</b></p> <p>Contracting Parties shall not allow the export of wastes or other matter to other countries for dumping or incineration at sea.</p>	<p><b>S.19- Prohibition of export of wastes</b></p> <p>The export of wastes from SKN to other countries for dumping or incineration at sea is hereby prohibited.</p>	<p><b>13.</b> These provisions are substantially the same.</p>
<p><b>Article 8- Exceptions</b></p> <p>1 The provisions of articles 4.1 and 5 shall not apply when it is necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms or other man-made structures at sea, if dumping or incineration at sea appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping or incineration at sea will be less than would otherwise occur. Such</p>	<p><b>S.20- Exceptions in cases of force majeure</b></p> <p>(1) Sections 22 and 25 of this Act shall not apply in circumstances of force majeure or other cases of emergency, where dumping or incineration at sea is deemed by the Director to be necessary to-</p> <p>(a) secure the safety of human life or of ships, aircraft, platforms or other man-made structures at sea, or</p> <p>(b) lessen damage to human safety or life or the marine environment that would otherwise occur.</p>	<p><b>14.</b> <u>There seems to be some typographical errors in the Shipping Bill since sections section 22 refers to “Offences” and Section 25 is the interpretative section of Part IV which seeks to give effect to MARPOL.</u></p> <p><u>Guided by the London Protocol, it appears that the sections that should have been referred to in Section 20(1) of the Shipping Bill should be section 15 (prohibition of dumping) and section 18 (prohibition of incineration).</u></p> <p><u>The Shipping Bill will need to be amended to correct these errors.</u></p>

**A Comparative Analysis of the Provisions of the London Protocol vis-a-vis the Saint Christopher and Nevis Shipping (Marine Pollution Prevention) Bill**

Relevant Provisions of the London Protocol	Corresponding Provisions in the Shipping (Marine Pollution Prevention) Bill	Comments
<p>dumping or incineration at sea shall be conducted so as to minimize the likelihood of damage to human or marine life and shall be reported forthwith to the Organization.</p> <p>2A Contracting Party may issue a permit as an exception to articles 4.1 and 5, in emergencies posing an unacceptable threat to human health, safety, or the marine environment and admitting of no other feasible solution. Before doing so the Contracting Party shall consult any other country or countries that are likely to be affected and the Organization which, after consulting other Contracting Parties, and competent international organizations as appropriate, shall, in accordance with article 18.6 promptly recommend to the Contracting Party the most appropriate procedures to adopt. The Contracting Party shall follow these recommendations to the maximum extent feasible consistent with the time within which action must be taken and with the general obligation to avoid damage to the marine environment and shall inform the Organization of the action it takes. The Contracting Parties pledge themselves to assist one another in such situations.</p>	<p>(2) Where practicable, a person considering dumping or incineration in the circumstances referred to in sub-section 27(1) shall apply to the Director of Environment, who may issue a permit under section 23 of this Act excepting the application of relevant sections of this Part, after consulting the Director, the IMO, and any other country or countries that are likely to be affected, and taking into account any recommendations of the IMO.</p> <p>(3) In any case, such dumping or incineration at sea referred to in sub-section 27(1) shall be conducted so as to minimise the likelihood of damage to human or marine life.</p>	<p><u>The cross-reference to section 23 is also erroneous since section 23 deals with record keeping and reporting. The issue of permits is mandated by section 16.</u></p> <p><u>15. A more substantive issue with section 20 is that it omits the conditions to dumping or incineration based on force majeure. For instance, it does not require that there be a “real threat” to vessels, aircraft, platforms or other man-made structures before they are dumped. Neither does it require that dumping or incineration in this case be the “only way of averting the threat”.</u></p> <p>It is possible that the draftspersons intend the Director bear these considerations in mind even if not reflected in the Shipping Bill. However, such a totally subjective approach may not be desirable considering the seriousness of the matter and it may be prudent to at least set out these minimum considerations in the Shipping Bill itself. Therefore, this is a possible area for amendment.</p>
<p><b>Article 3- General Obligations</b></p> <p>.2 Taking into account the approach that the polluter should, in principle, bear the cost of pollution, each Contracting Party shall endeavour to promote practices whereby those it has authorized to engage in dumping or incineration at sea bear the cost of meeting the pollution prevention and control requirements for the authorized activities, having due regard to the public interest.</p>	<p><b>S. 21- Obligations of a person authorised to dump or incinerate waste at sea</b></p> <p>A person authorised to engage in dumping or incineration at sea under this Part shall-</p> <p>(a) bear the cost of meeting the pollution prevention and control requirements for the authorised activities, having due regard to the public interest; and ,</p>	<p><b>16.</b> In respect of the polluter pays principle, the sections are the same in substance.</p> <p>However, as it regards the transfer of the damage of pollution, it appears that there is some variation. Whereas in the London Protocol, this obligation seems to be on the State party, in the Shipping Bill, the responsibility seems to be shifted to the person authorised to engage in dumping. While this may be a different means to the same end, the Authorities in St. Kitts and Nevis will have to be careful not to issue instructions to authorised</p>



