

# EXECUTIVE COUNCIL

## PUBLIC

**Title:** Implementation of Maritime, Harbours and Ports Ordinances and Development of a Maritime Administration

**Paper Number:** 81/18

**Date:** 29 August 2018

**Responsible Director:** Director of Natural Resources/ Attorney General

**Report Author:** Marine Officer and Harbour Master  
Legislative Drafter

**Portfolio Holder:** MLA Teslyn Barkman/MLA Ian Hansen

**Reason for paper:** This paper is submitted to Executive Council:

For appraising Members of the findings of the Marine Consultants Report covering the establishment of a Maritime Authority and associated legal implications.

**Publication:** Yes with redactions as highlighted in section 5.8.

*Under Executive Council Standing Order 23(2), Executive Council must have regard to the categories of exempt information in Schedule 3 to the Committees (Public Access) Ordinance when determining if information should be withheld*

*The categories which are potentially relevant to this paper are:*  
Paragraph 4: Economic interests

**Previous papers:** 72/13 - Oil Readiness Review - Marine Legislation  
24/15 – Maritime Legislation - Additional Policy Decisions  
98/17 - Maritime legislation - Implementation Plan

**List of Documents:** Annex 1 – Structure of the Interim Authority  
Annex 2 - Maritime Consultancy Services - Report on Recommendations  
Annex 3 – Draft Implementation Plan - Harbours and Ports Ordinance 2017  
Annex 4 – Draft Implementation Plan - Maritime Ordinance 2017  
Annex 5 – Proposed amendments to the Maritime Ordinance 2017  
Annex 6 – Draft designation of Maritime Authority

## **1. Recommendations**

Honourable Members are recommended to:

- (a) Approve the Report as attached and in particular make decisions on:
  - (i) Agreeing to set the 1 September 2018 as the commencement date for the Harbours and Ports Ordinance 2017 so that it can come into force;
  - (ii) Designation of an interim Maritime Authority by the Governor (a draft designation notice is attached as Annex 6, and the structure of the Interim Authority is attached as Annex 1), to coincide with the commencement of the Harbours and Ports Ordinance 2017
- (b) Agree the approach to progress the implementation of the Maritime Ordinance 2017;
- (c) Agree on the proposed priorities of the Maritime Project Officer once appointed within Natural Resources.
- (d) Note the proposed amendments to the Maritime Ordinance 2017. These issues will need to be remitted to Executive Council in due course for consideration.
- (e) Note the opportunity to investigate whether any synergies arise between FIG and BFSAI in introducing the Maritime Authority model (section 5.7).
- (f) Note the potential overlap with oil related regulatory work and the possibility that this may result in some re-ordering of priorities and a requirement for some additional capacity to deliver this on an appropriate timescale (section 5.8).

## **2. Additional Budgetary Implications**

2.1 None

## **3. Executive Summary**

- 3.1 Following recommendations agreed by Executive Council in ExCo Papers 72/13, 24/15 and 98/17 three Ordinances dealing with maritime laws were enacted and published in the *Gazette* in 2017. The Maritime Ordinance 2017, the Merchant Shipping (Adoption of Legislation) (Amendment) Ordinance 2017 and the Harbours and Ports Ordinance 2017. These Ordinances are also available online in the Statute Law Database. All of the Ordinances are yet to commence. In order for the Ordinances to be commenced there are specific decisions which the Falkland Islands government must make.
- 3.2 The UK's Maritime and Coastguard Agency (MCA) is the executive arm of the Secretary of State for Transport through which responsibility is exercised for all matters concerning shipping and seafarers. The MCA visited the Islands in March 2017 as part of a regular four year monitoring cycle to maintain the assurance that the Overseas Territories meet their obligations and maintain a safe marine environment. As part of

their audit report the MCA produced a Gap Analysis and made a recommendation that a specialist consultant was required to help take matters forward.

3.3 Following the recommendations made in 3.2 above the Department of Natural Resources engaged the services of a consultant in October 2017 to provide advice on a number of key issues specifically aimed at evaluating actions which are needed to fully implement the three Ordinances as well as make recommendations on the Gap Analysis. The Report is divided into eight parts with eleven appendices. It is attached to this Paper as Annex 2 with the full objectives of the consultancy specified under Appendix 1 of the Report at page 32.

3.4 Alongside this the International Maritime Organisation (IMO) has introduced compulsory auditing of the obligations of Territories known as the Implementation for International Instruments Code (III Code) and the MCA noted, *inter alia*, that to achieve compliance across the relevant maritime Conventions additional resources would be required. The Report also covers this.

3.5 The Report makes eight (8) recommendations which are discussed fully under paragraph 5 of this Paper. In summary the recommendations to Executive Council are to make decisions on:

- 1. Interim Designation of Authority
- 1A. Long term designation of Authority
- 2. International Obligations and Regulatory Independence
- 3. Primary Legislation
- 4. Immediate Subordinate legislation - Maritime Ordinance
- 4A. Subsequent subordinate legislation – Maritime Ordinance
- 5. Legislative Matters raised by the MCA
- 6. Subordinate legislation under the Harbours and Ports Ordinance 2017
- 7. III Code and Falkland Islands Government Obligations
- 8. Creation of a Project Board

3.6 In summary the attached Report –

- Acknowledges the steps already taken to modernise maritime and port legislation and to form a Maritime Authority;
- Details how the Authority can be formed effectively and quickly and how a longer-term structure should be established;
- Provides an analysis to allow the Maritime Ordinance 2017 and the Harbours and Ports Ordinance 2017 to be brought into force;
- Addresses the issue of subordinate legislation and identifies the best way forward to adopt certain international Conventions;
- Recommends the development of pilotage and vessel traffic services, (both required for the future development of the oil industry) and indicates how the government can reduce its exposure to risk if a serious maritime incident was to happen;
- Provides in the several appendices to the Report the necessary documentation that can potentially be used if Members agree with the recommended approach; and

- Sets out a way forward for compliance with the Code for the Implementation of International Instruments (the III Code) so that the government can meet its international obligations in maritime matters.

#### **4. Background and Links to Islands Plan and Directorate Business Plan/s**

- 4.1 In the Falkland Islands Government Islands Plan 2018-2022 a commitment is made to ‘*ensure responsible marine management including the implementation of new maritime legislation*’. The recommendations in this Paper will lead to commencement of the Ordinances. The 2018 – 2022 Islands Plan also makes a commitment for the government to ‘*support the creation of a shipping hub and international shipping links which are vital to the economic growth of the Falkland Islands*’ and in the Economic Development Hydrocarbons states that ‘*a robust legislative framework to facilitate and regulate hydrocarbons development, including high standards of safety, emergency protection and environmental protection;*’. There is a further commitment to ‘*deliver modern port facilities*’ and the Harbours and Ports Ordinance and Maritime Ordinance 2017 is the legislation regulating ports.
- 4.2 As discussed in previous Papers the Ordinances do not create new obligations but because of the comprehensive functions and responsibilities outlined in the Ordinances there needs to be clarity as to which entities or officers are to discharge these. The main aim of the Report is to outline the options; it looks at the current set-up, what can be done in the interim and long term and gives options so that Members can make informed decisions. Some of the issues relating to resources were already agreed under Paper 98/17.
- 4.3 The consolidation of the maritime laws applicable in the Falkland Islands has identified some areas which will need more legislative drafting work and the Report makes recommendations in this regard. Some of these legislative gaps were also identified by the Maritime and Coastal Agency (MCA) in their monitoring visit to the Falkland Islands in March 2017.
- 4.4 Both the Harbours & Ports Ordinance 2017 and the Maritime Ordinance 2017 contain a large number of references to the “Governor”, and the Governor is shown in the consultant’s report in the structure charts for the Maritime Authority. For the purposes of clarity, in most cases this means the Governor acting after consultation with the Executive Council, and acting in accordance with the Council’s advice. For example, all powers or obligations to make regulations are matters for the approval of Executive Council.

#### **5. Options and Reasons for Recommending Relevant Option**

- 5.1 The Report makes 8 recommendations as briefly summarised under paragraph 3.5. The first recommendation is tied to the Harbours and Ports Ordinance 2017 which requires the Governor under section 4 to designate a *body* or the *department* of Natural Resources as the Maritime Authority. The Report gives 2 options to effect this requirement:

##### ***Recommendation 1 – Interim Designation of Authority (Option 1)***

*On page 8 of the Report a recommendation is made for the designation of the **Department of Natural Resources** as the Maritime Authority to be agreed and made. The Department of Natural Resources will be designated as the interim Maritime Authority under section 4(2) of the Harbours and Ports Ordinance 2017. The recommendation is to make the Harbour Master the head of the Maritime Authority. Under Appendix 4 there is suggested wording for the designation which sets out a statement of the scope of the Authority, its duties and functions. This includes related duties and functions of the Harbour Master. On page 13 of the Report an organogram illustrates how the interim Authority could be staffed.*

- 5.1.1 Interim designation is desirable as a quick-fix solution to comply with the requirements of the Harbours and Ports Ordinance and to provide direction for the Harbour Master. It is also attractive in the current financial year in that it does not need new resources. However it must not be a permanent state of affairs.
- 5.1.2 While an interim Maritime Authority operates within DNR its ability to function with independence is important however its *modus operandi* would be similar to current arrangements where conflict of interest would be highlighted and addressed with transparency. Similarly, it is important the Maritime Authority fully interacts with the Government when dealing with maritime casualties or other extreme complex maritime circumstance where decision making will require full engagement with the FIG hierarchy and not solely held by the Maritime Authority. In these circumstances the Head of the Maritime Authority (HMA) will have to advise but FIG may reasonably have greater or lesser appetite for the proposed risk. Furthermore, if professional reputation was at stake then that would need to be addressed between HMA and FIG.

