

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Legislative Drafting, Merchant Shipping Ordinance
Paper No: 159/11
Date: 14 December 2011
Report of: Marine Officer
Director of Natural Resources

1.0 Purpose

This paper is to bring to the attention of Members the situation regarding the current Falkland Islands Merchant Shipping Act 1894, the association and relevance to the Harbour Ordinance of 1902 and the increasing need to be prepared for the offshore industry.

The paper was initially intended to be included earlier this year but financial implications were considered necessary prior to any recommendations being passed.

2.0 Recommendations

As these issues will require a considerable amount of time to investigate, the Marine Officer asks Executive Council to agree that further investigation is required before any more work is carried out.

- a) It is recommended that ExCo agrees that further investigation is carried out with a view to replace the Merchant Shipping Act of 1894 with suitable, enforceable understandable legislation. This may coincide with new merchant shipping legislation that will be required for the offshore industry.
- b) It is recommended that ExCo agrees that further investigation (and cooperation with the MoD where necessary) is carried out with the intention of replacing the Harbour Ordinance 1902.
- c) It is recommended that ExCo agrees to the need to clarify and improve the powers of intervention within a new Merchant Shipping Ordinance.
- d) It is recommended that ExCo agrees to further investigation as to the introduction of a Falklands specific Port State Control regime connected with a new Merchant Shipping Ordinance.

- e) It is recommended that ExCo agrees for the Marine Officer to investigate the available options in routing measures for tankers and other vessels.
- f) It is recommended that ExCo agrees for the Marine Officer to investigate any current and potential future threat posed by invasive species in ballast water.

3.0 Summary of Financial Implications

There are no direct financial implications at this stage. The implications will be developed as the requirements are defined. Further reports will be submitted in due course.

4.0 Background

4.1.1 The Falkland Islands as a flag state within the Red Ensign Group

4.1.1.1 The UK Secretary of State for Transport has ultimate responsibility for the safety and pollution prevention of all British ships; a responsibility carried out by the Maritime and Coastguard Agency (MCA).

4.1.1.2 The MCA carry out periodic monitoring visits of the Falklands as a maritime administration. The purpose of these visits includes the review of safety and pollution standards set and enforced; ensuring that international obligations are being met and to assist the administration in meeting objectives. The last of these visits was in February 2011.

4.1.1.3 Some of the issues set out here stem from recommendations made by the MCA, most notably the replacement of the 1894 Act and introduction of Port State Control. Other issues stem from a changing local environment.

4.1.1.4 The British Shipping registries, including the Falklands, together constitute the Red Ensign Group.

4.1.2 Introduction to Merchant Shipping Legislation

4.1.2.1 Merchant Shipping, as one of the first true world wide industries, is also one of the most competitive where profit often came before safety. Merchant shipping legislation is renowned for being reactionary and only gets updated after tragedy and disaster, most notably when either people or wildlife are affected.

4.1.2.2 Not until 1517 people died on Titanic was there legislation put in place that required enough lifeboats for people on a ship. This and other legislation was introduced as the International Convention for the Safety of Life at Sea, known as SOLAS.

4.1.2.3 Incidences of pollution and lack of legislation led to the UK organising a multilateral oil pollution conference that took place in 1954 and was later coordinated by the IMO but nothing significant came of it until 1967, when the tanker Torrey

Canyon went aground off Cornwall. It spilled approximately 120,000 tonnes of crude oil and was responsible for bringing in the International Convention for the Prevention of Pollution from Ships in 1973. This convention is commonly referred to as MARPOL.

4.1.2.4 MARPOL was updated in 1978, the same year that the tanker Amoco Cadiz ran aground with 200,000 tonnes of crude oil and 4000 tonnes of fuel onboard, hence it is now known as MARPOL 73/78.

4.1.2.5 MARPOL has since been extended to include chemicals, sewage, garbage and air pollution. The Falklands have adopted Annex I (Oil); Annex II (Noxious Liquids) Annex III (Marine pollutants) and Annex V (Garbage).

4.1.2.6 The Torrey Canyon incident also gave rise to the Civil Liability Convention. This is also adopted by the Falklands. The Torrey Canyon incident revealed certain doubts with regards to the powers of states under international law in order to protect their shores. This led to the "Intervention Convention" that was adopted by the Falklands in 1982.