## A Comparative Analysis of the Provisions of the London Protocol vis-a-vis the Saint

### Christopher and Nevis Shipping (Marine Pollution Prevention) Bill

Relevant Provisions of the London Protocol	Corresponding Provisions in the Shipping (Marine Pollution Prevention) Bill	Comments
<p>.3 In implementing the provisions of this Protocol, Contracting Parties shall act so as not to transfer, directly or indirectly, damage or likelihood of damage from one part of the environment to another or transform one type of pollution into another.</p>	<p>(b) Not cause, directly or indirectly, damage or likelihood of damage to the environment or transform one type of pollution into another.</p>	<p>persons which in effect amounts to a transfer of the damage of pollution for example. <u>Otherwise there may be implications for causing the authorised person to contravene sections 21(b) of the Shipping Bill.</u></p>
<p><b>Article 10- Application and Enforcement</b></p> <p>.2 Each Contracting Party shall take appropriate measures in accordance with international law to prevent and if necessary punish acts contrary to the provisions of this Protocol.</p>	<p><b>S.22- Offences</b></p> <p>Any person who contravenes the provisions of sections 22, 25 or 26 of this Act shall be guilty of an offence and shall be liable on summary conviction to a fine of up to \$ 300, 000 or to imprisonment for a term not exceeding two year, or to both.</p>	<p>17. The Shipping Bill has implemented measures to punish acts contrary to the Protocol.</p> <p><u>There are errors in the cross-reference as section 22 deals with offences and 25 and 26 fall under Part IV giving effect to MARPOL.</u></p> <p>This needs urgent amendment as it is currently unclear which acts are punishable.</p>
<p><b>Article 9 -Issuance of Permits and Reporting</b></p> <p>1 Each Contracting Party shall designate an appropriate authority or authorities to:</p> <p>.1 issue permits in accordance with this Protocol;</p> <p>.2 keep records of the nature and quantities of all wastes or other matter for which dumping permits have been issued and where practicable the quantities actually dumped and the location, time and method of dumping; and</p> <p>.3 monitor individually, or in collaboration with other Contracting Parties and competent international organizations, the condition of the sea for the purposes of this Protocol.</p> <p>.4 Each Contracting Party, directly or through a secretariat established under a regional agreement, shall report to the Organization and where appropriate to other Contracting Parties:</p>	<p><b>S.23- Record keeping and reporting</b></p> <p>(1) The Director Environment shall-</p> <p>(a) keep records of the nature and quantities of all wastes or other matter for which permits have been issued under section 23 and, where practicable, quantities actually dumped, and the location, time and method of dumping; and</p> <p>(b) cause to be monitored, where appropriate, in collaboration with other State Parties to the London Convention and competent international organisations, the condition of the sea for the purposes of this Part.</p> <p>(2) The Director of Environment shall communicate to the Director and, where appropriate, to other State Parties to the London Convention, and the Director shall report to the IMO-</p>	<p>18. <u>Cross- referencing issues are present. These are:</u></p> <ol style="list-style-type: none"> <li>1. <u>cited section 23 should be section 16; and</u></li> <li>2. <u>cited 30(1) should be 23(1).</u></li> </ol>

**A Comparative Analysis of the Provisions of the London Protocol vis-a-vis the Saint Christopher and Nevis Shipping (Marine Pollution Prevention) Bill**

Relevant Provisions of the London Protocol	Corresponding Provisions in the Shipping (Marine Pollution Prevention) Bill	Comments
<p>.1 the information specified in paragraphs 1.2 and 1.3;</p> <p>.2 the administrative and legislative measures taken to implement the provisions of this Protocol, including a summary of enforcement measures; and</p> <p>.3 the effectiveness of the measures referred to in paragraph 4.2 and any problems encountered in their application.</p> <p>The information referred to in paragraphs 1.2 and 1.3 shall be submitted on an annual basis. The information referred to in paragraphs 4.2 and 4.3 shall be submitted on a regular basis.</p>	<p>(a) on an annual basis, the information referred to in subsection 30(1); and</p> <p>(b) on a regular basis, measures taken by SKN to implement this Part, including a summary of enforcement measures, and a description of their effectiveness.</p>	
<p><b>Article 10- Application and Enforcement</b></p> <p>.3 Contracting Parties agree to co-operate in the development of procedures for the effective application of this Protocol in areas beyond the jurisdiction of any State, including procedures for the reporting of vessels and aircraft observed dumping or incinerating at sea in contravention of this Protocol.</p>	<p><b>S. 24 Co-operation regarding enforcement</b></p> <p>SKN Government shall co-operate in the development of procedures for the effective application of the London Convention in areas beyond the jurisdiction of any State, including procedures for the reporting of ships and aircraft observed dumping or incinerating at sea in contravention of the London Convention.</p>	<p><b>19.</b> These provisions are substantially the same.</p>

**1.5.3 Provisions of the London Protocol Omitted from the Draft Shipping (Marine Pollution Prevention) Act**

There are several provisions of the London Protocol which appear not to be reflected in the Shipping (Marine Pollution Prevention) Bill. These range from arguably minor omissions to more important ones. The omitted provisions which are notable and therefore warrant enumeration are as follows:

1. All references to the precautionary approach specifically in relation to the London Protocol, in particular, as noted expressly in Article 3 and impliedly in Articles 4.1.2 and 10.1.2;



2. Procedures regarding liability for dumping or incineration at sea as stipulated by Article 15; and
3. Annex 2 except for sections 17 and 18 which contain conditions attaching to the issue of permits.