***Recommendation 1A – Longer-term Designation of Authority***

*Under page 8 of the Report an alternative longer-term approach is recommended. This is to designate a body as the Maritime Authority under section 4(1). This will give the Authority more independence and will place the Authority outside potential conflicts of interest. In considering this a decision will need to be made as to whether the body should be inside Government or designated as an external agency. Physical relocation should also be planned as this will illustrate the separation of the regulatory role from the operational or commercial interests of government. The Report discusses this in more detail on page 11 and on page 13 there is an organogram illustrating how this structure will work.*

- 5.1.3 For the future a stand-alone Maritime Authority will be vital to enable its full development. However it is anticipated that unless there is an urgency elsewhere to progress this recommendation that for the next two years the initial drafting of secondary legislation will need to be completed before proceeding to this step. However it should be noted that as highlighted in the Report effective resourcing and design of the Authority is now quite urgent. The Authority will also lead in preparation for a potential international audit against the III Code.
- 5.2 The second recommendation relates to the powers, duties and functions of the Authority as contained in the Ordinances. Some of these duties and functions flow from the international Conventions which apply in the Falkland Islands. Some of these conventions place specific obligations on an ‘administrator’ or ‘competent authority’. As a result there will need to be a considered view as to how the duties and functions are discharged and by whom. In the exercise of power by the Maritime Authority or the

person in charge of the Authority there are specific issues which require professional independence. Direction as to how the Authority is organised is required.

***Recommendation 2 – Meeting International Obligations and Regulatory Independence***

*It is recommended that to ensure the structure, governance and location of the Authority properly reflects the need to meet the government’s international obligations, for professional independence and for the Harbour Master to carry out effective enforcement and regulatory functions the organograms on pages 13 and 14 be adopted.*

**5.3 Primary Legislation**

The third recommendation relates to the implementation of the Ordinances and refers to the steps needed to commence the Ordinances.

5.3.1 In relation to the Harbours and Ports Ordinance 2017 there is not a lot required other than designating the Authority as explained under paragraph 5.1 which is pivotal in progressing matters under all the Ordinances. There are specific regulations which will need to be made as specified in the draft Implementation Plan for the Harbours and Ports Ordinance 2017 (Annex 2) which the Authority, once designated can develop the policy for and produce drafting instructions for them to be progressed. There are also existing regulations which will need to be reviewed and updated but those are not immediate requirements.

***Recommendation 3 – Primary Legislation***

*1. The recommendation is that as soon as the designation referred to under Recommendation 1 has been agreed, a commencement date must be set for the Harbours and Ports Ordinance 2017.*

5.3.2 It is recommended that the Harbours and Ports Ordinance 2017 be commenced on 1 September 2018.

5.3.3 The Maritime Ordinance 2017 will need more work done before it can be commenced. The approach taken in section 312 of the Ordinance saves a raft of UK regulations which will continue to apply so while in the immediate future there is no need to make supporting regulations, there is still need to review and put in place a long term view for discrete regulations to be made under the Ordinance. The draft Implementation Plan for the Maritime Ordinance 2017 (Annex 3) specifies in detail what supporting regulations are required. The regulations which have been identified as requiring immediate review are the registration regulations which have been reviewed and are at an advanced stage.

***Recommendation 3 – Primary Legislation***

*2. Alert the United Kingdom to prepare the Order in Council to disapply the relevant UK Acts and Statutory Instruments (insofar as these apply to the Islands).*

5.3.4 The United Kingdom legislation which is required to be amended or revoked has already been identified and lists of both the UK Orders in Council and directly applying UK Acts to be amended has been sent to the relevant authorities in the UK to enable them to prepare the amending legal instruments. Work is being done to progress these and feedback on timelines from the UK authorities is awaited.

### ***Recommendation 3 – Primary Legislation***

*3. As soon as the registration regulations are ready, set appropriate commencement dates for the Maritime Ordinance and the Merchant Shipping (Adoption of Legislation) (Amendment) Ordinance.*

5.3.5 The registration regulations are currently being finalised and once ready, it is recommended that dates be set to commence the Maritime Ordinance 2017 and the Merchant Shipping (Adoption of Legislation) (Amendment) Ordinance 2017. However this will have to take into account timelines from the UK authorities in relation to the Orders in Council confirming the new Ordinances and revoking and amending other UK legislation that currently applies in the Falkland Islands.

### **5.4 Subordinate legislation**

The Report makes recommendations on the prioritisation for the making of subordinate legislation required to fully implement both Ordinances.

5.4.1 In terms of the Maritime Ordinance 2017 there are UK statutory instruments that were adopted under the Merchant Shipping (Adoption of Legislation) Ordinance 1992 which will continue to apply as saved by section 312 of the Ordinance. However in the long term this needs to be reviewed so that we have comprehensive local legislation in this area and avoid having to keep an eye on changes to the adopted UK law. Some of the applying UK regulations have been reviewed and it has been decided to continue using the adopted UK regulations (this is in relation to the UK Tonnage and Load Line regulations)

### ***Recommendation 4 – Immediate subordinate legislation***

*It is recommended that revised Registration Regulations 2018 be completed and submitted to ExCo for approval for them to be made.*

5.4.2 These are in progress will be submitted to ExCo in due course.

### ***Recommendation 4A – Subsequent subordinate legislation***

*As already stated the UK Tonnage and Load Line Regulations continue to apply to the Falkland Islands under the Merchant Shipping (Adoption of Legislation) Ordinance 1992 and so as part of the Law Revision programme these will be monitored so that any changes made to these in the UK are addressed.*

*It is recommended that once the Authority is designated and the appointment of the relevant staff is agreed, a prioritised analysis concerning all other applicable UK statutory instruments saved by section 312 of the Ordinance be carried out. The results of these will be used to produce policy and drafting instructions so that discrete Falkland Islands subsidiary legislation can be drafted. This will reduce the complexity of having to keep an eye on adopted UK laws and enhance accessibility of laws.*

5.4.3 In terms of the Harbours and Ports Ordinance 2017 there are new areas which the Ordinance introduces which will require regulations. These relate to pilotage and port state control (PSC). In relation to pilotage the Report makes it clear that there is a high risk associated with lack of legislation covering this and therefore as soon as a Maritime Authority is designated, if agreed, then the Authority must develop a pilotage regime for the Falkland Islands for safety reasons. There is also a need to review

existing regulations made under the old naval Ports Ordinance 1987 and the Harbours Ordinance 1902 so they are aligned to the new Ordinance.

***Recommendation 6 – Subordinate Legislation under the Harbours and Ports Ordinance 2017***

*It is recommended that after commencement of the Harbours and Ports Ordinance 2017 a review of existing regulations, orders, declarations and directions that will continue to apply under the new Ordinance be undertaken by the Authority. This will enable the Authority to make recommendations for their retention, replacement or amendment.*

*It is also recommended that the Maritime Authority, in its capacity as the Pilotage Board, if Members agree, will be responsible for considering whether pilotage services are needed and which areas should be subject to compulsory pilotage. This will enable the Authority to bring forward drafting instructions for regulations to be made under section 52 of the Ordinance.*

*It is further recommended that a review of the adopted UK Statutory Instruments (as saved under section 312 of the Maritime Ordinance) be undertaken to assess whether or not they are adequate for Port State Control purposes. At the same time an amendment to the Ordinance can be brought forward to extend the definition of PSC under section 3 of this Ordinance and draft regulations under section 42(j).*

5.4.4 Regulations for Port State Control will be necessary if progress is to be made in the development of the Harbours and Port Ordinance. The implementation of a pilotage regime is deemed vital to deliver improved safety within the confines of Stanley Harbour and its approaches and should be a priority to establish once the Maritime Authority is established.

**5.5 III Code, FIG obligations and legislative matters raised by the MCA**

As mentioned under paragraph 4.3 the Maritime and Coastal Agency has identified some matters which require legislative changes. These matters require providing for specific international Conventions to apply to the Falkland Islands. This ties in with the III Code obligations which require jurisdictions to “establish resources and processes capable of administering a safety and environmental protection programme”. Under this Code there is a mandatory audit which requires any territory which has adopted a maritime Convention to show how they comply with the Convention and the enforcement mechanisms in place. A Gap Analysis was carried out to determine what the Falkland Islands needs to do to comply with the obligations under the III Code.