4.2.1 During the late 1980's, it was found that nearly 90% of accidents at sea were caused by human error. Investigations following incidents at sea found that there were shortcomings in both shipboard and shore based management. Following the capsizing of the Herald of Free Enterprise, it was found that there was no safety culture within the Company and consequently there was no interest of upper management in maintaining safety standards. This Company was not alone.

4.2.2 This led to an international effort that resulted in the introduction of the International Management Code for the Safe Operation of Ships and for Pollution Prevention, known as the ISM Code. The ISM Code was written into SOLAS and became an internationally recognised legal requirement in 1993.

4.2.3 The principle of the ISM Code is to provide an international standard for the safety management and operation of ships by ensuring safety at sea, prevention of human injury, provide safe practices and establish safe guards against known risks.

4.2.4 Introduction of the ISM Code has led to all levels of Management within a shipping company having to be aware of all safety related issues and this is a legal requirement. It is now necessary for vessels to have direct access to all levels of shore management and to this end, Companies are audited to ensure that they remain compliant with the Code. Auditing such as this is carried out in the Falklands annually. Internationally, it is accepted that introduction of the Code has resulted in a reduction in the number of accidents.

4.2.5 However, there remains a need to ensure that requirements are met. Failure to comply with the Code can be picked up during port state control inspections. During an inspection of a vessel in New Zealand in October 2011 19 deficiencies were uncovered including concerns about the management of the vessel in relation to the ISM Code. The vessel was not detained but went on one week later to go aground with disastrous results spilling heavy fuel oil over a large area of coastline.

4.2.6 Port State Control is discussed in 8.0

5.0 The Falklands Merchant Shipping Act 1894

5.1.1 The underpinning maritime legislation in the Falkland Islands is the 1894 Merchant Shipping Act which is based on an old colonial model. This has undergone numerous repeals, changes and deletions over the past 100 years.

5.1.2 The underpinning Merchant Shipping legislation in the UK is the Merchant Shipping Act 1995 (MSA 1995.)

5.2 The MSA 1995 is the basis for a wide range of maritime issues such as registration of ships, Masters and seamen (including manning, health & qualifications), safety, accidents and accident investigation, fishing vessels, oil pollution, ship inspections, liability and salvage amongst others. There are sections that are currently not relevant to the Falklands.

5.3 Parts I and II of the MSA 1995 have already been adopted as amended in the Falklands Merchant Shipping (Registration of Ships) Ordinance and Regulations 2001. The regulations also make provision for the appointment of inspectors for the purposes of enquiring in to the eligibility of a fishing vessel to be entered on to the FI Registry by adoption of sections 259 and 260 of the Act.

5.4 The wider powers afforded in the UK by the 1995 Act to the Maritime and Coastguard Agency (MCA) inspectors / surveyors do not apply.

5.5 Various sections of the 1894 Act, 1970 UK Merchant Shipping Act, and the UK MSA 1995 apply in the Falklands, as does the local Adoption of Legislation Ordinance 1992. This not only means that some of the legislation is outdated, but it is also confusing, complicated and in parts no longer fit for purpose.

5.6 Replacing the 1894 Act with a new Ordinance relevant to the Falkland Islands in the 21st Century will mean that the Falklands shall have up to date legislation in order to protect the coastline and ensure standards are maintained on vessels.

5.7 The replacement Ordinance may be based on the current UK Merchant Shipping Act 1995 (MSA 1995), but adapted to suit the Falklands current needs and anticipated requirements of the future.

5.8 The UK updated its primary legislation following recommendations made by Lord Donaldson in his 522 page report following the 'Braer' disaster on Shetland. His inquiry uncovered a wide range of failings in UK maritime legislation. This is equally as relevant in the Falklands now.

5.8.1 Issues covered by Lord Donaldson such as Local and International Law, Port State Control, Safety Regulation, Navigation and Routeing of ships and dealing with emergencies are all important – even without an offshore oil and gas industry.

5.8.2 The Falklands as a member of the Red Ensign Group comes under the umbrella of the UK MCA who undertake monitoring visits of registries on behalf of the Secretary of State for Transport. During previous visits and again in 2011, they recommend with high priority the development of a new Falklands Merchant Shipping Ordinance. They stressed the importance of the Falklands to demonstrate its responsibility as a port and coastal administration.