A minor omission is as regards the definition of “permit”.

#### **1.5.4 The Relevance of the London Protocol to Saint Christopher and Nevis**

One of the first enumerated recognitions of the London Protocol is that the marine environment ought to be protected and that there should be sustainable use and conservation of marine resources. From a national perspective, Saint Christopher and Nevis supports this view and aspiration. Under the *Fisheries, Aquaculture and Marine Resources Act Cap 14.07* pollution of the marine environment is prohibited. In particular, it is required that ‘pollution originating from fishing vessels or vessels engaged in related activities’<sup>59</sup> be minimised. Further, pursuant to the said Act, there is also a requirement for the promotion of the health of the general marine and aquatic environment.

Elsewhere in the corpus of regulations and other legislative enactments forming the Laws of Saint Christopher and Nevis, these goals are echoed. One example is the *National Conservation and Environment Protection Act Cap 11.03* which makes provision for the establishment of marine reserves in furtherance of the protection of the marine environment.

*St. Kitts and Nevis’ Maritime Areas Act Cap 7.03* establishes the rights to be exercised in the various maritime zones. One such right is the protection and preservation of the marine environment.

From a policy perspective, the prevention of pollution which the London Protocol seeks to encourage is relevant to Saint Christopher and Nevis in the context of it being a member of a regional ocean governance movement, part and parcel of which is the protection of the marine environment. Having recognised that most of the small islands in the Eastern Caribbean are in fact Large Ocean States- with the marine space being “about 85 times larger”<sup>60</sup> than the land space, the immense asset that is the ocean has been recognised. With this comes the concomitant responsibility

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<sup>59</sup> Fisheries, Aquaculture and Marine Resources Act Cap 14.07, section 5(1)(j)(ii).

<sup>60</sup> Organisation of Eastern Caribbean States, “*We Are Large Ocean States*”: *Blue economy and ocean governance in the Eastern Caribbean* (OECS Commission 2020) 3.

to protect the ocean and its resources. Therefore, “pollution control”<sup>61</sup> has been identified by the OECS Commission (which plays a crucial role in ocean governance in the Eastern Caribbean) as one of the areas for regulation by its member States. This and other considerations were the basis of the development of the Eastern Caribbean Regional Ocean Policy (ECROP) in 2013 and the launch of the Caribbean Regional Oceanscape Project (CROP) in 2017. Through these programmes, Member States have, at their disposal, assistance with the development of the National Ocean Policies and Marine Spatial Plans. The thrust of St. Kitts and Nevis’ National Ocean Policy, which is currently in draft, is the achievement of a blue economy. This undoubtedly encapsulates the protection of the marine environment as a component of the sustainable use of the ocean space.

Finally, through its participation on international fora, Saint Christopher and Nevis has agreed to collaborate with other States in the move towards better management of the ocean. The most evident example of this is the fact that Saint Christopher and Nevis ratified the 1982 United Nations Convention on the Law of the Sea in 1984 just one year after attaining its independence. A key objective of the 1982 UNCLOS is to ‘promote the peaceful uses of the seas and oceans, the equitable and efficient utilisation of their resources, the conservation of their living resources and the study, **protection and preservation of the marine environment**’<sup>62</sup>[emphasis added]. Further, not only is UNCLOS inundated with references to the protection of the marine environment, but, to emphasise the importance of this regime, Part XII dubbed “Protection and Preservation of the Marine Environment” contains a plethora of measures to be taken by States in this regard.

Additionally, Saint Christopher and Nevis has expressed its will to protect the marine environment by becoming a State Party to a number of other international conventions with a specific focus on marine pollution. These include, International Convention for the Prevention of Pollution from Ships 1973, and its Protocol of 1978 (MARPOL), International Convention on Oil Pollution Preparedness, Response and Cooperation 1990, the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001, the International Convention on Liability and Compensation or Damages connection with the Carriage of Hazardous and Noxious Substances by sea 1996, the International Convention for the Control and Management of Ships’ Ballast Water and Sediments 2004 and numerous others.

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<sup>61</sup> Organisation of Eastern Caribbean States (n60) 11, 22, 25.

<sup>62</sup> Preamble of the United Nations Convention on the Law of the Sea.

In the premises, it could be said that at every sphere of governance, Saint Kitts and Nevis has demonstrated a will to protect the marine environment. The implementation of the London Protocol furthers this agenda.

