

EXECUTIVE COUNCIL

RESTRICTED

Title of Report: Oil exploration project:
Maritime Security and Safety Bill

Paper No: 257/09

Date: 17 December 2009

Report of: Legislative Drafter

1.0 Purpose

The purpose of this paper is to seek Executive Council's approval for the presentation of the Maritime Security and Safety Bill to the Legislative Assembly at its December meeting under a certificate of urgency.

The Bill has been drafted in order to prepare for the forthcoming oil exploration project by making necessary amendments to maritime security and safety legislation.

2.0 Recommendations

Executive Council is recommended to approve the presentation (under a certificate of urgency) of the Maritime Security and Safety Bill, a draft of which is annexed to this report.

3.0 Summary of Financial Implications

No significant implications

4.0 Background

4.1 The forthcoming oil exploration project has given rise to a number of requests to the Attorney General's Chambers for advice on legal issues connected with the project.

4.2 Some of these requests have revealed that the current legislation on maritime security and safety does not meet the specific requirements that will arise in relation to the project.

4.3 One specific requirement will be to take steps to ensure the security and health and safety in relation to the vessels that will be docked at FIPASS during the project. The vessels are due to arrive in the second week of January 2010.

4.4 In this connection, it is proposed that measures should be taken at FIPASS, restricting access to the facility and controlling movement within it (including provision for the use of designated “safe” routes). The purpose of these measures would be for the protection of health and safety as well as security.

4.5 Existing legislation would not provide the full range of powers necessary to support these measures.

4.6 That legislation is principally to be found in three Ordinances:

(1) the FIPASS Ordinance, the provisions of which can fairly be described as rudimentary;

(2) the Ship and Port Facility (Security) Ordinance, which is specifically aimed at implementing international obligations under the Safety of Life at Sea Convention (SOLAS) and the International Ship and Port Security Code (ISPS); and

(3) the Aviation and Maritime Security Act 1990 (Application of Provisions) Ordinance (referred to in this paper and in the draft Bill as “the 2004 Ordinance”), which applies (with extensive modifications) some of the maritime security provisions in the UK’s Aviation and Maritime Security Act 1990 (referred to in this paper and in the draft Bill, as it is applied in the Falkland Islands, as “the 1990 Act”).

4.7 The conclusion has been reached that the FIPASS Ordinance and the 2004 Ordinance need to be overhauled to meet modern, local requirements.

4.8 However, the immediate priority is to ensure that there is provision to restrict access to FIPASS and control movement within it and that this provision is “fit for purpose”.

4.9 Given the available timescale, the decision was taken to prioritise work on the provisions relating to restricted zones and designated routes.

4.10 Part 2 of the draft Bill would carve out the provisions of the 1990 Act relating to the designation and control of restricted zones in harbour areas and overhauls them. It also provides for the designation and use of “safe” routes within harbour areas. Unlike the 1990 Act, the purposes of these provisions would encompass health and safety as well as security. This would widen the scope of the powers.

4.11 Unlike the 2004 Ordinance, Part 2 sets out the provisions in full (rather than by reference to imperial legislation but with extensive modifications) – this would have an additional advantage in that the law would be made more transparent and accessible.

4.12 Part 3 of the draft Bill would extend the purposes of the remaining provisions of the 1990 Act to encompass health and safety as well as security. Again, this would widen the scope of the remaining powers under the 1990 Act (as applied).

4.13 It is envisaged that there will be a comprehensive overhaul of the 2004 Ordinance and that this will result in a consolidated Maritime Security and Safety Ordinance (incorporating the remaining provisions of the 1990 Act). However, this task will need to compete with other legislative priorities.

4.14 The opportunity has also been taken to put forward a minor amendment to the 1990 Act to correct an apparent anomaly. As matters stand, the power to appoint “authorised persons” for the purposes of the 1990 Act (as applied) is vested in a non-statutory committee that is not constituted by or defined in the 1990 Act or the 2004 Ordinance. The Bill would vest that power in the Governor instead.

4.15 More detailed explanations of the two Bills appear in the Objects and Reasons sections that appear at the end of each Bill. However, a summary of the key changes that would be made by the Bills appears in the Legal Implications section of this paper.

4.16 The proposed changes would take effect from the date on which the Ordinances are published in the *Gazette*.

4.17 Assuming that ExCo approves the presentation of the Bills to the Legislative Assembly at its December meeting under certificates of urgency and that the Bills are passed at that meeting, the Ordinances will be published in the *Gazette* on 31 December and will come into force at that time.

4.18 This is ahead of the deadline created by the arrival of the vessels in the second week of January 2010. The next available meeting of the Legislative Assembly (at which further legislation relating to the oil exploration project may need to be presented) would not be until towards the end of January 2010, after the deadline.

4.19 Executive Council is, therefore, recommended to approve the Maritime Security and Safety Bill for presentation under a certificate of urgency.

5.0 Financial Implications

5.1 There would be no significant financial implications as a result of the proposed legislation.

5.2 Although the Bills do not make any direct provision for charging, it is envisaged that the costs of the arrangements at FIPASS will be on-charged to the oil companies.

5.3 Measures taken under SOLAS and ISPS (under the Ship and Port Facility (Security) Ordinance) have to be taken under international obligations and the costs of these cannot be directly on-charged to ships or users of the port facility.

5.4 However, that limitation would not apply to measures taken for health and safety reasons and, since the basis of the measures proposed to be taken at FIPASS during the oil exploration project would be health and safety rather than the implementation of SOLAS and ISPS, it should be possible to on-charge the costs of the measures to the oil companies, either directly or via their contractors.

5.5 These financial arrangements would be dealt with by means of a “self-financing virement”, which is an accounting device under which there is a “double entry” recording both the expenditure and the corresponding charges out of which it is met.