5.8.3 A Merchant Shipping Bill is currently included in the Outstanding Legislative Drafting List reference Annex 2 to paper 168/11.

5.8.4 Updating Merchant Shipping legislation (excluding new offshore legislation) should not involve adding any new burden or any appreciable obligations to the Falkland Islands Government but would simply spell out modern standards and requirements that are widely used elsewhere already in a clear and understandable way.

5.8.5 If the Merchant Shipping Act 1894 is to be replaced, it will have to be considered what legislation is to be included and what corresponding policy changes may be necessary. Therefore it is important that ExCo agrees to the recommendation in principle to allow the Marine Officer and Attorney General's Chambers to carry out further work in these important areas.

5.8.6 It is unclear at this stage who may undertake this detailed work. Following recommendations from colleagues in the UK and British Virgin Islands, also a member of the Red Ensign Group, the Marine Officer contacted a Professor / Master Mariner who drafted new legislation for BVI. BVI were very pleased with the results and the Professor comes as highly recommended. The Professor has quoted twenty five thousand Euros (€25000) to undertake the drafting of a new Merchant Shipping Ordinance. However, this is only indicative and does not take into account specific policy needs that will require investigation prior to any drafting instructions.

5.8.7 The drafting does not include pollution legislation or any subordinate Regulations or Orders.

5.8.8 If ExCo is agreement that the MSA 1894 should be replaced, then the Marine Officer together with the Attorney General's Chambers shall return to ExCo with a formal request to approve the drafting of the necessary legislation once more in-depth legislation and policy changes together with financial implications have been identified.

6.0 Ports and Harbours

6.1 A new Merchant Shipping Ordinance may also cover numerous aspects relating to ports and harbours. This is also relevant since the main Harbour Ordinance dates from 1902 and is outdated to the extent that parts of it are irrelevant or is contrary to present requirements and practises including international regulations.

6.2 Under the Harbour Ordinance 1902 many offences provided carry fines so small it would not be in the public interest to prosecute. For instance, under Section 9 the

maximum fine for causing damage to moorings is £10. Under Section 17, the maximum fine for a Master throwing dead animals or rubbish into the harbour is £50. (10.1 below also refers)

6.3 It is increasingly likely that the offshore industry will require a new supply base / port. New legislation will therefore be required to provide a legal framework for any new port development. This will also be required for any replacement of FIPASS or if FIPASS is to fully endorse modern practices. It should be stressed that any new port should be able to adopt internationally recognised standards such as the Port Marine Safety Code. Current discussions over the joint use of East Cove Military Port and run by a civilian based port authority will require modern legislation if it becomes a civilian run port.

6.4 The Queen's Harbour Master at East Cove has no doubt that any localisation / "civilianisation" of ECMP will require new legislation and they are already committed to meeting the requirements of the Port Marine Safety Code. It would therefore make practical sense for the Falklands to update all harbour Ordinances to cover all ports.

6.5 The Falkland Islands have an enviable image where clean beaches and large swathes of unspoilt natural beauty are so prevalent that it is nearly taken for granted. If the Falkland Islands are to embrace an offshore industry and maintain clean seas, it would be strongly recommended that the Falklands fully embrace best practices where relevant to merchant shipping, ports and harbours. Best practices are enforced and encouraged in the offshore industry here already. It makes sense therefore to extend it to our shores.

6.6 In order to make provision for future harbour developments, certain relevant sections of the UK Act relevant to ports and harbours may be included within the new Merchant Shipping Ordinance and applied through domestic legislation as and when required. This would reduce the need for updating the main Ordinance as individual requirements come to the fore.

6.7 A Harbours Bill is currently included in the 2011 Outstanding & Ongoing Legislative Drafting under Marine and Port Services (Annex 3 to paper 5/11). A Port Authority Bill is also included, but it is unclear at this stage what the advantages in creating a port authority would be owing to the current uncertainty with the future of FIPASS. However, this same legislation should be applicable to any port authority within the Falklands and the scenario may change very quickly. Therefore it is imperative that any delays are minimal.

6.8 There are numerous known short comings within the Harbour Ordinance, especially in relation to Health & Safety. Failing to address known problems would surely leave FIG exposed to possible claims. Guidance from the Nautical Institute states that it is perfectly possible for a corporation or harbour authority or in this case FIG, to be criminally liable.