5.5.1 Based on the outcome of the monitoring visit by the MCA pages 18-20 of the Report discusses the specific actions identified by the MCA and makes the following recommendations:

***Recommendation 5 – Legislative matters raised by the MCA***

- *LLMC – The Maritime Ordinance 2017 needs to be amended in Schedule 5 to give effect to the increases to the limits of liability that entered into force internationally on 8 June 2015.*
- *Nairobi Wreck Removal Convention – It is recommended that the law be amended to incorporate the requirements under this Convention.*

- *Bunkers Convention 2001 – It is recommended that the law be amended to incorporate the requirements under this Convention.*
- *Supplementary Fund Protocol 2003 - It is recommended that the law be amended to incorporate the requirements under this Convention.*
- *Codes of Practice for small commercial vessels – Analyse how well the Merchant Shipping (Small Workboats and Pilot Boats) Regulations 1998 (SI 1998 / 1609), as currently applied to the Falkland Islands, fit the requirements and establish associated survey and inspection regime.*

5.5.2 A list of areas for amendment to the Maritime Ordinance 2017 have already been compiled which encompasses some of this. Drafting resource has already been identified to progress this and a Paper with the amending legislation will be brought to ExCo at a later stage.

5.5.3 In order to prepare the Falkland Islands for the audit in 2020 a gap analysis has assessed international laws which FIG must adopt to be compliant with its III Code obligations. Therefore specific to this point the following recommendation is made:

***Recommendation 7 – III Code and FIG obligations***

*3. Consider the adoption of new or amending international instruments only in the context of the Code’s requirements.*

5.5.4 A list of areas for amendment to the Maritime Ordinance 2017 have already been compiled which encompasses this. Drafting resource has already been identified to progress this and a Paper with the amending legislation will be brought to ExCo at a later stage.

**5.6 Establishment of a Project Board**

Given all the significant and wide-ranging matters discussed above and the complexity of the actions to be taken it is recommended that a Project Board be established. Page 27 of the report discusses the scope and membership of the Project Board.

***Recommendation 8 – Establishment of a Project Board***

*It is recommended that a Project Board chaired by the Director of Natural Resources and managed by the Harbour Master should be formed to assist in the implementation of the new Ordinances, compliance with the III Code, the creation of a sustainable Maritime Authority and related matters.*

5.6.1 This has already in part been established. It will provide a forum of senior personnel to ensure progress is made to meet the core aims of commencing the Ordinances, setting-up the long-term Authority and developing III Code compliance.

**5.7 Designation of Harbours & Declaration of Ports**

The current designations of harbours and declarations of ports are saved so will continue under the new ordinance. In due course it can be considered if there should be any amendment to the list of such ports and harbours. In particular there may be the opportunity

to consider whether the Maritime Authority remit should extend to East Cove/Mare Harbour, and whether any synergies arise which could benefit BFSAI and FIG.

## **5.8 Relevance to Oil Readiness tasking**

5.8.1 There is currently a consultancy in Mineral Resources assessing the aptness of the Falkland Islands regulatory regime for oil development. The Service definition includes:

**REDACTED.**

5.8.2 The Terms of Reference include amongst other requirements:

**REDACTED**

5.8.3 There is an overlap between the regulatory framework for some oil related activities and maritime legislation inevitably where shipping is concerned. The oil related consultancy is due to report at the end of July. The indications are that the early commencement of the new maritime legislation is seen as a constructive step in relation to oil readiness. It is also possible that the oil related work may recommend some revised priorities in relation to implementing both the Harbour & Port Ordinance and the Maritime Ordinance. Any such adjustments can be accommodated in the work programmes and if specific resource is required due to time constraints that case can be made at the appropriate time.

## **6. Resource Implications**

### **6.1 Financial Implications**

Executive Council is not being asked to approve anything with a specific financial impact, but rather the paragraphs below highlight potential future financial implications.

6.2 Options for future delivery of a pilotage service has yet to be identified however models adopted by ports throughout the world and particularly those in the UK operate either on an in house scheme, a contracted service to the Authorities or are a totally private venture. It is anticipated that the later option will be the preferred choice in delivering this service in the Falklands. Regulated costs will be charged by the Pilotage operator to the ship owner / charterer as they are currently being undertaken by the current provider. Although FIG through the Maritime Authority and Pilotage Board will regulate pilotage requirements and validate pilot competencies it will not have the burden of its cost for the provision of the service. Full operating options will require further work and be presented for proposal to ExCo in due course.

6.3 Development of a Vessel Traffic Service (VTS) will incur costs for the acquisition and maintenance of equipment and appointment and training of personnel (see below). Premier Oil have stated that a VTS service will be critical to the delivery of Ship to Ship (STS) operations in Berkley Sound and without it they would not be able to fulfil their safety requirements to undertake STS operations. In consort with Primer Oil it will be the responsibility of the Marine Authority to identify, through Risk Assessment, the level of VTS required along with the geographical coverage of the service.

6.4 Human Resource Implications

6.5 None for the purpose of this paper. If the delivery of pilotage is achieved through the commercial sector then no additional impact on personnel is anticipated. However should a pilotage service not be outsourced in such a manner then additional resources will be required and will be presented in a future Executive Council paper.

6.6 Delivery of VTS services has the potential to require a number of additional staff particularly if a 24/7 365 capability is deemed necessary. Manning options and associated costs, including training and maintaining validation will be presented in a future Paper when the extent of the requirement is fully assessed and understood.

6.7 Other Resource Implications

None

## 7. Legal Implications

7.1 Most of the legal implications are covered under paragraph 5 and under the Report. As discussed under paragraph 5 there is a clear need for many laws to be drafted. The draft Implementation Plans attached as Annexes 2 -4 set out in detail the timelines to put these in place. Some of these legislative changes require immediate attention while some will take years to make. The approach taken is to keep the momentum going and to prioritise those matters which need immediate attention (i.e. to enable commencement of the legislation and to prepare for the III Code audit scheduled for 2020).

7.2 Annex 4 sets out proposed amendments to the Maritime Ordinance 2017 which have been identified from various work streams. As indicated the Maritime Ordinance 2017 cannot be commenced until various UK Orders in Council have been revoked, and consequently the commencement date is uncertain. An alternative would be to commence the ordinance in parts, commencing earlier those parts of the ordinance which do not depend on the revocation of the UK Orders in Council. However, providing the delay does not become excessive it is considered preferable to wait and commence the ordinance in its entirety. In the meantime work can be undertaken on the proposed amendments so that where approved they can be made in conjunction with commencing the ordinance or as soon as possible thereafter.

## 8. Environmental & Sustainability Implications

8.1 Parts of the new legalisation will provide protection for the maritime environment particularly that regarding pollution especially oil pollution at sea.

## 9. Significant Risks

9.1 There are significant risks in not proceeding with the legislation or developing the Maritime Authority. These relate to the Falkland Islands Government's ability to discharge its functions in relation to maintaining a Red Ensign register and its wider International Maritime Administration responsibilities including the IMO's III Code.