6.0 Legal Implications

6.1 This section does not contain a line by line analysis of the draft Bills and Executive Council is referred to the Objects and Reasons sections at the end of each Bill.

6.2 However, this section does contain a summary of the key changes that would be made if the draft Bills became law and also of issues to which it is considered that Executive Council’s attention ought to be drawn.

6.3 The most important change is that the purposes of both the new provisions in Part 2 of the Bill and the remaining provisions of the 1990 Act would be extended to include health and safety as well as security. This means that the scope of the powers are extended accordingly.

6.4 Under the Bill, there would be greater flexibility in designating restricted zones and an additional power for authorised persons to designate restricted zones for short term purposes or pending approval of longer term arrangements by the Governor.

6.5 As a balancing safeguard, there will be a new duty on the authorised persons with responsibility for operating the controls to ensure that legitimate access to harbour areas is maintained.

6.6 There would also be a new power (backed up by a criminal offence, punishable by fine) to designate routes within restricted zones and to require the use of those routes by those with permission to be in the restricted zone.

6.7 As a transitional provision, existing restricted zones would remain in effect and there would be no requirement to replace existing signage.

Consolidation of maritime security and safety legislation

6.8 Ideally, the remaining provisions of the 1990 Act would, as a further step, be comprehensively overhauled and consolidated with Part 2 of the Bill into a new,

comprehensive Maritime Security and Safety Ordinance. Clearly, however, that task will need to compete with other drafting priorities.

6.9 However, it should be noted that it may be that further specific changes to the maritime security and safety legislation are required in connection with the oil exploration project and will need to be presented to the Legislative Assembly at a meeting towards the end of January 2010.

7.0 Human Resources Implications

7.1 It is very unlikely that the draft Bills should have any implications for staffing levels.

7.2 It is envisaged that the measures at FIPASS will be undertaken by contractors and on-charged to the oil companies.

EXCO DRAFT – 17.11.2009 (RMB)

Maritime Security and Safety Bill 2009

(No: of 2009)

ARRANGEMENT OF PROVISIONS

Clause

PART 1 – GENERAL PROVISIONS

1. Title
2. Commencement
3. Interpretation

PART 2 – RESTRICTED ZONES AND DESIGNATED ROUTES IN HARBOUR AREAS

4. Interpretation: Part 2
5. Purposes of this Part
6. Power to specify additional offences
7. Designation of restricted zones of harbour areas by the Governor
8. Designation of restricted zones of harbour areas by authorised person
9. Restricted zones; transitional provisions
10. Unauthorised presence in restricted zones
11. Duty on authorised persons to ensure legitimate access to restricted zones
12. Power to remove persons from restricted zones
13. Designated routes within restricted zones
14. Use of designated routes within restricted zones
15. Offences: restricted zones and designated routes
16. Offences: false statements

17. Offences by bodies corporate

PART 3- AMENDMENT OF THE 2004 ORDINANCE

18. Amendment of the 2004 Ordinance

19. Application of provisions

20. Amendment of the Schedule to the 2004 Ordinance

MARITIME SECURITY AND SAFETY BILL 2009

(No: of 2009)

(assented to: 2009)
(commencement: on publication)
(published: 2009)

A BILL

for

AN ORDINANCE

To replace the applied provisions of the Aviation and Maritime Security Act 1990 relating to restricted zones in harbour areas with new provisions controlling activities in harbour areas for the purposes of protection against acts of violence and the protection of health and safety; to extend the purposes of the remaining provisions of Part III of the Aviation and Maritime Security Act 1990 to include the protection of health and safety as well as protection against acts of violence; and for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands —

PART 1 GENERAL PROVISIONS

1. Title

This Ordinance is the Maritime Safety and Security Ordinance 2009.

2. Commencement

This Ordinance comes into force on publication in the *Gazette*.

3. Interpretation

In this Ordinance —

“the 1990 Act” means the Aviation and Maritime Security Act 1990 (as it applies in the Falkland Islands);

“the 2004 Ordinance” means the Aviation and Maritime Security Act 1990 (Application of Provisions) Ordinance (No.18 of 2004);

PART 2 RESTRICTED ZONES AND DESIGNATED ROUTES IN HARBOUR AREAS

4. Interpretation: Part 2

In this Part —

“act of violence” means an act (whether actual or potential, and whether carried out or to be carried out in the Falkland Islands or elsewhere) which either —

- (a) in the case of an act that is (or is to be) carried out in the Falkland Islands, constitutes a specified offence, or
- (b) in the case of an act that is (or is to be) carried out anywhere else, would constitute a specified offence, if it were (or were to be) carried out in the Falkland Islands;

“authorised person” means either —

- (a) a person authorised in writing by the Governor for the purposes of this Ordinance;
- (b) in the case of a harbour area, the Harbour Master;

“designated route” means a route designated under section 13(1);

“employee”, in relation to a body corporate, includes officer;

“harbour” has the same meaning as in the Harbours Ordinance (Title 57.3);

“harbour area” means the combined area of —

- (a) a harbour in the Falkland Islands to which the Harbours Ordinance applies; and
- (b) the land which is —
 - (i) adjacent to that harbour; and
 - (ii) used for harbour purposes;

“Harbour Master” means, in the case of a harbour area, the person who is Harbour Master for that harbour area within the meaning given to “Harbour Master” by section 2 of the Harbours Ordinance;

“harbour operations” means —

- (a) the marking or lighting of a harbour or part of a harbour;
- (b) the berthing or dry docking of a ship;
- (c) the warehousing, sorting, weighing or handling of goods on harbour land or at a wharf;

Comment [L1]: I have removed the definition of “deputy FIPASS manager” which had become superfluous.