### **1.5.5 Implementation of the Provisions of the London Protocol in Saint Christopher and Nevis**

Section 37 of the Constitution of St. Christopher and Nevis<sup>63</sup> provides that Parliament has the power to make laws for the good government of the Federation. The implication of this provision is that it evidences the dualist nature of St. Christopher and Nevis. This is premised on the fact that in order for international conventions to which the Federation is a State Party to bind national courts, their provisions must be incorporated into national law through an Act of Parliament.

That there needs to be a national law in order to incorporate the provisions of the London Protocol is clearly evidenced by the Shipping (Marine Pollution Prevention) Bill which, has as its Long Title, “An Act to incorporate into the national law of Saint Christopher and Nevis various international conventions relating to the prevention of marine pollution from ships”.<sup>64</sup>

Pursuant to section 132 of the Shipping Bill, the Minister has the power to make regulations generally for the administration of the Act and specifically for a number of purposes. One purpose is, “to give effect to, or to facilitate the enforcement, of any relevant international convention or instrument relating to this Act”.<sup>65</sup> The London Protocol is one such international convention.

At present, there is a need to enact a specific regulation for the implementation of the London Protocol. As a subsidiary legislation, such regulation would operate under the Shipping (Marine Pollution Prevention) Act once it becomes law. The scope of the suggested regulation is addressed below in the introduction to the draft. However, it must be noted that such regulation would be administered by the Department of Environment even though the Act itself, as far the London Protocol is concerned, will be regulated by the Department of Maritime Affairs.

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<sup>63</sup> Saint Christopher and Nevis Constitution Order 1983.

<sup>64</sup> Shipping (Marine Pollution Prevention) Bill, 2015.

<sup>65</sup> Shipping (Marine Pollution Prevention) Bill, 2015 section 132(b).

The Department of Environment would be responsible for *inter alia*, the issue of permits and the monitoring of dumping and incineration activities and the imposition of the conditions which are established by Annex 2 of the London Protocol. This means that the Department of Environment would be the administering body of the Regulations which is specifically concerned with Annex 2.

Meanwhile, the Department of Maritime Affairs would be responsible for determining whether dumping or incineration at sea is necessary on the basis of force majeure. This is notwithstanding the fact that it is the Director of Environment that would issue the permit to dump or incinerate at sea under these circumstances.

As part of the implementation process, there will be a need to amend some of the provisions of the Draft Shipping Bill. Some sections to be amended have been identified as not adequately reflecting the spirit and intent of the London Protocol. Other provisions are to be amended as a result of errors in cross-referencing, the most notable of which relates to the sections referred to in the offences clause which makes it difficult to ascertain which actions are punishable under the Bill.

## **2. Introduction to Proposed Changes and Draft Regulations**

### **2.1 Changes to Part III of the Draft Shipping (Marine Pollution Prevention) Bill.**

The dualist nature of Saint Kitts and Nevis has already been alluded to.<sup>66</sup> It follows that in order for the London Protocol to have effect at the national level, a national legislative instrument is required. The Draft Shipping (Marine Pollution Prevention) Bill intends to give national force to the London Protocol as well as other international conventions<sup>67</sup> relating to the protection of the marine environment.

Having reviewed the Shipping Bill, areas for improvement have been identified<sup>68</sup>. Considering that the Bill is still currently at the draft stage, the time is ripe for changes to be made that will ensure that the Act, once it comes into force, gives effect to the spirit of the London Protocol. Additionally, this is an opportune moment to improve the efficiency of the instrument so that those tasked with administering the Act, as well as those who will be regulated by the Act will understand their responsibilities under the instrument without difficulty.

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<sup>66</sup> See page 28.

<sup>67</sup> A comprehensive list is given on page 15.

<sup>68</sup> As indicated in the table from pages 17 to 26.

The areas identified for amendment vary in seriousness. Clarification of the section creating the offences under the Bill is perhaps one of the most important amendments in this regard. As it stands, it is unclear which acts under the Bill are intended to be offences. This has serious implications for the enforcement of the relevant provisions.

Other notable sections which have been highlighted as in need of amendment include the provisions on the granting of a permit for dumping or incinerating at sea in cases of force majeure and the section addressing the transfer of the damage caused by pollution or the transformation of one type of pollution into another. Changes to other sections involve corrections to errors in cross-referencing as well as certain minor alterations.

## **2.2 Introduction to Draft Shipping (Marine Pollution Prevention) Regulations**

Given that the Draft Shipping (Marine Pollution Prevention) Bill will have the effect of making the provisions of the London Protocol binding in Saint Kitts and Nevis, the proposed Regulations have a different objective. The aim of the proposed Regulations is to implement, in particular, the more technical aspects of the London Protocol as encapsulated in Annex II which deals with the assessment of wastes or other matter that may be considered for dumping. This is of particular importance since in the Shipping Bill only one reference was made to Annex II in the context of the conditions attaching to the grant of a permit to dump waste or incinerate at sea. Since Annex II is, in fact, much broader, regulations are necessary to ensure that its provisions are properly implemented.