6.9 Unless it is found that the authority can establish that it took all reasonable precautions and exercised all due diligence to avoid the offence, it will be liable. Maintaining out of date, largely ineffective legislation from over 100 years ago hardly

fits the bill. Criminal liability cannot be covered by insurance. The offshore industry will be fully aware of that.

6.10 If ExCo is in agreement in principle of replacing the Harbour Ordinance 1902, the Marine Officer shall investigate further the policy changes and legislation that will be required in order to take more responsibility for ports and harbours. This investigation will also include liaising with counterparts at East Cove where necessary.

7.0 The Link between Merchant Shipping and Offshore Developments

7.1 Background

7.1.1 In the UK in relation to the offshore industry, there are numerous agencies and departments who govern and watch over the offshore oil and gas industries. These are mainly the Health and Safety Executive, Department of Energy and Climate Change (DECC), HM Coastguard, Classification Societies and the MCA.

7.1.2 In the UK, the MCA has responsibility for implementing the National Contingency Plan and will act on behalf of the Secretary of State for Transport including the powers of intervention by the Secretary of States Representative for Maritime Salvage and Intervention (SOSREP).

7.1.3 Regulations under the UK Pollution Prevention and Control Act created powers for the Secretary of State for Energy and Climate Change (DECC) in relation to offshore installations and pipelines.

7.1.4 The roles within MCA and DECC are carried out by the same person – SOSREP.

7.1.5 The role of SOSREP was created following Lord Donaldson’s review of salvage and intervention following the Sea Empress incident. The UK government appointed SOSREP to provide overall direction for salvage, intervention and the prevention of marine pollution incidents involving ships or offshore installations which require a national response.

7.1.6 Therefore it is important that suitable legislation is introduced in this respect, backed up by a robust contingency plan. This would then enhance the existing FIG Major Incident Plan with some amendments.

7.1.7 During the Red Ensign Group Conference in 2009, SOSREP stated that “Within existing legislation, the SOSREP may use the intervention powers anywhere in the world, to assist another coastal state, where there is a risk of significant pollution”. Therefore SOSREP is able to offer guidance and advice even though he may not have direct jurisdiction in the Falklands.

7.1.8 However, with an offshore industry already here we do not have existing legislation in respect to the powers of intervention. Powers are made available in the UK through the MSA 1995 and also the Offshore Installations (Emergency Pollution

Control) Regulations 2002 which in turn also applies to section 137 of the UK MSA 1995 (not applicable in the Falklands.) The Marine Safety Act in the UK allows even more powers. This was used during the MSC Napoli incident when SOSREP directed the vessel ashore.

7.1.9 Lack of powers to control vessels was highlighted during the Ocean 8 incident (10.1 below also refers) but also with the more recent Ocean Guardian incident.

7.1.10 In guidance relating to the work of SOSREP, it is desirable for SOSREP to back up local contingency plans rather than take over completely, although this is more relevant in the UK. However, given potential concerns on the legal aspects of whether his advice was acted on or ignored, the basis of any decision making for FIG should be the local contingency plan based on local law.

7.1.11 In order to understand the situation in relation to FIG compared to the UK regime, it is important to understand the current role of the Marine Officer. Marine Officer's responsibilities include:

- a) Maritime authority for the Falkland Islands Government advising on Falklands legislation for FIG and 3rd parties, acting on behalf of the MCA where necessary;
- b) Act on behalf of the UK Marine Accident Investigation Branch;
- c) The formal role of Harbour Master especially the responsibility and powers where specifically listed within the Harbour Ordinance.
- d) Holds the role of Incident Commander for the National Oil Spill Contingency Plan and is in charge at FISHOPS in the event of a maritime incident.
- e) Appointed as an inspector for the UK Health & Safety Executive under the Offshore Minerals Ordinance and Health and Safety at Work etc Act 1974.
- f) Other responsibilities such as Aids to Navigation, FIPASS Management, Fisheries Enforcement or Port Facility Security Officer is not relevant here).