(d) the movement of goods or passengers within the limits within which the person engaged in improving, maintaining or managing a harbour has jurisdiction or on harbour land;

(e) in relation to a harbour (which, for the purposes of this paragraph, does not include a wharf) —

(i) the towing, or moving of a ship which is in or about to enter or has recently left the harbour;

(ii) the loading or unloading of goods, or embarking or disembarking of passengers, in or from a ship which is in the harbour or the approaches to a harbour;

(iii) the lighterage or handling of goods in the harbour; and

(f) in relation to a wharf —

(i) the towing or moving of a ship to or from the wharf;

(ii) the loading or unloading of goods, or the embarking or disembarking of passengers, at the wharf in or from a ship;

“officer” includes, in relation to a body corporate, a director, manager, secretary or other similar officer of the body corporate;

“police officer” means either —

(a) a member or reserve member of the Royal Falkland Islands Police Force; or

(b) a person having the powers of a police officer;

“property” includes —

(a) land, buildings and works;

(b) ships,

(c) vehicles; and

(d) baggage, cargo and other articles of any description;

“purported officer” means, in relation to a body corporate, a person who is purporting (or has done) to act as an officer of the body corporate;

“restricted zone” means either —

- (a) an area designated as a restricted zone under either section 7(1) or 8(1); or
- (b) a restricted zone treated as if it were a restricted zone designated under section 7(1) by virtue of section 9;

“ship” includes hovercraft and every other description of vessel used in navigation; and

“specified offence” means one of the following offences —

- (a) murder;
- (b) attempted murder;
- (c) manslaughter;
- (d) an offence under —
 - (i) section 18, 20, 21, 22, 23, 24, 28 or 29 of the Offences against the Person Act 1861;
 - (ii) section 2 of the Explosive Substances Act 1883; or
 - (iii) section 1 of the Criminal Damage Act 1971; or
- (e) an offence specified by the Governor in an order made under section 6.

5. Purposes of this Part

The purposes of this Part are —

- (a) the protection against acts of violence of one or more of the following —
 - (i) ships;
 - (ii) persons on board ships;
 - (iii) property on board ships;
 - (iv) harbour areas;
 - (v) persons who are present in a harbour area (whether or not they have a right or permission to be there);
 - (vi) property that forms part of a harbour area; and
 - (vii) property that is in a harbour area (whether permanently or temporarily).

(b) the protection of the health and safety of either or both of the following —

(i) persons on board ships; or

(ii) persons who are present in a harbour area (whether or not they have a right or permission to be there).

6. Power to specify additional offences

The Governor may extend the definition of “specified offence” in section 4 by means of an order specifying one or more additional offences to be included within the definition.

7. Designation of restricted zones of harbour areas by the Governor

(1) The Governor may designate the whole or one or more parts of a harbour area as a restricted zone for the purposes of this Ordinance.

(2) A restricted zone may be designated either within or overlapping another restricted zone.

(3) A designation made under sub-section (1) may be made —

(a) either —

(i) indefinitely; or

(ii) for a specified period; and

(b) either —

(i) at all times; or

(ii) for one or more of the following periods —

(aa) at one or more specified times of day;

(bb) on one or more specified days of the week or the month;

(cc) during periods while specified harbour operations are taking place; or

(dd) during specified events.

(4) In sub-section (3), “specified” means specified in the designation made under sub-section (1).

(5) The Governor may vary or revoke a designation made under sub-section (1).

8. Designation of restricted zones of harbour areas by authorised person

(1) An authorised person may designate the whole or one or more parts of a harbour area as a restricted zone for the purposes of this Ordinance.

(2) A restricted zone may be designated either within or overlapping another restricted zone.

(3) A designation made under sub-section (1) may be made —

(a) for a specified period of not more than 7 days; and

(b) either —

(i) at all times; or

(ii) for one or more of the following periods —

(aa) at one or more specified times of day;

(bb) on one or more specified days of the week or the month;

(cc) during periods while specified harbour operations are taking place; or

(dd) during specified events.

(4) For the purposes of sub-section (3), “specified” means specified in the designation made under sub-section (1).

(5) Either the Governor or an authorised person may vary or revoke a designation made under sub-section (1).

(6) A designation made under sub-section (1) may be renewed once.

(7) A designation that is substantially the same as a designation that has previously been made under sub-section (1) may not be made if it would result in substantially the same designation having effect for a total period (which need not be continuous) of more than 14 days.

9. Restricted zones: transitional provisions

(1) A restricted zone designated under section 19 of the 1990 Act before this Ordinance comes into effect is to be treated as if it were a restricted zone designated by the Governor under section 7(1) of this Ordinance, unless or until the designation of the zone is varied or revoked under sub-section (2).

(2) The designation of the restricted zone under section 19 of the 1990 Act —

(a) is to be treated as if it had been made by the Governor under section 7(1) of this Ordinance, but

Comment [L2]: This provision is intended to allow flexibility by allowing restricted zones to be set up for short periods or in cases of urgency pending approval by the Governor.

The 7 day time limit and the restriction on renewing a designation made under this section more than once are intended as safeguards.

(b) may be varied or revoked by the Governor at any time.

Comment [L3]: This is to deal with existing restricted zones and signage, such as at the FIC warehouses at the East Jetty.

10. Unauthorised presence in restricted zones

(1) No person may enter or remain in a restricted zone (with or without a vehicle or vessel) except —

(a) with the permission of either —

(i) an authorised person; or

(ii) a person acting on behalf of an authorised person;

(b) in accordance with any conditions subject to which that permission is for the time being granted.

(2) Permission to enter or remain in one restricted zone does not authorise a person to enter or remain in either —

(a) another restricted zone that is within the first restricted zone; or

(b) in the case of another restricted zone that overlaps the first restricted zone, the part of the other restricted zone that does not overlap.

(3) Sub-section (1) does not apply unless it is proved that, at the material time, one or more notices stating that the area concerned was a restricted zone were posted so as to be readily seen and read by persons entering the restricted zone.

