

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Delegation of Functions Relating to the Registration of Ships in the Falkland Islands

Paper No: 168/12

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Report of: Director of Emergency Services/Registrar of Ships

1.0 Purpose

The purpose of this paper is to inform Honourable Members about the possible future delegation of registration of ships related functions from the Governor to senior officers and/or the Registrar of Ships.

2.0 Recommendation

Honourable Members are invited to note the report and agree that the Registrar of Ships should bring back a further report to Executive Council with clear recommendations for the delegation of various functions under the Merchant Shipping (Registration of Ships) Regulations

3.0 Summary of Financial Implications

There are no financial implications.

4.0 Background

4.1 The United Kingdom's Merchant Shipping Act (section 8, Part II) provides for the central register of British ships on the UK Ships Register, as it is currently known. Any vessel registered in the UK, a Crown Dependency (CD) or an Overseas Territory (OT), is a "British ship" and is entitled to fly the British Merchant Shipping flag the 'Red Ensign' (or a version of it defaced with the appropriate national colour).

4.2 Section 18 of Part II of this Act, allows by Order in Council, British possessions (both CD's and OT's) to establish different categories of register with restrictions on vessels according to the tonnage, size and type. Category 1 registers operate large international registers and may register ships of unlimited tonnage, type and length whilst Category 2 registers are restricted.

- 4.3** Under the Merchant Shipping (Categorisation of Registries of Relevant British Possessions) Order 2008 (SI 2008 No. 1243) the Falkland Islands (FI) is categorised as a Category 2 register and only merchant vessels and pleasure vessels not exceeding 150 gross tons (GRT) and fishing vessels can ordinarily be registered in the FI. There is however provision for the Secretary of State to exceptionally grant approval for the registration of merchant (or pleasure) vessels exceeding 150 GRT if he is satisfied in the particular circumstances that it would be inappropriate, because of their Falklands' connection, to be registered other than in the FI e.g. the British Antarctic Survey vessels and the Concordia Bay.
- 4.4** The FI Register of Ships is managed in accordance with the Merchant Shipping Ordinance 2001. This ordinance principally applies Parts I and II of the UK Merchant Shipping (MS) Act 1995 as law in the FI in place of Part I of the MS Act 1894.
- 4.5** The Ordinance includes provision for the Collector of Customs to be the registrar of ships, for the Governor to designate any person to discharge, on behalf of the registrar all of his functions as registrar or such as them as the Governor may direct. It also provides for the Governor to give to the registrar directions of a general nature as to the discharge of any of his functions.
- 4.6** The subsidiary legislation is the Merchant Shipping (Registration of Ships) Regulations 2001. This legislation brought radical changes to the Falkland Islands' register as historically there was a 'one size fits all' register whereas under the new legislation the register is divided into four parts, these being:
- Part I: Merchant Vessels and Pleasure Vessels (full registration only - evidence of title required).
 - Part II: Fishing Vessels (may be registered with full registration - title evidence required or simple registration - where full evidence of title is not required).
 - Part III: Small Ships (under 24 metres in length, restricted to private individuals only – full evidence of title is not required).
 - Part IV: Bareboat Charter Ships (for both merchant ships and fishing vessels, where a vessel so registered remains registered on the primary register of another country).
- 4.7** Officers are aware that there are flaws in the current FI's registration of ships legislation, principally because of a series of incorrect cross referencing to the Merchant Shipping (Registration of Ships) Act 1995 on which this legislation is based. Whilst concerning, these flaws do not appear to be posing any significant issues in regard to the day to day management of the register and consideration of applications but will need to be addressed in due course. This work is not currently included in the

legislative drafting programme. There is also a need to review (or re-confirm) policy relating to the registration of fishing vessels however this appears not to be an urgent priority as the policy currently in place has not caused any particular issues.