7.1.12 Therefore it is clear that during a major emergency it should not fall on the Marine Officer and the Department of Mineral Resources alone when in the UK 3 or 4 whole agencies and departments are involved. If SOSREP and the MCA Counter Pollution and Response Branch is involved it is important that the Falklands has robust contingency plans backed up by proper legislation. It is already acknowledged in the UK that authorities may face problems which exceed the response capabilities they can reasonably maintain. This fact is certainly relevant in the Falklands where it would be unreasonable to suggest that FIG creates new departments but a workable solution should be found in due course. This highlights the need for robust contingency plans to be used in conjunction with UK Agencies as appropriate.

7.1.13 Role of FISHOPS

FISHOPS acts as an annex to the FI Rescue Coordination Centre at MPA.

Manning of the Ops Room as the incident control for marine incidents (Bronze Command) rotates on a regular basis as each fishery officer spends time at sea.

During normal office hours it is usually manned by 2 fisheries officers but on occasions only 1. Out of hours harbour control is carried out by Cable and Wireless in St Helena.

7.1.14 As the Falklands enters into a phase of deep water drilling, it should be prepared for any intense international scrutiny as seen during the Deep Water Horizon disaster. Remaining connected with legislation that still relies on horses and carts (even if not relevant) would not reflect well internationally. (10.1 below also refers)

7.1.15 It is clear that the Falklands needs to enhance the current Major Incident Plan with a robust National Contingency Plan backed up by legislation including powers of intervention which in turn can be used as the basis for requesting external assistance if required. Further work and investigation is required and can be carried out if ExCo supports this as per recommendation (c) in section 2.

8.0 Port State Control

8.1 Port State Control is the regime of inspecting visiting ships to carry out inspections to ensure that international regulations are being followed. There is no role of Port State Control in the Falklands.

8.2 Certain flag states fail to fulfil their commitments & obligations under international legal instruments. Some vessels therefore are sailing around the world's oceans in unsafe conditions, threatening the lives onboard and the environment.

8.3 Port State control is recognised as the first line of defence against pollution of its coast. Safer ships mean safer seas. Safer seas mean less pollution.

8.4 Port State Control in Europe is carried out by each flag state under a common scheme with a view on eliminating substandard shipping. This is the Paris Memorandum of Understanding on Port State Control (Paris MoU). A similar arrangement is used in South America known as Vina Del Mar.

8.5 It is not expected for the Falklands to join systems such as the Paris MoU with the associated workload and demands. However, the Marine Officer recommends that the Falklands adopt a tailor made scheme relevant to the Falklands and this stance has the support of the UK Maritime and Coastguard Agency.

8.6 Currently there is a very limited legal basis for carrying out inspections of any ships that are suspected to be substandard, unless they are overloaded or unsafe. However, the Marine Officer has no legal basis to board these vessels and it would be quite embarrassing for the Marine Officer to be asked to leave a vessel that is thought or known to be sub-standard. The importance of this cannot be over emphasised.

8.7 With the offshore industry gathering pace, there is an increase in the number of vessels operating in and around Falkland waters. This increase also comes with increased risks. This concern has already proven to be correct in 2011 when the standard of a ship was called into question by the charterer. The ship had been detained for some lengthy periods in Europe with a long list of deficiencies before

arriving in the Falklands. No action was taken by the Falkland Islands Government as there is no legal basis to do so. This is of concern and it is important that the Falkland Islands Government protects its own shores. The issue was, it is believed, rectified between the owner and charterer and the vessel left Falkland waters after its work here ended.

8.8 There has been concern that the detaining of vessels could lead to a new generation of unwanted condemned hulks, but this can be avoided. Banning ships is sadly a common enough policy in Europe. The current (November 2011) refused ship list includes in excess of 200 vessels who would be refused entry into UK ports. The limited repair facilities currently available will have to be taken into account in any such circumstances where the condition of a vessel is in doubt.

8.9 If there is to be a long term oil and gas industry, then it is imperative that the Falkland Islands Government is prepared in advance of any more increases in vessels and associated risks. This is equally important in the short and medium term when the current state of legislation is concerned.

8.10 A recent report highlighted that of 173 tankers, 16.3% of them could not demonstrate that they were correctly loaded in accordance with their own conditions. Of these, 77 were oil tankers, 84 chemical tankers and 12 were gas tankers. (Source: Paris MoU)

8.11 Without the powers of Port State Control, the Falkland Islands currently has no way of meeting its obligations under the International Convention on Civil Liability for Oil Pollution Damage (CLC Protocol 1992) relating to tankers insurance which was adopted by the Falklands in 1996.