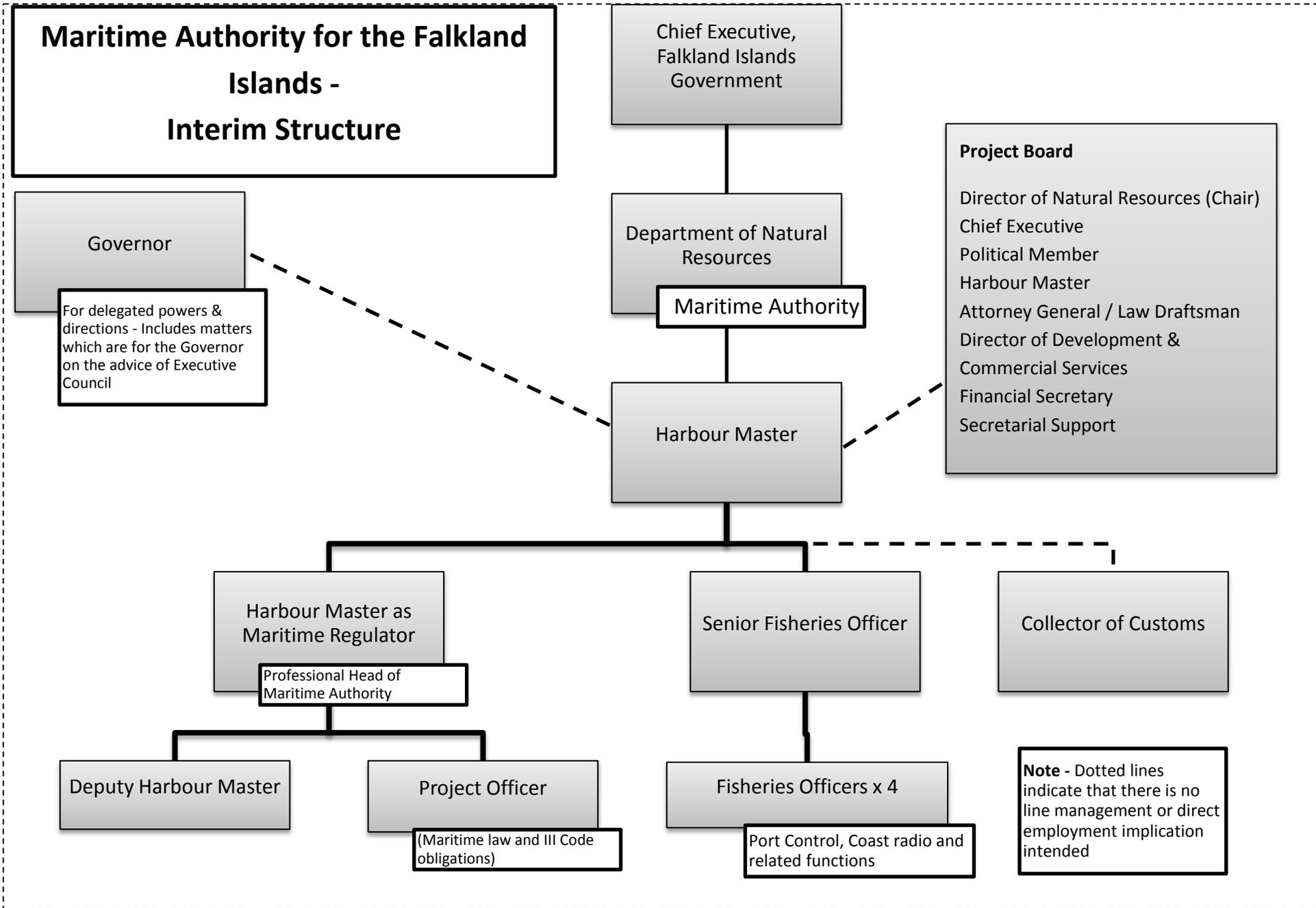
## **10. Consultation**

10.1 Full consultation was undertaken with MLA's during the Select Committee process in delivering the three maritime Ordinances for enactment. Consultation with the AGs department has been ongoing throughout the delivery of this paper. The Consultants recommendations have also had MCA oversight.

## **11. Communication**

11.1 The Harbour Master as Head of the Maritime Authority will communicate the implementation plan.

Annex 1



**Supply of Maritime Consultancy Services to the  
Falkland Islands Government**

# REPORT

## Falkland Islands

9 – 20 October 2017

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## **Executive Summary**

The Government of the Falkland Islands has made huge steps to modernise its maritime and port legislation. Provisions have been made for effective subordinate legislation and for the creation of a Maritime Authority to oversee all matters of port marine safety, safety at sea and protection of the marine environment. There is an across-the-board recognition that these steps are needed for the government to reduce their exposure to risk of a serious maritime incident and to meet its international obligations.

However, the legislation has yet to come into force and the Authority has not come into being. For the effort so far expended not to be in vain a further push is needed from all concerned and maritime matters will need to be a high government priority in the next two to five years. The Authority will need to move as quickly as practicable towards a form of governance which is free from conflicting interests. It is believed that a reasonable budget commitment is unavoidable for permanent (albeit relatively small) increases in the Harbour Master's staffing and resources.

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## **1. Background and Objectives**

Prior to the visit to the Falkland Islands by the maritime consultant, full access was given to all relevant legal and administrative documentation, including the maritime legislation under development, the Interim Policy and Legislation Report produced by Fisher Associates in November 2013 and the draft monitoring report produced by the MCA following their visit to the Islands in March 2017.

During his visit the consultant was accorded every courtesy and introduced to the geographical realities and organisational arrangements of the Islands. He met and discussed maritime matters in detail with key personnel both within the government and the private sector.

Objectives of the engagement –

These are reproduced in full at appendix 1. They can be summed up as an intention to support and help progress towards the implementation of the new Ordinances, establishment of the Maritime Authority and compliance with the IMO<sup>1</sup> Code for the Implementation of International Instruments (the III Code).

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<sup>1</sup> The International Maritime Organisation, which is the UN body responsible for all maritime matters.

## 2. Context - MCA visit and monitoring Report

### Extract from Draft Annex C – Recommendations from the 2017 Falkland Islands Monitoring Visit

Agenda Item / Recommendation	Priority / Completion Date
<p>Recommendation C - That FIG continue efforts to establish a Marine Harbours Authority to implement and fulfil the requirements of the Maritime Bill and the Harbours and Port Bill. Following discussions with FIG personnel, it is recommended that the proposed option to appoint a specialist consultant to advise on these matters is taken forward.</p> <p>In recognition of the fundamental requirement of the III Code that those bodies responsible for duties, obligations and responsibilities for flag, port and coastal states should establish resources and processes capable of administering a safety and environmental protection programme (ref. Paragraph 16 of the III Code), consideration should be given to confirming whether there is sufficient resources within the FIG to fulfil their maritime obligations.</p>	<p>High</p>

The consultant has taken full account of the range and scale of issues raised by the MCA. However, his work does not replace other actions considered necessary by the Falkland Islands' Government (FIG) or the MCA. Therefore due regard should be given to the recommendations in the MCA report.

At the heart is the need to develop fully the ability of FIG to meet its responsibilities as a Flag, Coast and Port State for Falkland Island ships and to enforce the related international Conventions for visiting ships. Achieving compliance with the Code will stand the Falkland Islands in a very good light internationally, it will improve safety at sea and reduce the liability for and potential of environmental damage.

Many actions will be driven by the introduction of the new Ordinances. The establishment of the Maritime Authority will allow it to assume responsibility for delivery. Much will then depend on an adequate degree of resourcing for the Harbour Master as the professional head of the Authority. Other outcomes depend on sufficient time being found for legal instructions to be developed and law drafting to take place.

It is hoped that what follows in this report will steer all concerned in the right direction.

### **3. The Maritime Authority and Role of the Harbour Master**

A maritime authority has three overarching functions:

1. Flag State responsibilities relating directly to ships registered within a territory, wherever those vessels operate around the world.
2. Coastal state responsibilities relating to all shipping within the territory's waters.
3. Port State responsibilities relating to enforcement of international obligations on foreign ships in the ports of the territory.

These functions include port and ship safety and security, seafarer welfare and safety, ship and port security, search and rescue, pilotage, accident investigation and environmental protection.

The Falkland Islands' Harbour Master is the sole professional expert in maritime matters. He works within a department which is supportive and helpful but it is also responsible for the major revenue stream derived from the licensing of the vessels used in the squid fisheries. Meanwhile ship registration is managed by tradition by the Collector of Customs whose department is also involved in setting harbour dues.

Relationships between these groups is very good. All recognised the need for an identifiable Maritime Authority, with the Harbour Master able to act independently as the regulator in maritime, harbour and port matters. Provisions have been made in Part 2 of the Harbours and Ports Ordinance 2017 for the establishment or designation of Authority and for defining its functions and responsibilities as well as those of the Harbour Master. The whole purpose of the Ordinance depends on this designation and many of the recommendations of the MCA then fall under the aegis of the new Authority.

The Ordinance gives wide scope as to where to place the Authority. The consultant understands that the initial preferred designation is within the Department of Natural Resources (DNR). As an interim step this may work if the Harbour Master can act with full professional freedom. However, the Authority really will not be free of perceived conflicts of interest unless it can stand outside an operational government department.

### Recommendation 1 – Interim Designation of Authority

A designation under section 4 of the Harbours and Ports Ordinance 2017 could be agreed as soon as possible. This would make the Department of Natural Resources the interim Maritime Authority. It should include a statement of the scope of the Authority, its duties and functions as well as related duties and functions of the Harbour Master, as the professional head of the Authority. (These matters are addressed in more detail below and a draft designation is included at Appendix 4 using a similar format to that for the Director of Civil Aviation).

### Recommendation 1A – Longer-term Designation of Authority

A longer-term Designation is needed which would place the Authority outside potential conflicts of interest. Whether that should be inside government or as an external agency is a matter for further consideration. Physical relocation should also be planned as this will illustrate the separation of the regulatory role from the operational or commercial interests of government.

### Scope of the Authority

Both the Harbours and Ports Ordinance 2017 and the Maritime Ordinance 2017 give specific powers, duties and functions to the Maritime Authority. These are listed in Appendix 6 of this report. Further functions and responsibilities may be conferred by section 4(3) of the Harbours and Ports Ordinance. These should include an overarching scope with the purposes of protecting shipping, the safety, welfare and security of life at sea and the environment as far as is reasonably possible. This could be stated as follows:

*“The Maritime Authority is to regulate ports and harbours, Falkland Island ships, merchant shipping and seafarers in the waters of the Falkland Islands and related Flag, Coastal and Port State responsibilities in accordance with the III Code, relevant maritime and labour Conventions. Unless otherwise stated, the Authority will have the responsibility as the Administration under these Conventions”.*

## Role of Harbour Master

In addition to the responsibilities that the post-holder has in law and in his job-description, the Harbour Master would be the professional head of the Maritime Authority. He would be expected to carry out most of those duties and functions allocated to the Authority in law. These are tabulated at Appendix 6 but a broad statement of intent is recommended as well:

*Unless and until stated otherwise, the Harbour Master in his capacity as the Falkland Islands' Marine Officer and professional head of the Maritime Authority, is to carry out the functions and responsibilities of the Authority under this ordinance or any other law.*

This is notwithstanding that for the time being it is recognised that the Harbour Master remains a part of the DNR and answerable for administrative, employment, budget and other non-enforcement matters through his Director.