It must be noted that under the proposed Regulations, the appropriate authority would be the Department of Environment headed by the Director of Environment. This is due to the fact that under the Shipping Bill, it is the Director of Environment, and not the Director of Maritime Affairs, who has the power to grant or refuse permits for dumping or incineration at sea.

The proposed regulations have been drafted to stay true to the spirit of Annex II, in language and in scope. It covers all the areas of Annex II. These include waste prevention audit, considerations of waste management options, chemical, physical and biological properties of wastes, action list, dump-site selection, assessment of potential effects, monitoring and permit and permit conditions. The proposed regulations also introduces new sections not included in Annex II

but which would typically be present in regulations in Saint Kitts and Nevis, most notable of which is an offences provisions which provides a penalty for non-compliance with conditions imposed on the issue of permits.

**CABINET MEMORANDUM**

**ON**

**Subject: Proposed Changes to the Draft Shipping (Marine Pollution Prevention) Bill**

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**Presented by: (1) Minister for Environment and Cooperatives  
(2) Minister Responsible for Maritime Affairs  
(3) Minister Responsible for Marine Environment**

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**Ministry of Justice and Legal Affairs, Chambers of the Attorney General**

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***Date:* 10 May, 2021**

## CABINET MEMORANDUM

***Presented by:*** (1) Honourable Minister for Environment and Cooperatives  
(2) Minister Responsible for Maritime Affairs  
(3) Minister Responsible for Marine Environment

**Subject:** Proposed Changes to the Draft Shipping (Marine Pollution Prevention) Bill

### **1. The Purpose of the Memorandum**

The Cabinet is being asked to consider and approve proposed changes to the Draft Shipping (Marine Pollution Prevention) Bill.

### **2. Background Summary**

In 2015, the Shipping (Marine Pollution Prevention) Bill (hereinafter “the Shipping Bill”) of Saint Christopher and Nevis was prepared under the auspices of the Oceans and Natural Resources Division of the Commonwealth Secretariat. The long title of the Bill succinctly describes its purpose. It states, ‘An Act to incorporate into the national law of Saint Christopher and Nevis various international conventions relating to the prevention of marine pollution from ships.’<sup>69</sup> Among the Conventions which the Bill seeks to incorporate is the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping Waste and Other Matter (hereinafter “the London Protocol”).

The London Protocol is the successor of the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter 1972 (hereinafter “the London Convention”). The objective of the London Convention is to ‘promote the effective control of all sources of marine pollution and to take all practicable steps to prevent pollution of the sea by dumping of wastes and other matter’.<sup>70</sup> The London Protocol is the product of a review of the London Convention and evidences a modernised approach to waste management and the protection of the marine environment.

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<sup>69</sup> Shipping (Marine Pollution Prevention) Bill 2015

<sup>70</sup> *ibid.*



## **2. Issue to be resolved**

It appears that since 2015, no further action has been taken in respect of the Shipping Bill. As a result, the numerous Conventions which the Bill seeks to incorporate into national law remain unimplemented with the concomitant effect that St. Kitts and Nevis has failed, in respect of each of these Conventions, to honour its obligation under international law to adopt laws in order to give effect to the Conventions.

Not only is this circumstance counter-productive to the very reason for which these treaties were ratified in the first place but it also has the potential to attach to St. Kitts and Nevis a reputation of non-compliance with treaties which it has voluntarily adhered to. This latter outcome is particularly worrying since these conventions relate to the protection of the marine environment which is of particular concern currently and, quite possibly, for the foreseeable future.

Another issue with regards to the Shipping Bill is that, while it represents a good attempt to incorporate the provisions of the London Protocol, there are areas which would benefit from review in order for the Bill, once it becomes law, to operate effectively.

## **4. The Proposal**

In order to remedy the situation, two actions need to be taken; changes need to be implemented to the current draft of the Shipping Bill and, once amended, the Bill needs to be taken before the National Assembly in order that it may be passed into law. In the interest of brevity, this section will address only the changes which are to be made to the Bill and in doing so, will focus on the more pertinent changes. The minor amendments are self-explanatory and are clearly indicated in the document attached which presents the changes as they would appear in the text of the Bill.

Changes to the key sections identified below are proposed as follows:

### **I. Section 13**

In this section, it is proposed to add a sub-paragraph (d) in order to include any deliberate disposal into the sea of vessels, aircraft, platforms or other man-made structures at sea. This provision, though apparent in the London Protocol, has been omitted (possibly by

inadvertence) from the Bill. It is necessary to add this sub-paragraph in order to ensure that a thorough definition of dumping is provided as is reflected in the Protocol.

## **II. Section 14**

It is further proposed that two sub-sections be added to section 14. Subsection (3) is intended to ensure that vessels and aircrafts which are owned by the government of St. Kitts and Nevis act in a manner which is consistent with the object and purpose of the Bill. Meanwhile, the proposed sub-section (4) seeks to mandate that the Director of Maritime Affairs keeps the IMO informed of measures taken by it to ensure that vessels owned or operated by Saint Christopher and Nevis comply with the provisions of the Bill.