8.12 The Marine Officer recommended to ExCo (March 2011) that the Falklands delays ratifying the 2002 Protocol to the Athens Convention until there is a legal framework through Port State Control to meet the obligations required. It is the intention of the UK Department of Transport for all Overseas Territories to adopt the 2002 Protocol.

8.13 Ship inspections under Port State Control would be carried out by the Marine Officer. It is not necessary to inspect every vessel, but a decision to inspect a vessel will be risk based. There have been vessels that have visited the Falklands in 2011 that would be regarded as high risk by the Paris MoU.

8.14 It should be noted that Port State Control would only be introduced for SOLAS vessels (ie commercial merchant vessels) and would be different from the inspections already carried out on fishing vessels by Fisheries Officers which is mainly for safety and accommodation standards.

8.15 The introduction of Port State Control should also act as a deterrent against charterers from sending vessels of doubtful standards to the Falklands. It is important that a stand is made in order to avoid any repetitions of the vessel discussed in 8.7 or even worse the container ship “Rena” (4.2.5 above.)

8.16 If ExCo is in agreement on the principle of introducing Port State Control, the Marine Officer, in association with the Attorney General's Chambers and the MCA, will return to ExCo with recommendations regarding policy and the legal basis for such a scheme.

9.0 Maritime Labour Convention

9.1 The Falklands will shortly be in a position where it should consider adopting the International Labour Organisation's Maritime Labour Convention (MLC).

The MLC has its roots following a review between ship owners, maritime trade unions and governments and has been met with unprecedented support worldwide. Therefore it is being implemented widely by both flag and port states. The UK expects to adopt the MLC in late 2012.

9.2 The MLC is expected to join the other major merchant shipping conventions that have already been ratified by the Falklands such as SOLAS (International Convention for the Safety of Life at Sea), MARPOL (International Convention for the Prevention of Pollution from Ships) and also STCW'95 (International Standards for Training Certification and Watchkeeping) to become the "4th pillar of international regulatory regime for quality shipping".

9.3 The MLC consolidates and updates many maritime labour instruments and the underlying aim is that working and living conditions for seafarers should be made to be as close as possible to those enjoyed by workers ashore.

9.4 A Flag state must verify, through an effective and coordinated system of regular inspection, monitoring and other control measures that ships comply with the requirements of the Convention as implemented in national laws or regulations, implementing the requirements of the MLC. This relies on port state control.

9.5 There is a problem if the Falklands do not adopt the MLC. Inspection in a foreign port applies even if the ship is flying the flag of a country that has not ratified the MLC, because the MLC obliges the States that ratify it to give no more favourable treatment to ships of States that have not ratified it.

9.6 This means that any Falklands flagged vessel that does not carry MLC documentation could be subject to a more rigorous inspection and it is not inconceivable that this situation could play into the hands of any state that may wish to make things difficult for a Falklands flagged ship. This is equally applicable to yachts. The Falklands Government does have a duty in this regard.

9.7 Any decision to detain a ship under the Convention must be clear and there is emphasis within the Convention that any grounds should be fully justified. However, an inspection maybe carried out by a MLC inspector but any problems experienced maybe passed over to the appropriate port state control officer who may act under national legislation and not under the MLC.

9.8 Seafarers' unions have already expressed a warning of disadvantages of working on non-MLC ships. Potentially this could affect the manning of Falklands ships such

as the BAS ships and fishery patrol vessel but this is currently hard to quantify. Meanwhile, discussions are continuing and some aspects of the MLC are still being addressed.

9.9 The MLC is applicable to all vessels except where operation is within or adjacent to sheltered / inland waters and fishing vessels, warships and naval auxiliaries. It is the opinion of the Marine Officer, that the Falklands exclude vessels which operate on domestic voyages no more than 60 miles from a safe haven. This limit would coincide with vessels operating in Area Category 2 under the Small Commercial Vessel Code.

9.10 The matter of the MLC was discussed in some detail during the Red Ensign Group Conference held in May 2011 and the UK expects to finalise legislation in the coming months. Obtaining the UK legislation would greatly assist in the process here as well as other Overseas Territories & Crown Dependencies.