Comment [L4]: I have tweaked the provision to make it clear that it is not necessary for more than one notice to be in place.

(4) A notice that refers to the 1990 Act or the 2004 Ordinance is valid for the purposes of sub-section (3).

11. Duty on authorised persons to ensure legitimate access to restricted zones

(1) Subject to the remaining provisions of this section, there is a duty on authorised persons to ensure that permission to enter and remain in a restricted zone is given to the following persons —

(a) persons carrying out harbour operations;

(b) the crew and passengers of ships docked in the harbour area;

(c) persons carrying on a business within the restricted zone;

(d) employees of a business carried on within the restricted zone;

(e) persons having a legitimate reason to visit any other person listed in this sub-section.

Comment [L5]: This provision has been included as a safeguard balancing the powers under the Bill.

(2) The duty imposed on authorised persons in sub-section (1) is limited to the extent that —

(a) it is compatible with the purposes of **this Part**; and

(b) access to the restricted zone is required by a person for one or more legitimate purposes.

(3) The duty imposed on authorised persons does not restrict the power of an authorised person or a person acting on behalf of an authorised person to make permission granted to any of the persons listed in sub-section (1) subject to any reasonable conditions.

Comment [L6]: I have corrected the reference in the previous version to the Ordinance as a whole (rather than just Part 2).

12. Power to remove persons from restricted zones

(1) No person may remain in a restricted zone after being requested to leave by —

(a) an authorised person;

(b) a person acting on behalf of an authorised person; or

(c) a police officer.

(2) A police officer or a person acting on behalf of an authorised person may use such force as is reasonable in the circumstances to remove from a restricted zone a person remaining in it in contravention of sub-section (3).

Comment [L7]: No obstruction offence has been included.

13. Designated routes within restricted zones

(1) An authorised person may designate routes for the use of persons who have permission to enter or remain in a restricted zone.

(2) An authorised person may vary or revoke a designation made under sub-section (1).

14. Use of designated routes within restricted zones

(1) An authorised person or a person acting on behalf of an authorised person may require persons who have permission to enter and remain in a restricted zone to use a designated route.

(2) A person who has permission to enter and remain in a restricted zone but who has been required to use a designated route may not use a route within the restricted zone other than that designated route.

15. Offences: restricted zones and designated routes

(1) Subject to sub-section (3), it is an offence to contravene section 10(1) or section 12(1).

(2) Subject to sub-section (3), it is an offence to contravene section 14(1).

(3) No offence under sub-section (1) or (2) is committed by a person in relation to an act or omission for which that person had either —

(a) lawful authority; or

(b) reasonable excuse.

(3) A person guilty of an offence under sub-section (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Comment [L8]: This penalty corresponds to the existing penalty under the 1990 Act.

(4) A person guilty of an offence under sub-section (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Comment [L9]: This penalty has been approved by the AG.

16. Offences: false statements

(1) It is an offence for a person to make a statement for the purpose of obtaining permission for either that person or another person to enter or remain in a restricted zone, if —

(a) the statement is false in a material particular; and

(b) the person making the statement either —

(i) knows that the statement is false in a material particular; or

(ii) is reckless as to whether or not the statement is false in a material particular.

(2) A person guilty of an offence under sub-section (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Comment [L10]: This penalty has been approved by the AG.

17. Offences by bodies corporate

(1) This section applies if —

(a) an offence under this Ordinance is committed by a body corporate; and

(b) it is proved that either —

(i) the offence was committed with the consent or connivance of an officer of the body corporate; or

(ii) the offence was attributable to neglect on the part of an officer of the body corporate.

(2) If this section applies, the officer as well as the body corporate is —

(a) guilty of the offence; and

(b) liable to be proceeded against and punished accordingly.

(3) For the purposes of this section, “officer” includes a purported officer.

(4) If the affairs of a body corporate are managed by its members, sub-sections (1) and (2) apply in relation to the acts and defaults of a member in connection with that member’s functions of management as if the member were an officer of the body corporate.

PART 3
AMENDMENT OF THE 2004 ORDINANCE

18. Amendment of the 2004 Ordinance

This Part amends the 2004 Ordinance.

19. Application of provisions

In section 2(1), the words “18 to 46” are repealed and “18, 19, 21 to 38, 40 to 46” substituted.

20. Amendment of the Schedule to the 2004 Ordinance

(1) This section amends the Schedule to the 2004 Ordinance.

(2) Paragraph 1 is repealed and the following paragraph substituted —

“1. Section 18 (Purposes to which Part III applies) is replaced by the following —

“18. Purposes to which Part III applies

(1) The purposes to which this Part of this Act applies are —

(a) the protection against acts of violence of one or more of the following —

(i) ships;

(ii) persons on board ships;

(iii) property on board ships;

(iv) harbour areas;

(v) persons who are present in a harbour area (whether or not they have a right or permission to be there);

(vi) property that forms part of a harbour area; and

(vii) property that is in a harbour area (whether permanently or temporarily).

(b) the protection of the health and safety of either or both of the following —

(i) persons on board ships; or

(ii) persons who are present in a harbour area (whether or not they have a right or permission to be there).

(2) In this Part of this Act —

“act of violence” means an act (whether actual or potential, and whether carried out or to be carried out in the Falkland Islands or elsewhere) which either —

- (a) in the case of an act that is (or is to be) carried out in the Falkland Islands, constitutes a specified offence, or
- (b) in the case of an act that is (or is to be) carried out anywhere else, would constitute a specified offence, if it were (or were to be) carried out in the Falkland Islands;

“harbour area” means the the combined area of —

- (a) a harbour in the Falkland Islands to which the Harbours Ordinance applies; and
- (b) the land which is —
 - (i) adjacent to that harbour; and
 - (ii) used for harbour purposes; and

“specified offence” means one of the following offences —

- (a) murder;
- (b) attempted murder;
- (c) manslaughter;
- (d) an offence under —
 - (i) section 18, 20, 21, 22, 23, 24, 28 or 29 of the Offences against the Person Act 1861;
 - (ii) section 2 of the Explosive Substances Act 1883; or
 - (iii) section 1 of the Criminal Damage Act 1971; or
- (e) an offence specified as such by the Governor by order.””