The role of the Harbour Master should include key search and rescue aspects of the role of the Receiver of Wreck, with the Collector of Customs remaining responsible for custody of recovered cargo, ownership and related matters.

The Harbour Master is not directly involved with the day-to-day management and operation of the port as this is the concern of a private contractor (*Atlink*). He is, however, much engaged with the maintenance of its ageing infrastructure and involved with the setting of harbour dues. Under the Harbours and Ports Ordinance 2017 (sections 27 to 29) the Maritime Authority would set those dues in future.

In this respect, concepts have been conflated and the Ordinance treats the Authority as a commercial port operator whilst also clearly intending it to be the Government's maritime administration. This presents a significant problem for its independent regulatory functions. The obligation to carry out Port State Control would be especially compromised, "*1.8.3 The PSCOs and the persons assisting them should have no commercial interest, either in the port of inspection, or in the ships inspected<sup>2</sup> ...*"

A possible way forward is for the Authority to delegate the setting as well as the collection of harbour charges to the private port operator<sup>3</sup>.

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<sup>2</sup> Procedures for port state control, 2011 as adopted by IMO Resolution A 27/Res.1052

<sup>3</sup> See Appendix 4

Whether or not a future port operator may one day be given powers to raise harbour charges, steps should at least be taken to ensure that the structure of the Maritime Authority clearly separates the Harbour Master from fee setting and commercial port matters. It should be possible to make these clarifications within the definitions of the scope of the Authority and the Harbour Master.

There is a second similar issue: The new Maritime Ordinance requires the appointment of a Chief Inspector of Marine Accidents. This role falls naturally to the Harbour Master and as such would avoid additional resources being created<sup>4</sup>. However, the need could occur to investigate an incident concerning government owned or operated vessels. The international standard<sup>5</sup> states, "*The investigator(s) carrying out a marine safety investigation should have functional independence from:*  
.1 *the parties involved in the marine casualty or marine incident;*  
.2 *anyone who may make a decision to take administrative or disciplinary action against an individual or organization involved in a marine casualty or marine incident; and* .3 *judicial proceedings.*"

As with the matter of harbour dues, the structure of the Maritime Authority and the reporting lines of the Harbour Master must clearly make an appropriate separation between parties. This would be further assisted if regulations made with respect to accident investigations lay down rules as to when the Harbour Master should invite an external accident investigator to carry out an investigation on his behalf and when it could be deemed safe not to do so.

In conclusion, the Harbour Master needs independent reporting lines for his professional role and a clear exclusion from commercial operations.

### Shape of the Authority

The new Harbours and Ports Ordinance is *silent* as to the Authority's structure, membership and governance. Given that its functions are substantive, the designation of the Authority should specify these matters<sup>6</sup>. An initial shape and membership could be as follows -

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<sup>4</sup> A new appointment could be made as Chief Inspector of Accidents who could also be responsible for Port State Control. He or she would sit outside the government structure and the Maritime Authority. However, in a small jurisdiction needing to keep control of costs and prevent a burgeoning bureaucracy this may be undesirable and not cost effective.

<sup>5</sup> At 16.1.1 of IMO Resolution MSC.255(84), Casualty Investigation Code

<sup>6</sup> See appendix 4 for a possible draft designation

## Interim Structure

- To sit in Department of Natural Resources (DNR)
- HM as Maritime Regulator
- Staff – DHM, Project Officer
- Senior Fisheries Officer and 4 Fisheries officers linked as these carry out port control, coast radio and related functions
- Within DNR for budget, harbour dues and other fees
- Dotted line reporting of Registrar to HM
- Report to Project Board on quarterly basis
- No additional costs incurred as DHM and Project officer have already been budgeted for.

For the Authority to pass the critical regulatory independence test, a second designation would follow as soon as possible, as referred to Recommendation 1A above -

## Long-term Structure

- To sit outside departmental structure
- Overseen by Chair appointed by FIG
- Funding by registration and other fees under Maritime Ordinance and dividend paid by commercial port operator
- HM as Maritime Regulator
- Annual Report to ExCo
- Staff – HM, DHM, Chief Surveyor, Maritime Legal officer / Registrar, an Admin Officer and appropriate staff for Vessel Traffic Services<sup>7</sup> (VTS)
- Financial Secretary ensures adequate budget and oversight of dues and fees.

Notes –

### 1. Staffing

1.1 The Chief Surveyor does **not** need to be full-time. A contract for services with a surveyor already working for other Red Ensign Group jurisdictions would be perfectly adequate. The appointment would allow the Authority to carry out surveyors, issue safety, passenger and cargo certificates and manage small commercial craft on behalf of FIG. An

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<sup>7</sup> Referred to in more detail later in this report.

appropriate appointee would also be able to oversee, advise or even carry out PSC and accident investigation matters.

1.2 As with any maritime jurisdiction, there is a long-term requirement to maintain and develop the relevant legislation and ensure government is compliant with its international obligations. The Project Officer role should therefore evolve and would therefore be better described as a Maritime Legal Officer function. This person would **not** need to be a qualified lawyer but should certainly have maritime legal knowledge. He or she could also adequately fill the role as Registrar unless there was a dramatic increase in Falkland Islands' registered shipping.

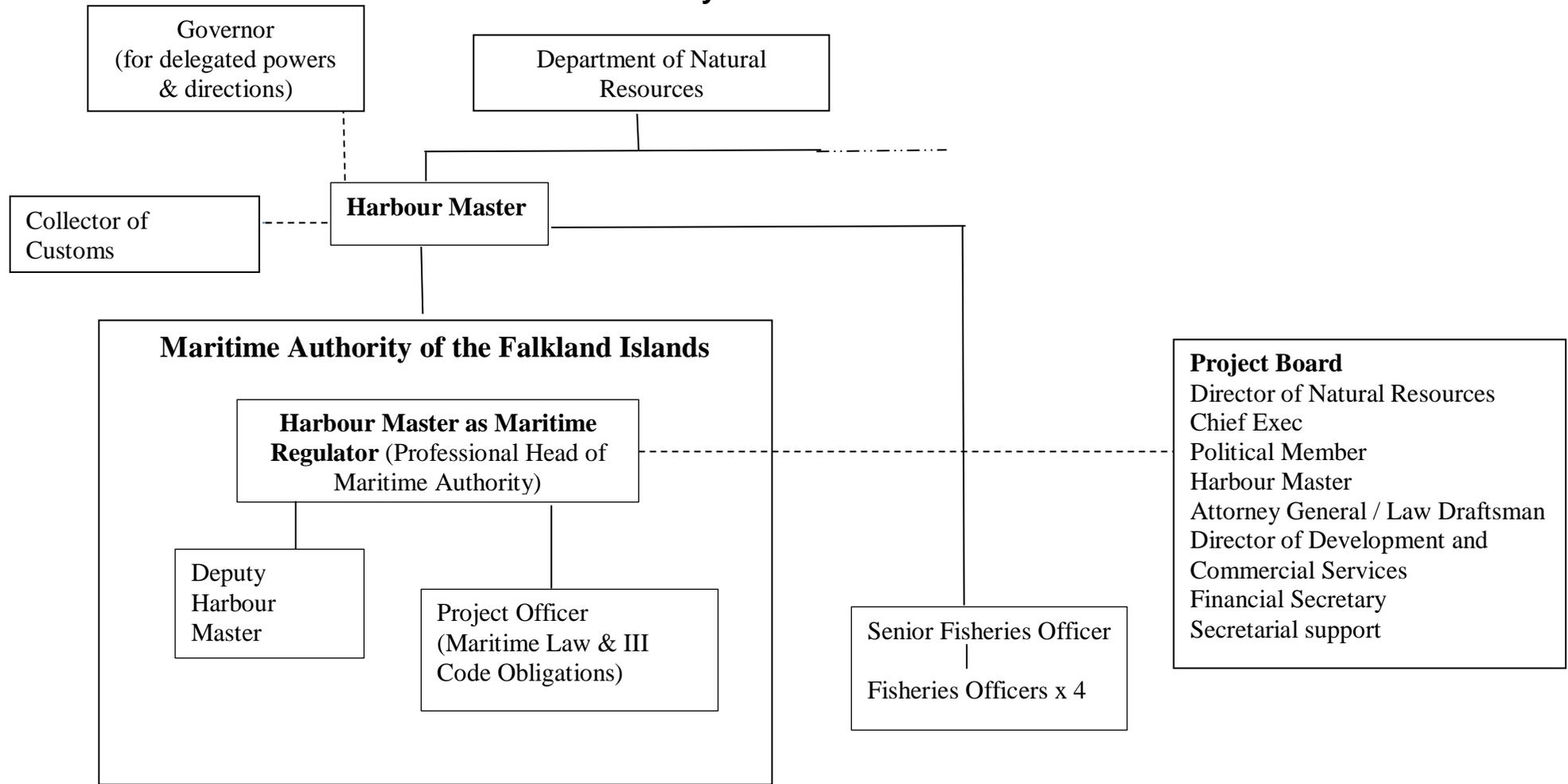
Costs - These are incurred to fund the Chief Surveyor and in replacing the Project Officer with a permanent Maritime Legal officer / Registrar. The Admin Officer would also be additional unless savings made elsewhere. Some VTS officers might be drawn from existing Fisheries resources, if appropriately trained and fully integrated into the Authority.