9.11 In the time that this paper has been prepared it is evident that with the overwhelming international support of the MLC the UK is lagging behind the rest of the world and it is very unlikely that the UK will be in the first group of States to ratify the Convention. However, if FIG addresses the current needs of merchant shipping then it is possible that the Falklands is not left overly vulnerable.

9.12 As it will be in the interests of FIG to ensure that Falklands flagged vessels are not left vulnerable, the MLC is dependant on introducing new legislation that will be added to any new underpinning Merchant Shipping Ordinance. Therefore, any further work for the MLC will be covered under recommendation (a).

10.0 Recent Local Issues

10.1 Failings of the current legislation have been apparent during previous incidents including the loss of “Ocean 8” where the powers to control vessels in distress was largely ineffective. The Receiver of Wreck may “demand the use of any wagon, cart or horses that may be near at hand” (MSA 1894)

Any person receiving an order of the Harbour Master to move a vessel or hulk “who refuses or neglects to comply with such order with all convenient speed commits an offence and is liable on conviction to a fine not exceeding £20” (Harbour Ordinance, 1902).

10.2 One of the recommendations of the report into the fire and loss of “Ocean 8” was that the 1971 Oil Pollution Act should be updated to include provisions to facilitate the serving of directions and strengthen the Government’s position in relation to cost recovery. This can be applied directly through a new Merchant Shipping Ordinance. However, a Prevention of Oil Pollution (Amendment) Bill is already included in the 2011 Outstanding & Ongoing Legislative Drafting under Marine and Port Services (Annex 3 to paper 5/11).

10.3 Any further incidents of a similar nature where the findings of another investigation led to the same recommendations being made would be highly undesirable if no action is taken, especially if larger commercial vessels were involved such as any of the offshore support or seismic fleet where findings of any

accident were to be made public such as through the Falklands Memorandum of Understanding with the Marine Accident Investigation Branch.

10.4 Another recent case in 2011 was the insolvency of a German Company whose vessel Beluga Skysails was alongside FIPASS at the time. The relatively recent FIPASS Ordinance did not fully meet the demands of the situation where the Company owed nearly £30000, a significant proportion of which was to FIG.

10.5 The Marine Officer recently advised Government House on the ratification by the Falklands of the Wreck Removal Convention. In the UK, this convention will be added to the existing MSA 1995 but this is not currently straightforward in the Falklands. Therefore, the Marine Officer, in agreement with the Attorney General, has recommended delaying the adoption of the Convention until such time as new underpinning legislation is brought in.

10.6 The Wreck Removal Convention will require vessels to have ample insurance in place to cover the removal of any wrecks. There are also desirable applications to the offshore industry within the Convention.

11.0 Future Developments & Considerations

11.1 There may be a wide range of new requirements in the future, but updating the basic underpinning legislation will go a long way in meeting the challenges already facing us today.

11.2 Floating Production Storage and Offloading vessels (FPSO's). FIG is already being asked as to what standards FPSOs should conform to. The standards are set by Classification Societies but the crossover from merchant shipping to offshore production is not straightforward and it will be necessary to fully investigate exactly what is deemed to be suitable for FIG.

11.3 Some aspects of FPSOs are considered ships (ie covered by merchant shipping legislation) but they are also covered by offshore regulations. There is a fine cross over and this is currently not fully understood. It is expected that specialist external assistance will need to be brought in to assist on this matter and close contact between the Marine Officer and the Department of Mineral Resources will be required.

11.4 Routeing of vessels

11.4.1 Owing to the position of the Falklands relative to Cape Horn, there are a number of ships that pass through Falklands waters and have done so for a considerable period. Vessels on passage to or from the Cape or to or from a number of ports in Argentina, Uruguay, Brazil and others farther a field would involve passing close to the Falklands. How close would be a matter for the navigating officer and the Master.

11.4.2 In recent months the distances of ships from the shore have varied, but one ship was seen to be within 5 miles of the Jason Islands. (Taking this ship as an example, it

can carry 159000 tonnes of crude oil and has a laden draught of 17m.) 5 miles to a ship of this size does not amount to much and if losing power it could just be a matter of a couple of hours before it risked going aground. (The Braer was 10 miles from the shore when she lost power and drifted for 6 ½ hours). Even if in ballast, such tankers would seldom have less than 1000 tonnes of fuel onboard and the bulk of this will likely be heavy fuel oil.