(3) Paragraph 3 is repealed.

(4) Paragraph 18 is repealed.

(5) In paragraph 23, sub-paragraph (a) is repealed and the following sub-paragraph substituted —

“(a) in the definition of authorised person, the words “Secretary of State” are replaced by the word “Governor”;

OBJECTS AND REASONS

This Bill would replace the applied provisions of the Aviation and Maritime Security Act 1990 (which, as it applies in the Falkland Islands, is referred to in the Bill and in these Objects and Reasons as “the 1990 Act”) relating to restricted zones in harbour areas with new provisions controlling activities in harbour areas for the purposes of protection against acts of violence and the protection of health and safety.

It would also extend the purposes of the remaining provisions of Part III of the 1990 Act to include the protection of health and safety as well as protection against acts of violence.

Part 2 of the Bill would establish a new local regime for restricted zones and designated routes in harbour areas.

Clause 5 sets out the purposes of the provisions of Part 2 (and, as a consequence, the purposes for which the powers in Part 2 could be exercised). These purposes would be protection against acts of violence and the protection of health and safety and these would be wider than the current purposes of the corresponding provisions in the 1990 Act that would be replaced.

Clause 6 would give the Governor the power to extend the definition of “specified offences” (on which the definition of “acts of violence” is based) by specifying additional offences.

Clause 7 would give the Governor the power to designate restricted zones within harbour areas. This power would be more flexible than the corresponding power in the 1990 Act.

Clause 8 would give a similar, but more limited power to authorised persons (defined in *clause 4* as the person appointed as Harbour Master under the Harbours Ordinance (Title 57.3) or another person authorised by the Governor). A restricted zone designated by an authorised person could only remain in place for 7 days, renewable once only. This would allow for short term arrangements to be put in place or interim arrangements pending approval by the Governor in cases of urgency.

Clause 9 would make transitional provisions for restricted zones designated under existing legislation.

Clause 10 would prohibit unauthorised presence in a restricted zone, subject to a requirement for notices to be shown.

Clause 11 would impose a duty on authorised persons to ensure legitimate access to restricted zones but that duty would be qualified by the purposes of Part 2 and limited to the legitimate purposes for which access is required. Nor would it prevent access being made subject to reasonable conditions. This would be a new provision and there is no corresponding provision in the 1990 Act.

Clause 12 would allow for the removal of persons from restricted zones (using reasonable force, if necessary).

Clause 13 would provide for routes to be designated within restricted zones for use by persons with permission to be in the restricted zone.

Clause 14 would allow for the use of designated routes to be made a requirement and to prohibit the use of other routes within the restricted zone.

Clause 15 would provide for offences and penalties in relation to restricted zones and designated routes.

Clause 16 would make provision for offences in relation to false statements made in order to obtain permission to be in a restricted zone. This would be broader than the nearest equivalents in the 1990 Act.

Clause 17 would make provision for offences by bodies corporate.

Part 3 would make a number of amendments to the Aviation and Maritime Security Act 1990 (Application of Provisions) Ordinance 2004 (No. 18 of 2004) (referred to in the Bill and these Objects and Reasons as “the 2004 Ordinance”).

Clause 20 and clauses 21(3) and (4) would disapply the provisions of the 1990 Act relating to restricted zones in harbour areas, which would be replaced by Part 2 of this Bill.

Clause 21(2) would extend the purposes of the remaining provisions of Part III of the 1990 Act (and, as a consequence, the purposes for which powers in those provisions could be exercised) to include the protection of health and safety as well as protection against acts of violence. It would also clarify the definitions of “act of violence” and “harbour area” and give the Governor power to extend the definition of “specified offence” (on which the definition of “act of violence” would become based) by specifying additional offences.

Clause 21(5) would deal with an anomaly in the definition of “authorised person”. As matters stand, the power to authorise persons for the purposes of Part III of the 1990 Act is vested in “the Committee” (which is not constituted in the 1990 Act nor defined in it). This provision would vest the power in the Governor instead.

EXCO DRAFT – 17.11.2009 (RMB)

Maritime Security and Safety Bill 2009

(No: of 2009)

ARRANGEMENT OF PROVISIONS

Clause

PART 1 – GENERAL PROVISIONS

1. Title
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PART 2 – RESTRICTED ZONES AND DESIGNATED ROUTES IN HARBOUR AREAS

4. Interpretation: Part 2
5. Purposes of this Part
6. Power to specify additional offences
7. Designation of restricted zones of harbour areas by the Governor
8. Designation of restricted zones of harbour areas by authorised person
9. Restricted zones; transitional provisions
10. Unauthorised presence in restricted zones
11. Duty on authorised persons to ensure legitimate access to restricted zones
12. Power to remove persons from restricted zones
13. Designated routes within restricted zones
14. Use of designated routes within restricted zones
15. Offences: restricted zones and designated routes
16. Offences: false statements

17. Offences by bodies corporate

PART 3- AMENDMENT OF THE 2004 ORDINANCE

18. Amendment of the 2004 Ordinance

19. Application of provisions

20. Amendment of the Schedule to the 2004 Ordinance

MARITIME SECURITY AND SAFETY BILL 2009

(No: of 2009)

(assented to: 2009)
(commencement: on publication)
(published: 2009)

A BILL

for

AN ORDINANCE

To replace the applied provisions of the Aviation and Maritime Security Act 1990 relating to restricted zones in harbour areas with new provisions controlling activities in harbour areas for the purposes of protection against acts of violence and the protection of health and safety; to extend the purposes of the remaining provisions of Part III of the Aviation and Maritime Security Act 1990 to include the protection of health and safety as well as protection against acts of violence; and for connected purposes.