Recommendation 2 – Meeting International Obligations and Regulatory Independence

Ensure the structure, governance and location of the Authority properly reflect the need to meet the government's international obligations, for professional independence and for the Harbour Master to carry out effective enforcement and regulatory functions.

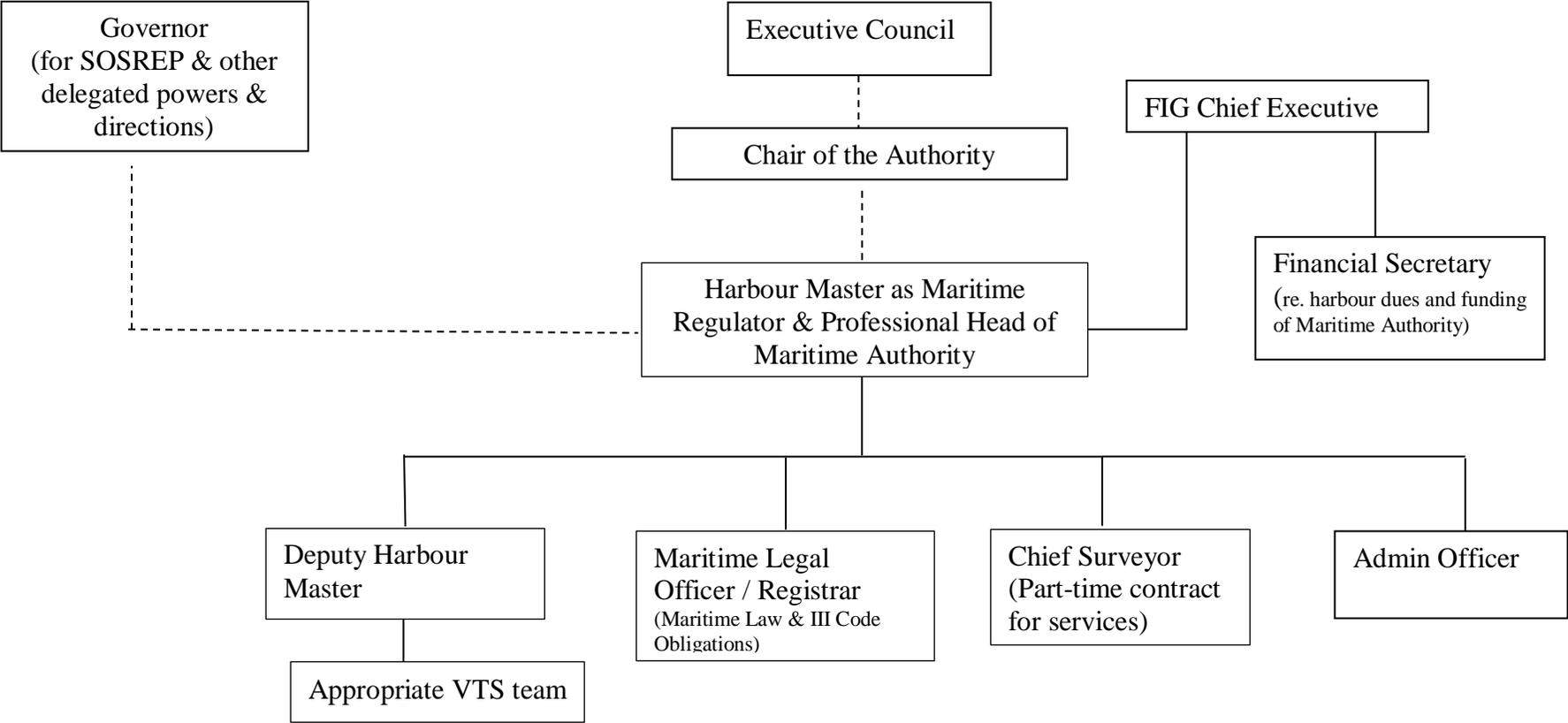
*Organograms shown on following two pages*

## Maritime Authority of the Falkland Islands – Possible Interim Structure



Note – Dotted line links indicate there is no line management or direct employment implication intended.

# Maritime Authority of the Falkland Islands – Long-term Structure



Note – Dotted line links indicate there is no line management or direct employment implication intended.

#### **4. Coming into force of the new maritime and ports Ordinances**

The Harbours and Ports Ordinance 2017, the Maritime Ordinance 2017 and the Merchant Shipping (Adoption of Legislation) (Amendment) Ordinance 2017 have been passed by the legislature and gazetted.

##### The Maritime Ordinance

The coming into force of the Maritime Ordinance will trigger the disapplication of certain UK Acts and Statutory Instruments (insofar these apply to the Islands) and as such a request is to be made to the UK to prepare the necessary Order in Council. It is understood the UK could take up to a year to do this due to other pressures.

This time can be put to good use in drafting the most important of the necessary subordinate legislation referred to below. Once that legislation is ready, a commencement date can be set for both the Maritime Ordinance and the Merchant Shipping (Adoption of Legislation) (Amendment) Ordinance.

An alternative has been suggested which is to commence the Maritime Ordinance in parts to allow those parts not dependent on the UK to go ahead more quickly. However, this will generate further analysis and legal work when the time could be better spent on progressing the required subordinate legislation.

##### The Harbours and Ports Ordinance

This Ordinance does not appear to require the repeal or disapplication of any UK legislation. Regarding the introduction of subordinate legislation it is a permissive Ordinance and there appear to be *no* absolute requirements to introduce subordinate legislation.

The one absolute requirement occurring on commencement is that of establishing or designating the Maritime Authority under section 4(1). Bringing the Authority into existence would create the much-needed impetus and duty to progress with key safety matters provided for in the Ordinance.

Not least amongst these duties are the matters of Vessel Traffic Services and pilotage. It is rare for a jurisdiction dependent on the sea, with a dangerous coastline and complex coastal navigational, to have no areas

where compulsory pilotage is required, no formal pilotage service or VTS. This is a high-risk situation where safety at sea and the protection of the environment may both be threatened. Arguably it does not sit comfortably with government obligations as laid down by the International Maritime Organisation (IMO), such as Assembly Resolutions A.158 and A.159 and the SOLAS obligation reproduced at Appendices 9 and 10. The grounding of the fishing vessel LOITADOR on 15 July 2017 with the subsequent spillage of oil, is one recent example of where compulsory pilotage would have almost certainly prevented the incident<sup>8</sup>.

Section 43 of the Ordinance requires the Authority to keep these matters under consideration. The Authority would then be expected to make provision for a service and define compulsory pilotage areas for certain ship types and size. It is understood that this is already viewed as high-priority by the Harbour Master.

Once the draft designation has been approved and with the Ordinance in place, two of the highest priorities of the newly established Authority would thus be to develop the framework for VTS and pilotage.

### Recommendation 3 – Primary Legislation

1. As soon as the draft designation referred to under Recommendation 1 has been agreed, set a commencement date for the Harbours and Ports Ordinance.
2. Alert the United Kingdom to prepare the Order in Council to disapply the relevant UK Acts and Statutory Instruments (insofar these apply to the Islands).
3. As soon as the registration regulations are ready, set appropriate commencement dates for the Maritime Ordinance and the Merchant Shipping (Adoption of Legislation) (Amendment) Ordinance.

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<sup>8</sup> <http://en.mercopress.com/2017/11/10/spanish-vessel-fined-15-500-for-oil-spill-in-the-falklands>

## 5. Prioritisation of Subordinate Legislation

### Maritime Ordinance 2017

Section 312 of the Ordinance ensures that key UK statutory instruments, (modified as specified in the Merchant Shipping (Adoption of Legislation) Ordinance 1992) will continue to apply after the Ordinance has come into force, as long as such legislation is not inconsistent with the Ordinance. At the same time, as and when these statutory instruments are revoked or amended in the UK, section 312 provides for the revocation or amendment to apply automatically to the Falklands. This is an important mechanism, providing the Maritime Ordinance with a ready-made set of subordinate legislation.

Notwithstanding the value in this approach, it leaves the possibility that the UK legislation could be inconsistent with the Maritime Ordinance. At the same time, there is a need to be aware of the effect any amendment or revocation of the UK legislation would have locally.

The fifty-two applicable UK instruments are listed at appendix 5. To replace these, work on new Registration Regulations are well-advanced. Both the current Tonnage<sup>9</sup> and Load Line<sup>10</sup> legislation **are adequate** for the time-being and will ensure that the right legislation is in place for the registration of ships. Analysis of the remainder is advisable in priority areas as bespoke Falkland Island subordinate legislation may be needed in due course.