11.4.3 The result would be catastrophic, as the danger posed to the black browed albatross colony and to fisheries and the reputation of the Falklands with regards to the agriculture, fisheries and tourism industries would be damaged for years. As can be seen in other parts of the world, where a ships name remains house hold names for decades, it only takes one.

11.4.4 It is clear that we do not have to wait for an offshore oil industry to start exporting. Tankers are already passing through the waters.

11.4.5 It would not be unreasonable to keep ships clear of the Jason Island Group as it does not offer any real shelter from ocean swells, unlike say, the Minch off the west coast of Scotland. Steeple Jason and Beauchene Islands hosts approximately 46% of the worlds' population of black browed albatross. Around the coast in general, penguins would always be particularly vulnerable to any pollution.

11.4.6 Although most, if not all, tankers passing through Falklands waters are double hulled or equivalent standard, a double hull will be ineffective in any high energy grounding such as can be found in any month of the year around the Falklands.

11.4.7 In order to minimise the risk to the environment, routeing measures should be considered. Options include mandatory routeing for certain vessels which would require the approval of IMO. This may be unnecessary and politically sensitive and would be difficult to police. There are other implications with the UN Convention on the Law of the Sea (UNCLOS).

11.4.8 A more straight forward option could be to introduce voluntary "Precautionary Areas". This would at least advise shipping to stay out of particularly environmentally sensitive areas. It is considered reasonable to include large tankers and vessels with large quantities of fuel on board.

11.4.9 Another alternative is to adopt the UK's Marine Environmental High Risk Areas scheme where specific areas are recognised for being at risk from shipping and the effects of pollution for instance the Jason Islands Group & Beauchene Island. Between shipping risk and environmental sensitivity an overall ranking can be determined. In the UK, around 9% of the coastline is qualified to be a MEHRA.

11.4.10 Even without knowing the full story behind the incident on Tristan da Cunha in March 2011 with the grounding and loss of the bulk carrier Oliva, it is easy to contemplate that a vessel routeing scheme could have prevented the disaster in the first place. Here in the Falklands, we surely don't have to wait until the luck has run out.

11.4.11 With no specific coast guard function within FIG and a negligible emergency towing capability, routing measures are at least a cost effective measure and a first line of defence for ships passing by.

11.4.12 If ExCo is in agreement in principle to the investigation of routing measures, then the Marine Officer shall return to ExCo with proposals having discussed the issue with the MCA and if necessary, the Department of Transport.

11.5 An increase in visiting ships may increase the risks of invasive species in ballast water. There are a number of catalogued examples of where ships' ballast water has been responsible for introducing non-native species. It is estimated that there are around 3000 species carried every day around the world in ship ballast water. With the exception of reefers that arrive to load fish, most vessels currently arrive in the Falklands loaded and take on ballast, rather than discharge ballast. However, this situation may change.

11.5.1 Oil or gas tankers loading in Falklands waters and therefore discharging ballast may be some time in the future, but the ability to act in advance should be considered. It may be desirable to adopt domestic legislation should the Falklands consider adopting the IMO Ballast Water Management Convention. This would also involve Port State Control inspections.

11.5.2 Biosecurity is rightfully taken very seriously in the Falklands and therefore it would make sense to fully investigate perhaps the biggest single threat in the future. It is recommended that ExCo agrees for the Marine Officer to carry out some research and to inform ExCo with advice on any policy changes or legislation that maybe required (recommendation f).

Financial Implications

There are no immediate financial implications, but further work into these issues may incur bringing in external expertise at cost. This is particularly clear if the Merchant Shipping Act 1894 is to be replaced and also if expertise is brought in to deal with some of the complex issues relating to the offshore industry.

At this stage therefore there are no direct financial implications.

Legal Implications

If it is decided to replace the MSA 1894 in due course, what legislation is to be included will have to be considered and a policy development plan drawn up. Any such plan would provide the necessary background information for Members to decide what should be included as law. Until more work is carried out, it is unclear what the exact implications may be.

Human Resources Implications

As the Professor noted in 5.8.6 would be hired through a procurement exercise and so not be an employee of FIG, this paper has no immediate HR implications, but any

further work may involve extra resources, either within FIG or brought in from elsewhere. Until the scoping exercises covered in this paper are completed the extent of any additional resource required cannot be quantified.