These additions ensure that the duty to refrain from dumping attaches also to government owned vessels and that the IMO is kept apprised of the measures pursuant to Article 10(4) of the Protocol.

## **III. Section 15**

The suggested change to section 15 seeks to clarify that the dumping of wastes other than those listed in Annex 1 is strictly prohibited. This is particularly important in the context of the approach taken in the London Protocol which is that dumping is generally prohibited *except* for those matters which are indicated in Annex 1. This is a complete reversal of the position in the London Convention under which dumping was generally permitted except for the specific items which were prohibited. This restrictive measure emphasises the growing significance of the regime for the protection of the marine environment facilitated through the implementation of more stringent rules regulating human treatment of the ocean-space.

## **IV. Section 16**

Section 16 makes it mandatory for the conditions imposed in relation to the grant of a permit to dump waste or incinerate at sea to be complied with. This might seem self-evident but in drafting effective legislation, clarity is to be favoured. It is pertinent that authorised persons understand that the conditions imposed are not merely recommendatory.

## **V. Section 20**

By virtue of a proposed section 20(3), the Director is required to consider whether dumping or incineration at sea appears to be the only way of averting the threat posed by force majeure and if there is every probability that the damage consequent upon such dumping or incineration at sea will be less than would otherwise occur. As currently drafted, there is no guidance on what considerations the Director ought to bear in mind when considering whether or not to grant a dumping permit in such a case. While it may be that the drafters intended the Director to exercise his or her discretion, the gravity of the effects of dumping on the environment requires that attempts should be made to avoid improper exercise of full discretion. One way to address this is by presenting some guidance in regards to considerations which should be borne in mind, as proposed.

## **VI. Section 21**

A new section 21(2) imposes on the Director of Maritime Affairs the obligation to take all reasonable steps to verify that the authorised person has not taken any action which results in the transfer, directly or indirectly, damage or likelihood of damage from one part of the environment to another or to transform one type of pollution into another. Given that ultimate responsibility for the preservation of its marine environment rests with the Government, it is prudent to implement monitoring mechanisms to ensure that authorised persons have done any action which results in marine pollution.

## **6. Recommendations**

Based on the foregoing, the Cabinet is kindly asked to :

1. Issue a formal request for the proposed changes in respect of the London Protocol to be implemented to the Shipping Bill.
2. Once the changes have been implemented, to table the Shipping Bill in National Assembly so that the process of its passage into law may be commenced.

**PART III- PREVENTION OF POLLUTION BY DUMPING OF WASTES  
AT SEA**

**13. Interpretation of Part III**

In this Part-

“dumping” means-

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

but does not include -

- (e) The disposal into the sea of wastes incidental to, or derived from the normal operations of ships, aircraft, platforms or other man-made structures at sea and their equipment, other than where those operations are for the specific purpose of transport, disposal or treatment of waste,
- (f) Placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to this Part,
- (g) abandonment at sea of items such as cables, pipelines and marine research devices placed for a purpose other than the mere disposal thereof, and
- (g) disposal or storage of wastes or other matter directly arising from, or related to the exploration, exploitation and associated off-shore processing of seabed mineral resources;

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

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

**14. Application of Part III**

(1) This Part shall apply to all-

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

(2) This Part shall not apply to-

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

“(3) Vessels and aircraft owned or operated by Saint Christopher and Nevis shall act in a manner consistent with the object and purpose of this Act.

(4) The Director of Maritime Affairs shall keep the IMO informed of measures taken by it to ensure that vessels owned or operated by Saint Christopher and Nevis comply with the provisions of this Act.”

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

(1) Subject to section 23 or sub-section 27(2) of this Act, the dumping of any wastes-

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

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

(2) Notwithstanding subsection (1), the dumping of wastes other than those listed in Annex 1 of the London Protocol is hereby strictly prohibited.

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

(1) The dumping of wastes listed in Annex 1 to the London Convention, or the incineration of waste at sea in the force majeure circumstances provided for in sub-section 27(2) of this Act, may be permitted subject to the issue of a permit by the Director of Environment where such wastes are-

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

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

(3) Any conditions imposed in relation to the grant of a permit to dump waste or incinerate at sea pursuant to sub-section (2) must be complied with.

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

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

Where a permit is issued under section 23 of this Act, the Director of Environment shall inform the Director and shall communicate details of any dumping or incineration carried out pursuant to the permit, and the Director shall notify the IMO.

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

Subject to section 27 of this Act, the incineration of wastes-

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

is hereby prohibited.

## 19. Prohibition of export of wastes

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

## 20. Exceptions in cases of force majeure

(1) Sections ~~22-15~~ and ~~25~~ 18 of this Act shall not apply in circumstances of force majeure or other cases of emergency, where dumping or incineration at sea is deemed by the Director to be necessary to-

(a) secure the safety of human life or of ships, aircraft, platforms or other man-made structures at sea, or

(b) lessen damage to human safety or life or the marine environment that would otherwise occur.