- 4.8** The number of merchant and pleasure vessels registered in the Falkland Islands has remained relatively static since the early sixties and the current total on the Part I Register is just 8 vessels. Fisheries licensing policy from the mid 1980's through until the change in Fisheries legislation in 2005 actively encouraged the registration of fishing vessels in the Falkland Islands and during this period the number registered on the Part II Register went as high as 28 but this has gradually decreased over the years to the current total of 21. There are also currently 6 privately owned small pleasure craft and motor boats registered on the Part III Small Ships Register and 2 fishing vessels registered on the Part IV Bareboat Charter Register.
- 4.9** It is envisaged that in the medium term, the registration of major vessels of all types in the FI will continue to be occasional and primarily involve either replacement or transfer of ownership of existing vessels and in the case of fishing vessels, there may also be the occasional bareboat charter registration as this provides fishing companies with an alternative to vessel ownership in respect of utilising ITQ granted under the current Fisheries arrangements.

5.0 Delegation of Registration Functions

- 5.1** At the meeting of Executive Council held on 29 April 2010 Honourable Members considered Paper Number 108/10, namely an application to transfer the registration of two FI registered fishing vessels to a newly formed joint venture company and this was approved.
- 5.2** At that meeting a Member enquired whether the registration of ships functions could be delegated to an officer rather than having to seek Executive Council permission. The Governor's viewpoint as recorded states that matters relating to the registration of vessels could be sensitive in terms of regulatory control from London's perspective and asked that registration issues should continue to come before Executive Council for the time being. The conclusion agreed however was that the Registrar of Ships should provide a further report on the possible delegation of these functions.
- 5.3** Although there may be sensitivity in regard to registration matters from the UK's perspective as flag state, given the low level of FI registration of ships activity and the fact that the eligibility and FI connection and safety standards requirements are clearly defined and regulated, it is suggested that some delegation of the Governor's authority in relation to the registration of ships to senior officers and/or the registrar of ships is worthy of consideration.

5.4 Whilst the current arrangements are satisfactory, a clear benefit of such delegation in addition to reducing the workload placed on Executive Council would be that commercial applications would be considered much more expeditiously instead of applicants having to wait until their application has been considered at a meeting of Executive Council.

5.5 A comprehensive review of all the functions that could be delegated would be a substantial piece of work and it would make sense to incorporate this into a review of the Regulations and the Ordinance. As mentioned at 4.7 above, our merchant shipping registration legislation is flawed and does require amendment. This work is not currently included in the legislative drafting programme and therefore if Members agreed that a total review of delegation of functions is appropriate it would also be necessary to determine what priority it had over other pending legislation.

5.6 In the meantime it is considered that certain functions could be delegated to the Registrar of Ships. Whilst the legislation makes no explicit reference to the ability to delegate functions to the Registrar of Ships the Attorney General has advised that such delegation is possible under Common Law where the function is administrative in nature.

5.7 The Schedule attached to this paper sets out the parts of the Regulations which reviews where it might be appropriate to delegate functions to a senior officer and/or the Registrar of Ships now or in the longer term by review of the legislation.

Recommendation

6.1 Honourable Members are recommended to agree that the Registrar of Ships bring a further report recommending which functions should be delegated to a senior officer and/or the Registrar of Ships.

7.0 Financial Implications

There are no financial implications.

8.0 Legal Implications

As set out in this report.

9.0 Human Resources Implications

There are no human resources implications.

Schedule

Merchant Shipping Ordinance

Ordinance section	Provision	Could this be delegated now?	Could this be delegated in the future?
N/A	New provision in the MS Ordinance under which the Governor appoints a senior superintending officer/director and/or the registrar of ships to be responsible for all FI ship registration matters.	N/A	Yes, in the longer term if it was desired, provided relevant safeguards are in place. For example, Bermuda (Cat 1) and British Virgin Islands (Cat 2) have such an administrative arrangement.
4 (1)	The Governor may appoint inspectors to report to him upon (a) the nature and causes of any accident relating to a ship; (b) whether any requirements, restrictions or prohibitions imposed by or under any enactment relating to shipping have been complied with or (as the case may be) contravened; (c) condition of the hull and machinery of any ship; (d) what measures have been taken to prevent the escape of oil or mixtures containing oil.	No.	Yes, as per above.
4 (2)	The Governor may appoint persons to be the surveyors of ships for the purposes of any enactment relating to shipping.	No.	Yes, as per above. There are UK rules and regulations that apply in the FI governing this e.g. UK approved classification society and Royal Yachting Association surveyors. A formally “approved list” would enable delegation.