#### Recommendation 4 – Immediate subordinate legislation

Complete the draft Registration Regulations and submit these for endorsement by the Governor.

#### Recommendation 4A – Subsequent subordinate legislation

1. Maintain a watching brief on UK Tonnage and Load Line Regulations as they apply to the Falkland Islands.
2. Carry out prioritised analysis concerning all other applicable UK statutory instruments that have been saved by section 312.

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<sup>9</sup> See Appendix 2

<sup>10</sup> See Appendix 3

## MCA recommended subordinate legislation – international instruments

An outcome of the MCA's visit to the Islands in March 2017 was the recommendation that high priority consideration was given to introducing certain new or amending international Conventions -

Agenda Item / Recommendation	Priority / Completion Date
<p>Recommendation E - Following publication of the Maritime Bill, it is recommended that FIG strongly consider and seek extension of the following Conventions for the benefits/protection offered to Falkland Islands territorial waters:</p> <ul style="list-style-type: none"><li>- LLMC 1996 (to supersede LLMC 76), and the new increases to the limits of liability that enter into force internationally on 8 June 2015 (which were agreed under the tacit amendment procedure);</li><li>- 2002 Athens Protocol (to supersede Athens Convention 1974);</li><li>- Nairobi Wreck Removal Convention;</li><li>- Bunkers 2001 Convention; and</li><li>- FUND Protocol 2003.</li></ul>	High

### LLMC 1996 –

This continues to have the force of law in the new Maritime Ordinance but the limits of liability applicable from 8 June 2015 have not been introduced. Therefore, **only an amendment is needed** to Article 6 in Schedule 5 of the Ordinance as provided for by section 194(4).

### 2002 Athens Protocol –

The Ordinance at section 193 and in schedule 4 shows that the Athens Protocol will be given the force of law as soon as the Ordinance itself comes into force. **No further action is required.**

### Nairobi Wreck Removal Convention –

Amongst other matters, this Convention makes the owner of a vessel liable for the costs of locating, marking and removing a wreck. In terms of cost, navigational hazards and potential damage to the environment this must be regarded as of very high importance to safeguard Falkland Island waters. Under the Convention, both Falkland Island registered shipping

and ships in Falkland Island waters (of 300gt and over) are also bound to take out compulsory insurance against such loss, providing security for the Falkland Islands Government. Hence, it is strongly advised that law drafting is prepared for the Convention to have the force of law in the Falklands.

To introduce the Convention into United Kingdom law, the UK amended their Merchant Shipping Act 1995 by a separate Act (the Wreck Removal Convention Act 2011). The 1995 Act has provision at section 315 to extend this to Overseas Territories. Legal advice will be needed as to whether regulations under section 310 of the Maritime Ordinance, a separate amending Ordinance or a request for a UK Order to apply the UK Act directly is the right way to go.

#### Bunkers Convention 2001 –

Quoting from the IMO website, *“The Convention was adopted to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage caused by spills of oil, when carried as fuel in ships’ bunkers ..... Another key provision ..... allow[s] a claim for compensation for pollution damage to be brought directly against an insurer. The Convention requires ships over 1,000 gross tonnage to maintain insurance ...”*

There are eighteen ships on the Falkland Island register which are over 1,000gt. Ships visiting the Falklands or transiting Falkland Island waters may also pose a risk. It is for FIG to decide if the risks associated here are significant before embarking on law drafting. If it is decided to proceed, regulations may be possible under the Maritime Ordinance. Whilst this was the route taken by the UK, it concerned implementation of an EU Council Decision and was based on powers under the European Communities Act of 1972. Whether there is the *vires* in the Maritime Ordinance to make regulations for the Bunkers Convention will be subject to legal advice.

#### FUND Protocol 2003 –

The Protocol to the 1992 Fund Convention created a separate supplementary fund as the cost of clean-up and compensation from an oil

disaster now far outweighs what was available through the original Fund and Liability Conventions of 1992<sup>11</sup>.

Drafting instructions could be developed for the supplementary fund protocol to sit alongside the existing liability and compensation schemes provided for in the Maritime Ordinance. There does not appear to be a regulation-making power for this, so an amending Ordinance may be needed.

MCA recommended subordinate legislation – other matters

A medium-term goal is set by the MCA for FIG to continue development of a survey and certification regime for small craft (under 24m LOA).

Agenda Item / Recommendation	Priority / Completion Date
<p>Recommendation J - FIG to continue efforts to introduce a staggered implementation of a survey and certification scheme for domestic small commercial vessels (&lt;24m in length) operating within FI territorial waters. This includes consideration of:</p> <ul style="list-style-type: none"> <li>• The introduction of the MCA Codes of Practice as the required standard;</li> <li>• Establishing the availability of a local small craft surveyor/examiner approved by a MCA Certifying Authority (MECAL, SCMS, YDSA or IIMS); and</li> </ul> <p>The introduction of a local Boatmaster syllabus based on examples provided by the and to look at developing a sea survival / radio / first aid course suitable to FIG.</p>	<p>Medium</p>

Whilst the UK Statutory Instrument applicable to small workboats and pilot boats *is* extant and saved by section 312 of the Ordinance, some law drafting may be needed for subordinate legislation under section 84 to make the provisions applicable to commercial craft in use for sport and leisure and allow for local variation by FIG. Further guidance can be given in developing these measures.

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<sup>11</sup>The current funds available are a maximum of 203 million Special Drawing Rights (SDR). This would rise to 750 million. As of 27 November 2017 there are 0.94 SDR to £1.00 so this represents a change from a maximum of approximately £191m to £705m.

## Recommendation 5 – Legislative matters raised by the MCA

1. LLMC - An Order is required to amend Schedule 5 giving effect to the increases to the limits of liability that entered into force internationally on 8 June 2015.
2. Athens protocol 2002 - No action required.
3. Nairobi Wreck Removal Convention – It is recommended that this is added to the law drafting programme. An amending Ordinance may be needed rather than subordinate legislation.
4. Bunkers Convention 2001 – Consider whether this is a high priority. If it is decided to proceed advice will be needed to establish the *vires* to make subordinate legislation.
5. Supplementary Fund Protocol 2003 - It is recommended that this is added to the law drafting programme. An amending Ordinance may be needed rather than subordinate legislation.
6. Codes of Practice for small commercial vessels – Analyse how well SI 1998 / 1609, as currently applied to the Falkland Islands, fits the requirements and establish associated survey and inspection regime.

## Harbours and Ports Ordinance 2017

The Naval Ports Ordinance 1987 and the Harbours Ordinance 1902 are repealed by section 57(1). The savings provisions in section 57(3)(b) maintain existing regulations and orders made under those ordinances but only as long as such legislation is not inconsistent with the Ordinance and until they are revoked. It appears that no UK legislation is involved.

As already stated the new Ordinance places no absolute duty to bring in new regulations. However, as with the Maritime Ordinance, analysis is advisable. This will ensure it is properly understood how well the existing regulations fit. At the same time a review of any current declarations and directions made by the Governor could take place. A list of priority new regulations, orders, declarations and directions, or amendments to these, can then follow, two of which are dealt with below -

## Pilotage –

The development of a pilotage regime is very much supported for sound safety reasons. Before pilotage regulations can be made under section 52, the Maritime Authority must first fulfil its duty under section 43(1) to consider whether pilotage services are needed and which areas should be subject to compulsory pilotage. The Authority will at the same time need to address its related duties under Part 5 of the Ordinance concerning the authorisation of pilots, pilotage directions, pilotage exemption certificates and all related matters.

## Port State Control (PSC) –

In their monitoring report, PSC is regarded as a medium-term goal by the MCA. Several UK Statutory Instruments saved under section 312 of the Maritime Ordinance provide for PSC.

However, if these provisions are not adequate, regulations can be made under section 42(j) of the Harbours and Ports Ordinance. In this case, care will be needed as the definition of PSC in section 3 of the Ordinance is narrow and only concerns safety and manning. PSC should also be carried out regarding pollution prevention and control, security and seafarer welfare. It may be advisable therefore to consider an amendment to the Ordinance to provide for a wider definition. For example, this might empower PSC to take place, "For all purposes of effective enforcement of relevant international maritime or labour Conventions".

It has been noted that there is a perceived conflict of interest in the Maritime Authority both having the power to exercise PSC and to impose Harbour Dues. Care will therefore be needed to ensure that the regulations do not empower an officer to carry out PSC if that person also has duties or influence in the matter of setting or collecting dues or other commercial port matters.

Recommendation 6 – Subordinate Legislation under the Harbours and Ports Ordinance 2017

1. Review existing regulations, orders, declarations and directions that will continue to apply under the new Ordinance and make recommendations for their retention, replacement or amendment.
2. The Maritime Authority, in its capacity as the Pilotage Board, to consider whether pilotage services are needed and which areas should be subject to compulsory pilotage, bringing forward drafting instructions for regulations under section 52 of the Ordinance.
3. Only if existing UK Statutory Instruments (as saved under section 312 of the Maritime Ordinance) are not adequate for Port State Control purposes, extend the definition of PSC under section 3 of this Ordinance and draft regulations under section 42(j).