BE IT ENACTED by the Legislature of the Falkland Islands —

PART 1 GENERAL PROVISIONS

1. Title

This Ordinance is the Maritime Safety and Security Ordinance 2009.

2. Commencement

This Ordinance comes into force on publication in the *Gazette*.

3. Interpretation

In this Ordinance —

“the 1990 Act” means the Aviation and Maritime Security Act 1990 (as it applies in the Falkland Islands);

“the 2004 Ordinance” means the Aviation and Maritime Security Act 1990 (Application of Provisions) Ordinance (No.18 of 2004);

PART 2 RESTRICTED ZONES AND DESIGNATED ROUTES IN HARBOUR AREAS

4. Interpretation: Part 2

In this Part —

“act of violence” means an act (whether actual or potential, and whether carried out or to be carried out in the Falkland Islands or elsewhere) which either —

- (a) in the case of an act that is (or is to be) carried out in the Falkland Islands, constitutes a specified offence, or
- (b) in the case of an act that is (or is to be) carried out anywhere else, would constitute a specified offence, if it were (or were to be) carried out in the Falkland Islands;

“authorised person” means either —

- (a) a person authorised in writing by the Governor for the purposes of this Ordinance;
- (b) in the case of a harbour area, the Harbour Master;

“designated route” means a route designated under section 13(1);

“employee”, in relation to a body corporate, includes officer;

“harbour” has the same meaning as in the Harbours Ordinance (Title 57.3);

“harbour area” means the combined area of —

- (a) a harbour in the Falkland Islands to which the Harbours Ordinance applies; and
- (b) the land which is —
 - (i) adjacent to that harbour; and
 - (ii) used for harbour purposes;

“Harbour Master” means, in the case of a harbour area, the person who is Harbour Master for that harbour area within the meaning given to “Harbour Master” by section 2 of the Harbours Ordinance;

“harbour operations” means —

- (a) the marking or lighting of a harbour or part of a harbour;
- (b) the berthing or dry docking of a ship;
- (c) the warehousing, sorting, weighing or handling of goods on harbour land or at a wharf;

(d) the movement of goods or passengers within the limits within which the person engaged in improving, maintaining or managing a harbour has jurisdiction or on harbour land;

(e) in relation to a harbour (which, for the purposes of this paragraph, does not include a wharf) —

(i) the towing, or moving of a ship which is in or about to enter or has recently left the harbour;

(ii) the loading or unloading of goods, or embarking or disembarking of passengers, in or from a ship which is in the harbour or the approaches to a harbour;

(iii) the lighterage or handling of goods in the harbour; and

(f) in relation to a wharf —

(i) the towing or moving of a ship to or from the wharf;

(ii) the loading or unloading of goods, or the embarking or disembarking of passengers, at the wharf in or from a ship;

“officer” includes, in relation to a body corporate, a director, manager, secretary or other similar officer of the body corporate;

“police officer” means either —

(a) a member or reserve member of the Royal Falkland Islands Police Force; or

(b) a person having the powers of a police officer;

“property” includes —

(a) land, buildings and works;

(b) ships,

(c) vehicles; and

(d) baggage, cargo and other articles of any description;

“purported officer” means, in relation to a body corporate, a person who is purporting (or has done) to act as an officer of the body corporate;

“restricted zone” means either —

- (a) an area designated as a restricted zone under either section 7(1) or 8(1); or
- (b) a restricted zone treated as if it were a restricted zone designated under section 7(1) by virtue of section 9;

“ship” includes hovercraft and every other description of vessel used in navigation; and

“specified offence” means one of the following offences —

- (a) murder;
- (b) attempted murder;
- (c) manslaughter;
- (d) an offence under —
 - (i) section 18, 20, 21, 22, 23, 24, 28 or 29 of the Offences against the Person Act 1861;
 - (ii) section 2 of the Explosive Substances Act 1883; or
 - (iii) section 1 of the Criminal Damage Act 1971; or
- (e) an offence specified by the Governor in an order made under section 6.

5. Purposes of this Part

The purposes of this Part are —

- (a) the protection against acts of violence of one or more of the following —
 - (i) ships;
 - (ii) persons on board ships;
 - (iii) property on board ships;
 - (iv) harbour areas;
 - (v) persons who are present in a harbour area (whether or not they have a right or permission to be there);
 - (vi) property that forms part of a harbour area; and
 - (vii) property that is in a harbour area (whether permanently or temporarily).

(b) the protection of the health and safety of either or both of the following —

(i) persons on board ships; or

(ii) persons who are present in a harbour area (whether or not they have a right or permission to be there).

6. Power to specify additional offences

The Governor may extend the definition of “specified offence” in section 4 by means of an order specifying one or more additional offences to be included within the definition.

7. Designation of restricted zones of harbour areas by the Governor

(1) The Governor may designate the whole or one or more parts of a harbour area as a restricted zone for the purposes of this Ordinance.

(2) A restricted zone may be designated either within or overlapping another restricted zone.

(3) A designation made under sub-section (1) may be made —

(a) either —

(i) indefinitely; or

(ii) for a specified period; and

(b) either —

(i) at all times; or

(ii) for one or more of the following periods —

(aa) at one or more specified times of day;

(bb) on one or more specified days of the week or the month;

(cc) during periods while specified harbour operations are taking place; or

(dd) during specified events.

(4) In sub-section (3), “specified” means specified in the designation made under sub-section (1).

(5) The Governor may vary or revoke a designation made under sub-section (1).

8. Designation of restricted zones of harbour areas by authorised person

(1) An authorised person may designate the whole or one or more parts of a harbour area as a restricted zone for the purposes of this Ordinance.

(2) A restricted zone may be designated either within or overlapping another restricted zone.