Ordinance section	Provision	Could this be delegated now?	Could this be delegated in the future?
9 (3)	Notwithstanding any provision of the registration regulations, the registrar shall if the Governor so directs refuse to register or terminate the registration of a ship. The Governor may give such direction if he is satisfied that having regard to any requirements of this Act or of any law in the FI it would be inappropriate for the ship to be, or, as the case may be, to remain registered.	No.	No, this provision would offer protection that the Governor (in ExCo) could also exercise in protecting the UK's registration of British ships interests. However if a senior superintending officer/director was appointed, a parallel authority could also be included.

Merchant Shipping Regulations

Regulation	Provision	Could this be delegated now?	Could this be delegated in the future?
a. Merchant			
8	Falkland Islands connection and majority interest – the Governor must be satisfied and give consent to register to the registrar.	Yes, to a limited extent. The criteria is defined in the regulations. The Governor could give a blanket consent in relation to applications relating to ships whose qualifying owners are ordinarily resident in the FI and provided that if foreign ownership interests are involved, they are known to the FI and are not of concern. Where necessary the Attorney General's Chambers could check and advise the registrar. Vessels exceeding 150 GRT would of course require consent to register from the Secretary of State.	Yes, if it was desired, provided relevant safeguards are in place. For example, Bermuda (Cat 1) and British Virgin Islands (Cat 2) have an administrative arrangement (appointment of a senior superintending officer/director and/or registrar of ships empowered to discharge certain functions).
b. Fishing			
4	Fishing vessel changing from full registration to simple registration subject to conditions including Governor's consent to re-register to the registrar.	No, however it is most unlikely to be requested in the FI.	Yes, however it is very unlikely to be requested in the FI. If it did occur, this could be dealt with either under an agreed ExCo policy or under revised regulations.

Regulation	Provision	Could this be delegated now?	Could this be delegated in the future?
12 (1) to 12 (3)	Eligibility for registration, Falkland Islands connection and majority interest – Governor must be satisfied and give consent to register to the registrar	Yes, to a limited extent. The criteria is defined in the regulations. The Governor could give a blanket consent in relation to applications relating to ships whose qualifying owners are ordinarily resident in the FI and provided that if foreign ownership interests are involved they are known to the FI and are not of concern. Where necessary the Attorney General's Chambers and Director of Fisheries could check and advise the registrar.	Yes, in the longer term if it was desired, provided relevant safeguards are in place. For example, Bermuda (Cat 1) and British Virgin Islands (Cat 2) have such an administration arrangement (appointment of a senior superintending officer/director and/or registrar of ships empowered to discharge certain functions).
12 (5)	Governor may for any reason if he sees fit withhold consent to register (but must notify the applicant of the reasons for it)	No. This reflects section 9 (3) of the Ordinance as per the table above.	No. This reflects section 9 (3) of the Ordinance as per the table above. However if a senior superintending officer/director was appointed, a parallel authority could also be included.
13 (1)	Requirements as to management etc – Governor may if he sees fit require conditions of his consent to registration: (a) vessel is managed and its operations controlled from within the Falkland Islands (b) any charterer, manager or operator satisfies the eligibility requirement of 12.3	No. This is a policy consideration matter and therefore is for ExCo to approve. Although the owners of all fishing vessels have stated that their vessels are compliant with these, there is currently no approved policy in place.	No. This is a policy consideration matter and therefore is for ExCo to approve. Although all owners of fishing vessels have stated that their vessels are compliant with these there is currently no approved policy in place.