(2) Where practicable, a person considering dumping or incineration in the circumstances referred to in ~~sub-section~~ subsection ~~27-20~~(1) shall apply to the Director of Environment, who may issue a permit under section ~~23-16~~ of this Act excepting the application of relevant sections of this Part, after consulting the Director, the IMO, and any other country or countries that are likely to be affected, and taking into account any recommendations of the IMO.

(3) In considering whether or not to grant a permit on the basis of force majeure in accordance with subsection (1), the Director shall consider whether dumping or incineration at sea appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping or incineration at sea will be less than would otherwise occur.

(4) In any case, such dumping or incineration at sea referred to in ~~sub-section~~ subsection ~~27-20~~(1) shall be conducted so as to minimise the likelihood of damage to human or marine life.

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

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

(a) bear the cost of meeting the pollution prevention and control requirements for the authorised activities, having due regard to the public interest; and ,

(b) Not cause, directly or indirectly, damage or likelihood of damage to the environment or transform one type of pollution into another.

(2) Notwithstanding subsection (1), the Director of Maritime Affairs shall take all reasonable steps to verify that the authorised person has not taken any action which results in the transfer, directly or indirectly, damage or likelihood of damage from one part of the environment to another or to transform one type of pollution into another.

## 22. Offences

Any person who contravenes the provisions of sections ~~22, 25 or 26~~ 15, 16(3), 18 or 19 of this Act shall be guilty of an offence and shall be liable on summary conviction to a fine of up to \$300, 000 or to imprisonment for a term not exceeding two year, or to both.

## 23. Record keeping and reporting

(1) The Director Environment shall-

(a) keep records of the nature and quantities of all wastes or other matter for which permits have been issued under section ~~23-16~~ and, where practicable, quantities actually dumped, and the location, time and method of dumping; and

(b) cause to be monitored, where appropriate, in collaboration with other State Parties to the London Convention and competent international organisations, the condition of the sea for the purposes of this Part.

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

(a) on an annual basis, the information referred to in ~~sub-section~~ **subsection 3023**(1); and

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

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

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

**SCHEDULE**  
*(Section 132)*

**SHIPPING (MARINE POLLUTION PREVENTION) REGULATIONS**

PART I  
PRELIMINARY

**Citation.**

1. These Regulations may be cited as the Shipping (Marine Pollution Prevention) Regulations.

**Interpretation.**

2. In these Regulations-

“Act” means the Shipping (Marine Pollution Prevention) Act, Cap—.

“Director of Environment” shall have the same meaning assigned to it in the Act.

PART II  
PRELIMINARY ASSESSMENT OF WASTES OR OTHER MATTER THAT MAY BE  
CONSIDERED FOR DUMPING

**Application**

3. These Regulations apply to permits for the dumping or incinerating at sea pursuant to Part III of the Shipping (Marine Pollution Prevention) Act.

**General.**

4. The acceptance of dumping under certain circumstances shall not remove the obligations under these Regulations to make further attempts to reduce the necessity for dumping.

**Waste Prevention Audit.**

5. The initial stages in assessing alternatives to dumping should, as appropriate, include an evaluation of:

1. types, amounts and relative hazard of wastes generated;
2. details of the production process and the sources of wastes within that process; and
3. feasibility of the following waste reduction/prevention techniques:
  - i. product reformulation;
  - ii. clean production technologies;
  - iii. process modification;



- iv. input substitution; and
- v. on-site, closed-loop recycling.

4(1) If the required audit reveals that opportunities exist for waste prevention at source, an applicant may be required to formulate and implement a waste prevention strategy.

(2) Any waste prevention strategy prepared pursuant to sub-regulation (1) may be created in collaboration with the Department of Environment and any other relevant local or national agency.

(3) Waste prevention strategy should, as far as practicable, include specific waste reduction targets and provision for further waste prevention audits to ensure that these targets are being met.

(4) Permit issuance or renewal decisions shall assure compliance with any resulting waste reduction and prevention requirements.

### **Consideration of Waste Management Options.**

6. Applications to dump wastes or other matter shall demonstrate that appropriate consideration has been given to the following hierarchy of waste management options, which implies an order of increasing environmental impact

- i. re-use;
- ii. off-site recycling;
- iii. destruction of hazardous constituents;
- iv. treatment to reduce or remove the hazardous constituents; and
- v. disposal on land, into air and in water.

### **Refusal of Permit.**

7. (1) A permit to dump wastes or other matter shall be refused if the Director of Environment determines that appropriate opportunities exist to re-use, recycle or treat the waste without undue risks to human health or the environment or disproportionate costs.

(2) In assessing the application, the Director of Environment shall consider the practical availability of other means of disposal in the light of a comparative risk assessment involving both dumping and the alternatives.

### **Chemical, Physical and Biological Properties of Wastes.**

8. (1) A detailed description and characterisation of the waste shall be an essential precondition

for the consideration of alternatives and the basis for a decision of the Director of Environment as to whether a waste may be dumped.