(3) A designation made under sub-section (1) may be made —

(a) for a specified period of not more than 7 days; and

(b) either —

(i) at all times; or

(ii) for one or more of the following periods —

(aa) at one or more specified times of day;

(bb) on one or more specified days of the week or the month;

(cc) during periods while specified harbour operations are taking place; or

(dd) during specified events.

(4) For the purposes of sub-section (3), “specified” means specified in the designation made under sub-section (1).

(5) Either the Governor or an authorised person may vary or revoke a designation made under sub-section (1).

(6) A designation made under sub-section (1) may be renewed once.

(7) A designation that is substantially the same as a designation that has previously been made under sub-section (1) may not be made if it would result in substantially the same designation having effect for a total period (which need not be continuous) of more than 14 days.

9. Restricted zones: transitional provisions

(1) A restricted zone designated under section 19 of the 1990 Act before this Ordinance comes into effect is to be treated as if it were a restricted zone designated by the Governor under section 7(1) of this Ordinance, unless or until the designation of the zone is varied or revoked under sub-section (2).

(2) The designation of the restricted zone under section 19 of the 1990 Act —

(a) is to be treated as if it had been made by the Governor under section 7(1) of this Ordinance, but

(b) may be varied or revoked by the Governor at any time.

10. Unauthorised presence in restricted zones

(1) No person may enter or remain in a restricted zone (with or without a vehicle or vessel) except —

(a) with the permission of either —

(i) an authorised person; or

(ii) a person acting on behalf of an authorised person;

(b) in accordance with any conditions subject to which that permission is for the time being granted.

(2) Permission to enter or remain in one restricted zone does not authorise a person to enter or remain in either —

(a) another restricted zone that is within the first restricted zone; or

(b) in the case of another restricted zone that overlaps the first restricted zone, the part of the other restricted zone that does not overlap.

(3) Sub-section (1) does not apply unless it is proved that, at the material time, one or more notices stating that the area concerned was a restricted zone were posted so as to be readily seen and read by persons entering the restricted zone.

(4) A notice that refers to the 1990 Act or the 2004 Ordinance is valid for the purposes of sub-section (3).

11. Duty on authorised persons to ensure legitimate access to restricted zones

(1) Subject to the remaining provisions of this section, there is a duty on authorised persons to ensure that permission to enter and remain in a restricted zone is given to the following persons —

(a) persons carrying out harbour operations;

(b) the crew and passengers of ships docked in the harbour area;

(c) persons carrying on a business within the restricted zone;

(d) employees of a business carried on within the restricted zone;

(e) persons having a legitimate reason to visit any other person listed in this sub-section.

(2) The duty imposed on authorised persons in sub-section (1) is limited to the extent that —

(a) it is compatible with the purposes of this Part; and

(b) access to the restricted zone is required by a person for one or more legitimate purposes.

(3) The duty imposed on authorised persons does not restrict the power of an authorised person or a person acting on behalf of an authorised person to make permission granted to any of the persons listed in sub-section (1) subject to any reasonable conditions.

12. Power to remove persons from restricted zones

(1) No person may remain in a restricted zone after being requested to leave by —

(a) an authorised person;

(b) a person acting on behalf of an authorised person; or

(c) a police officer.

(2) A police officer or a person acting on behalf of an authorised person may use such force as is reasonable in the circumstances to remove from a restricted zone a person remaining in it in contravention of sub-section (3).

13. Designated routes within restricted zones

(1) An authorised person may designate routes for the use of persons who have permission to enter or remain in a restricted zone.

(2) An authorised person may vary or revoke a designation made under sub-section (1).

14. Use of designated routes within restricted zones

(1) An authorised person or a person acting on behalf of an authorised person may require persons who have permission to enter and remain in a restricted zone to use a designated route.

(2) A person who has permission to enter and remain in a restricted zone but who has been required to use a designated route may not use a route within the restricted zone other than that designated route.

15. Offences: restricted zones and designated routes

(1) Subject to sub-section (3), it is an offence to contravene section 10(1) or section 12(1).

(2) Subject to sub-section (3), it is an offence to contravene section 14(1).

(3) No offence under sub-section (1) or (2) is committed by a person in relation to an act or omission for which that person had either —

(a) lawful authority; or

(b) reasonable excuse.

(3) A person guilty of an offence under sub-section (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A person guilty of an offence under sub-section (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

16. Offences: false statements

(1) It is an offence for a person to make a statement for the purpose of obtaining permission for either that person or another person to enter or remain in a restricted zone, if —

(a) the statement is false in a material particular; and

(b) the person making the statement either —

(i) knows that the statement is false in a material particular; or

(ii) is reckless as to whether or not the statement is false in a material particular.

(2) A person guilty of an offence under sub-section (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

17. Offences by bodies corporate

(1) This section applies if —

(a) an offence under this Ordinance is committed by a body corporate; and

(b) it is proved that either —

(i) the offence was committed with the consent or connivance of an officer of the body corporate; or

(ii) the offence was attributable to neglect on the part of an officer of the body corporate.

(2) If this section applies, the officer as well as the body corporate is —

(a) guilty of the offence; and

(b) liable to be proceeded against and punished accordingly.

(3) For the purposes of this section, “officer” includes a purported officer.

(4) If the affairs of a body corporate are managed by its members, sub-sections (1) and (2) apply in relation to the acts and defaults of a member in connection with that member’s functions of management as if the member were an officer of the body corporate.

PART 3
AMENDMENT OF THE 2004 ORDINANCE

18. Amendment of the 2004 Ordinance

This Part amends the 2004 Ordinance.

19. Application of provisions

In section 2(1), the words “18 to 46” are repealed and “18, 19, 21 to 38, 40 to 46” substituted.

20. Amendment of the Schedule to the 2004 Ordinance

(1) This section amends the Schedule to the 2004 Ordinance.