Regulation	Provision	Could this be delegated now?	Could this be delegated in the future?
14	Dispensations from 12.3 (above) – the Governor may modify requirements if he considers it appropriate.	No. This is a policy matter and therefore is a matter for ExCo.	No. This is a policy matter and therefore is a matter for ExCo. However if a senior superintending officer/director was appointed, a parallel authority could also be included.
15	Appointment of inspectors – the Governor may appoint a person to investigate the eligibility of a vessel for registration and report his conclusions to the Governor.	No.	Yes, by provision in the Ordinance under which the Governor appoints a senior superintending officer/director to exercise this authority. Eligibility matters could also be dealt with by the Attorney General's Chambers where necessary as per 12 (1) to 12(3) above.
c. General			
16 (2), 18 (1), 38 (1), 73 (3), 79 (4) etc	All forms, documents, notices and certificates must be in a form approved by the Governor.	No, it would require an amendment to the regulations.	Yes, it could either remain the case that forms etc must be prescribed via ExCo or it could be delegated to a senior superintending officer/director or to the registrar.
25 (3)	Survey or measurement survey certificates must include particulars as required by the Governor.	No, it would require an amendment to the regulations. However current practice is to request measurement survey certificates the same as for UK registered vessels.	Yes, it could either remain the case that forms etc must be prescribed via ExCo or alternatively it could be delegated to a superintending officer/director or to the registrar

Regulation	Provision	Could this be delegated now?	Could this be delegated in the future?
52 (1)	Governor may direct the Registrar to remove a vessel from the register by reason of its poor condition, health and safety concerns, risk of pollution, health and welfare of the crew, owner or charterer convicted of an offence, Registrar not informed of change of ownership etc	No.	No, however if a senior superintending officer/director was appointed, a parallel authority could also be included.
65	Provisional registration not to be renewed without the consent of the Governor.	No.	Yes, by provision in the Ordinance under which the Governor appoints a senior superintending officer/director to exercise this authority.
68 (8)	Transfer of registration from United Kingdom or relevant British possession - Registrar not to register vessel without the consent of the Governor.	Yes, to a limited extent. The eligibility criteria is defined in the regulations. The Governor could give a blanket consent in relation to applications relating to ships whose qualifying owners are ordinarily resident in the FI and provided that if foreign ownership interests are involved they are known to the FI and are not of concern. Where necessary the Attorney General's Chambers and Director of Fisheries could check and advise the registrar.	Yes, by provision in the Ordinance under which the Governor appoints a senior superintending officer/director to exercise this authority.

Regulation	Provision	Could this be delegated now?	Could this be delegated in the future?
69	Transfer within the Register – ship not to be transferred without the consent of the Governor	Yes, to a limited extent. The eligibility criteria is defined in the regulations. The Governor could give a blanket consent in relation to applications relating to ships whose qualifying owners are ordinarily resident in the FI and provided that if foreign ownership interests are involved they are known to the FI and are not of concern. Where necessary the Attorney General's Chambers and Director of Fisheries could check and advise the registrar.	Yes, by provision in the Ordinance under which the Governor appoints a senior superintending officer/director to exercise this authority.
d. Bareboat Charter			
71 (2)	Qualification and entitlement for registration of a fishing vessel as a bareboat charter ship – Governor may require that the vessel is managed, and its operations controlled and directed from within the Falkland Islands.	No, this is a policy matter and therefore is a matter for ExCo.	No, this is a policy matter and therefore is a matter for ExCo.
72	Fishing vessels – dispensations from eligibility requirements in accordance with regulation 14 (above) – Governor may modify requirements if he considers it appropriate.	No, this is a policy matter and therefore is a matter for ExCo.	No, this is a policy matter and therefore is a matter for ExCo.
84 (1)	Governor may direct the Registrar to remove a vessel from the Register by reason of its poor condition, health and safety concerns, risk of pollution, health and welfare of the crew, owner or charterer convicted of an offence, Registrar not informed of change of ownership etc.	No.	No, however if a senior superintending officer/director was appointed, a parallel authority could also be included.

Regulation	Provision	Could this be delegated now?	Could this be delegated in the future?
e. Small Ships	Registrar attends to all matters pertaining to small ships	N/A	N/A
Schedule 2			
2.	Carving and Marking - Governor may exempt any class of ship from any or all of the carving and marking requirements included in the Schedule	No, it currently requires an order agreed in ExCo.	No, it would require an order agreed in ExCo or alternatively an amendment to the regulations.