(2) If, in the opinion of the Director of Environment, a waste is so poorly characterised that proper assessment cannot be made of its potential impacts on human health and the environment, a permit to dump the waste shall be refused.

### **Characterisation of Wastes.**

9. In characterising wastes and their constituents, the Director of Environment shall take into account:

- (1) origin, total amount, form and average composition;
- (2) properties: physical, chemical, biochemical and biological;
- (3) toxicity;
- (4) persistence: physical, chemical and biological; and
- (5) accumulation and biotransformation in biological materials or sediments.

### **Action List.**

10. (1) The Director of Environment shall develop a national Action List to provide a mechanism for screening candidate wastes and their constituents on the basis of their potential effects on human health and the marine environment.

(2) In selecting substances for consideration in the Action List, priority shall be given to toxic, persistent and bio-accumulative substances from anthropogenic sources (e.g., cadmium, mercury, organohalogenes, petroleum hydrocarbons, and, whenever relevant, arsenic, lead, copper, zinc, beryllium, chromium, nickel and vanadium, organosilicon compounds, cyanides, fluorides and pesticides or their by-products other than organohalogenes).

(3) An Action List created pursuant to Regulation 9(1) may also be used as a trigger mechanism for further waste prevention considerations.

(4) An Action List shall specify an upper level and may also specify a lower level. The upper level should be set so as to avoid acute or chronic effects on human health or on sensitive marine organisms representative of the marine ecosystem.

(5) Application of an Action List should identify three possible categories of waste:

(i) wastes which contain specified substances, or which cause biological responses, exceeding the relevant upper level shall not be dumped, unless made acceptable for dumping through the use of management techniques or processes;

(ii) wastes which contain specified substances, or which cause biological responses, below the relevant lower levels should be considered to be of little environmental concern in relation to dumping; and

(iii) wastes which contain specified substances, or which cause biological responses, below the upper level but above the lower level require more detailed assessment before their suitability for dumping can be determined.

### **Dump Site Selection.**

11. In deciding on an appropriate dump-site, the Director of Environment shall require the following information-

- (1) physical, chemical and biological characteristics of the water-column and the seabed;
- (2) location of amenities, values and other uses of the sea in the area under consideration;
- (3) assessment of the constituent fluxes associated with dumping in relation to existing fluxes of substances in the marine environment; and
- (4) economic and operational feasibility.

### **Assessment of Potential Effects.**

12. (1) The Director of Environment shall, following the assessment of potential effects, prepare a concise statement of the expected consequences of the sea or land disposal options.

(2) The assessment for dumping should integrate information on:

- i. waste characteristics;
- ii. conditions at the proposed dump-site(s);
- iii. fluxes;
- iv. proposed disposal techniques;
- v. potential effects on human health, living resources, amenities and other legitimate uses of the sea.
- vi. define the nature, temporal and spatial scales; and
- vii. duration of expected impacts based on reasonably conservative assumptions.

(3) The assessment prepared pursuant to sub-regulation (1) shall provide a basis for deciding whether to approve or reject the proposed disposal option and for defining environmental monitoring requirements.

(4) In analysing each disposal option, the Director of Environment shall take account of the following concerns:

- i. human health risks;

- ii. environmental costs;
- ii. hazards, (including accidents)
- iv. economics; and
- v. exclusion of future uses.

(5) If, in the opinion of the Director of Environment, the assessment reveals that adequate information is not available to determine the likely effects of the proposed disposal option then the relevant disposal option should not be considered further.

(6) Subject to sub-section (5), if the interpretation of the comparative assessment shows the relevant dumping option to be less preferable, a permit for dumping should not be given.

(7) The Director of Environment shall ensure that each assessment contains a statement supporting a decision to issue or refuse a permit for dumping.

### **Monitoring.**

13. (1) The Director of Environment shall monitor dumping on incinerating activities in order to verify that permit conditions are met and that the assumptions made during the permit review and site selection process were correct and sufficient to protect the environment and human health.

(2) The Director of Environment shall establish clearly defined objectives for such monitoring programmes.

### **Permit and Permit Conditions.**

14. (1) The Director of Environment must consider all completed impact evaluations and determine all monitoring requirements before making a decision to issue a permit.

(2) The provisions of the permit shall ensure, as far as practicable, that environmental disturbance and detriment are minimised and the benefits maximised.

(3) Any permit issued shall contain data and information specifying:

- (i) the types and sources of materials to be dumped;
- (ii) the location of the dump-site(s);
- (iii) the method of dumping; and
- (iv) monitoring and reporting requirements.

(4) Permits shall be reviewed at regular intervals, as determined by the Director of Environment, taking into account the results of monitoring and the objectives of monitoring programmes.

(5) The Director of Environment may, after reviewing the monitoring results, indicate whether field programmes need to be continued, revised or terminated.

### PART III

#### MISCELLANEOUS

##### **Offences.**

**15.** The provision of Section 23 of the Act shall apply in respect to any person who has been granted conditional permission to dump or incinerate waste at sea based on principles set out in these Regulations.

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