(2) Paragraph 1 is repealed and the following paragraph substituted —

“1. Section 18 (Purposes to which Part III applies) is replaced by the following —

“**18. Purposes to which Part III applies**

(1) The purposes to which this Part of this Act applies are —

(a) the protection against acts of violence of one or more of the following —

(i) ships;

(ii) persons on board ships;

(iii) property on board ships;

(iv) harbour areas;

(v) persons who are present in a harbour area (whether or not they have a right or permission to be there);

(vi) property that forms part of a harbour area; and

(vii) property that is in a harbour area (whether permanently or temporarily).

(b) the protection of the health and safety of either or both of the following —

(i) persons on board ships; or

(ii) persons who are present in a harbour area (whether or not they have a right or permission to be there).

(2) In this Part of this Act —

“act of violence” means an act (whether actual or potential, and whether carried out or to be carried out in the Falkland Islands or elsewhere) which either —

- (a) in the case of an act that is (or is to be) carried out in the Falkland Islands, constitutes a specified offence, or
- (b) in the case of an act that is (or is to be) carried out anywhere else, would constitute a specified offence, if it were (or were to be) carried out in the Falkland Islands;

“harbour area” means the the combined area of —

- (a) a harbour in the Falkland Islands to which the Harbours Ordinance applies; and
- (b) the land which is —
 - (i) adjacent to that harbour; and
 - (ii) used for harbour purposes; and

“specified offence” means one of the following offences —

- (a) murder;
- (b) attempted murder;
- (c) manslaughter;
- (d) an offence under —
 - (i) section 18, 20, 21, 22, 23, 24, 28 or 29 of the Offences against the Person Act 1861;
 - (ii) section 2 of the Explosive Substances Act 1883; or
 - (iii) section 1 of the Criminal Damage Act 1971; or
- (e) an offence specified as such by the Governor by order.””

(3) Paragraph 3 is repealed.

(4) Paragraph 18 is repealed.

(5) In paragraph 23, sub-paragraph (a) is repealed and the following sub-paragraph substituted —

“(a) in the definition of authorised person, the words “Secretary of State” are replaced by the word “Governor”;

OBJECTS AND REASONS

This Bill would replace the applied provisions of the Aviation and Maritime Security Act 1990 (which, as it applies in the Falkland Islands, is referred to in the Bill and in these Objects and Reasons as “the 1990 Act”) relating to restricted zones in harbour areas with new provisions controlling activities in harbour areas for the purposes of protection against acts of violence and the protection of health and safety.

It would also extend the purposes of the remaining provisions of Part III of the 1990 Act to include the protection of health and safety as well as protection against acts of violence.

Part 2 of the Bill would establish a new local regime for restricted zones and designated routes in harbour areas.

Clause 5 sets out the purposes of the provisions of Part 2 (and, as a consequence, the purposes for which the powers in Part 2 could be exercised). These purposes would be protection against acts of violence and the protection of health and safety and these would be wider than the current purposes of the corresponding provisions in the 1990 Act that would be replaced.

Clause 6 would give the Governor the power to extend the definition of “specified offences” (on which the definition of “acts of violence” is based) by specifying additional offences.

Clause 7 would give the Governor the power to designate restricted zones within harbour areas. This power would be more flexible than the corresponding power in the 1990 Act.

Clause 8 would give a similar, but more limited power to authorised persons (defined in *clause 4* as the person appointed as Harbour Master under the Harbours Ordinance (Title 57.3) or another person authorised by the Governor). A restricted zone designated by an authorised person could only remain in place for 7 days, renewable once only. This would allow for short term arrangements to be put in place or interim arrangements pending approval by the Governor in cases of urgency.

Clause 9 would make transitional provisions for restricted zones designated under existing legislation.

Clause 10 would prohibit unauthorised presence in a restricted zone, subject to a requirement for notices to be shown.

Clause 11 would impose a duty on authorised persons to ensure legitimate access to restricted zones but that duty would be qualified by the purposes of Part 2 and limited to the legitimate purposes for which access is required. Nor would it prevent access being made subject to reasonable conditions. This would be a new provision and there is no corresponding provision in the 1990 Act.

Clause 12 would allow for the removal of persons from restricted zones (using reasonable force, if necessary).

Clause 13 would provide for routes to be designated within restricted zones for use by persons with permission to be in the restricted zone.

Clause 14 would allow for the use of designated routes to be made a requirement and to prohibit the use of other routes within the restricted zone.

Clause 15 would provide for offences and penalties in relation to restricted zones and designated routes.

Clause 16 would make provision for offences in relation to false statements made in order to obtain permission to be in a restricted zone. This would be broader than the nearest equivalents in the 1990 Act.

Clause 17 would make provision for offences by bodies corporate.

Part 3 would make a number of amendments to the Aviation and Maritime Security Act 1990 (Application of Provisions) Ordinance 2004 (No. 18 of 2004) (referred to in the Bill and these Objects and Reasons as “the 2004 Ordinance”).

Clause 20 and clauses 21(3) and (4) would disapply the provisions of the 1990 Act relating to restricted zones in harbour areas, which would be replaced by Part 2 of this Bill.

Clause 21(2) would extend the purposes of the remaining provisions of Part III of the 1990 Act (and, as a consequence, the purposes for which powers in those provisions could be exercised) to include the protection of health and safety as well as protection against acts of violence. It would also clarify the definitions of “act of violence” and “harbour area” and give the Governor power to extend the definition of “specified offence” (on which the definition of “act of violence” would become based) by specifying additional offences.

Clause 21(5) would deal with an anomaly in the definition of “authorised person”. As matters stand, the power to authorise persons for the purposes of Part III of the 1990 Act is vested in “the Committee” (which is not constituted in the 1990 Act nor defined in it). This provision would vest the power in the Governor instead.