## 6. III Code and FIG Obligations

The IMO adopted the Code in 2011. The associated mandatory audit scheme commenced on 1 January 2016. This requires territories which have adopted a maritime Convention to show that they comply with and can enforce that Convention. The Falkland Islands as an Overseas Territory of the UK have the same obligations to ensure compliance and prepare for the audit as any other territory.

The MCA has supported all members of the Red Ensign Group in preparation for the audit both at a one-to-one level and through their annual conference. It is for each jurisdiction to “*establish resources and processes capable of administering a safety and environmental protection programme*” as referred to in paragraph 16 of the Code. The MCA recommend that consideration be given as to whether sufficient resources exist within FIG to meet these maritime obligations.

### The Gap Analysis

To the credit of FIG and especially the current and previous Harbour Masters, it is understood that a gap analysis has been carried out. There is a genuine awareness of the Code and a desire to fulfil international standards. This was apparent across the board, from the Governor, Chief Executive, the Attorney General’s office and the Director of Natural Resources amongst many others.

Small jurisdictions are not expected to fulfil every aspect of a Convention’s requirements. Category 2 registers within the Red Ensign Group do not have all the obligations of an unrestricted category 1 register. In a similar way, SOLAS chapter V obligations to make weather reports under regulation 4 or provide ice patrols for the North Atlantic under regulation 6 fall to the UK as the nation state than to individual Overseas Territories. The annex to Resolution A.1070(28) of the IMO puts this as follows:

*“Different States will view this Code according to their own circumstances and should be bound only for the implementation of those instruments to which they are Contracting Governments or Parties. By virtue of geography and circumstance, some States may have a greater role as a flag State than as a port State or as a coastal State, whilst others may have a greater role as a coastal State or a port State than as a flag State.”*

For the Falkland Islands’ Government, the gap analysis was the right place to start. The analysis now needs to take account of comments by

the MCA in their monitoring report regarding SAR capability and coastal state responsibilities.

The gap-analysis must be a continuously changing document where each gap is addressed and progress made. Where gaps in compliance cannot be closed this needs to be noted. Whilst the management and oversight of this process may best rest with the newly formed Maritime Authority, different departments within government will have a role in this according to their responsibilities. A sound way forward is to ensure each department and responsible individual knows which areas of the Code are their concern and for all responsible to meet regularly to review progress against the gap analysis<sup>12</sup>.

*Review meetings need to become an embedded process and part of the culture, duly planned with an agenda and Minutes. This will be a major step in showing the UK and any future IMO audit that a system is in place and is working.*

## The Strategy

The Annex<sup>13</sup> to the Resolution has much useful guidance. The formation of a written strategy is recommended as follows:

### *Strategy*

3 *In order to meet the objective of this Code, a State is recommended to:*

- .1 develop an overall strategy to ensure that its international obligations and responsibilities as a flag, port and coastal State are met;*
- .2 establish a methodology to monitor and assess that the strategy ensures effective implementation and enforcement of relevant international mandatory instruments; and*
- .3 continuously review the strategy to achieve, maintain and improve the overall organizational performance and capability as a flag, port and coastal State.*

This strategy needs to be agreed at the highest level and published. In this way, commitment is shown across government and will help those charged with carrying the strategy forward.

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<sup>12</sup> In Jersey the need for a hydrographic programme stimulated the formation of a cross-departmental group that went on to oversee III Code compliance - <https://www.gov.je/Government/PlanningPerformance/Pages/MinisterialDecisions.aspx?showreport=yes&docid=0F96BFA7-42EC-4483-9B99-191AF7CAAD56>

<sup>13</sup> Annex to IMO Resolution A.1070(28), p 4. An extract can be found at appendix 7 of this report.

It is recommended that the strategy includes (i) a clear mechanism for closing the gaps in the gap-analysis and (ii) identifying the consequences of adopting new or amending international instruments, so that there are no unmanageable resource requirements on the government.

Recommendation 7 – III Code and FIG obligations

1. Ensure III code review meetings take place to focus on closing the gaps identified in the gap analysis. This should meet frequently (perhaps monthly for the first year) at officer level and would seek endorsement of the Project Board (as referred to below) at least annually.
2. Adopt a formal strategy approved by the Project Board and Executive Council for the implementation of the Code in accordance with IMO recommendations.
3. Consider the adoption of new or amending international instruments only in the context of the Code's requirements.

## 7. Project Board

There are significant and wide-ranging matters which impact on the good governance and international reputation of the Islands: The new Ordinances, the formation of the Authority and the III Code potentially affect the economy, other government departments and private businesses. To be successful in implementation, the Authority will want to keep FIG fully engaged and supportive.

The Chief Executive expressed support for a Project Board. This can be chaired by the Director of Natural Resources. It will need secretarial support, either from the Chief Executive's department or DNR. The Harbour Master would fulfil the role of the Board's executive officer.

### Possible Scope

- Support the initial designation of the Maritime Authority.
- Ensure the implementation of the new Ordinances and their subordinate legislation.
- Review progress concerning implementation of the III Code, the associated strategy and gap analysis.
- Review progress against the recommendations of this report and the MCA monitoring visit.
- Assist in planning for the long-term governance and possible relocation of the Maritime Authority.
- Assist in providing the relevant resources.

### Membership

- Chair – Director of Natural Resources
- Chief Executive
- Political Member of the Executive Council and / or politician responsible for DNR
- Harbour Master as Board's executive officer
- Attorney General and / or Law Draftsman
- Director of Development and Commercial Services
- Project Officer (to evolve into Maritime Legal Officer / Registrar)
- Financial Secretary
- Secretarial support

## Frequency of Meetings and Longevity of the Board

It should be adequate for the Board to meet quarterly from the outset. This could reduce in time according to progress.

It is not necessary to envisage the existence of the Board as permanent. Once the primary legislation is in force, clear progress being made against the law drafting programme and the Maritime Authority has been established with a long-term structure the Board can stand down. Oversight would continue as a minimum through an annual report by the Authority submitted to the Executive Council.

### **Recommendation 8 –**

A Project Board chaired by the Director of Natural Resources and managed by the Harbour Master should be formed to assist in the implementation of the new Ordinances, compliance with the III Code, the creation of a sustainable Maritime Authority and related matters.

## 8. Summary of Recommendations, Options and Risks

<b>Recommendation</b>	<b>Option – Desirable or Obligatory</b>	<b>Risk and/or cost if not carried out</b>	<b>Cost of carrying out recommendation</b>
1. Interim Designation of Authority	Desirable	Without the interim body as a stop-gap FIG continues to be exposed & funding for the long-term solution is then required immediately.	Nil
1A. Long-term designation of Authority	Obligatory – legal requirement under H&P Ordinance	The interim (and in effect virtual) Authority with no clear identity may fail to be effective and would not meet IMO / III Code standards.	Cost of relocation. Staff costs dependent on final arrangement and savings elsewhere.
2. International Obligations and Regulatory Independence	Obligatory	Failure to meet IMO / III Code standards and compromises HM position.	
3. Primary Legislation	Obligatory	Most other Recommendations fall without the new Ordinances.	Law drafting time
4. Immediate Subordinate legislation - Maritime Ordinance	Desirable	The Maritime Ordinance may not be fit for purpose without the new Registration Regulations.	Law drafting time
4A. Subsequent subordinate legislation - Maritime Ordinance	Desirable	The analysis should go ahead but subsequent legislation may be programmed according to resource commitments without undue risk.	Law drafting time

<b>Recommendation</b>	<b>Option – Desirable or Obligatory</b>	<b>Risk and cost if not carried out</b>	<b>Cost of carrying out recommendation</b>
5. Legislative matters raised by the MCA	Desirable	Reputational damage, potential liabilities regarding wreck removal and oil pollution clean-up	Law drafting time
6. Subordinate Legislation under the Harbours and Ports Ordinance 2017	Desirable	If no Regulations developed for PSC and pilotage, there is heightened risk of loss of life at sea, environmental and reputational damage.	Law drafting time. Subsequent resources for pilotage service
7. III Code and FIG obligations	Obligatory	III Code is mandatory for all maritime jurisdictions. The cost of failure includes a risk to life at sea and environmental damage as well as reputational damage and regulatory action by UK	Obligations include enforcement through PSC, provision of SAR, VTS and hydrographic services. Costs need to be quantified.
8. Project Board	Desirable	Without the Project Board it may be more difficult to maintain high-level engagement and agreement.	Secretarial services, which may be within present resources.

## **Appendices**

1. Objectives of the Maritime Consultancy
2. Advisory Notes - Tonnage Regulations
3. Advisory Note – Load Line Regulations
4. Draft Designation of the Authority
5. Harbour Master’s Functions – some priorities
6. Commercial Port Matters
7. Table of UK legislation that would continue to apply in the FI
8. Table of powers and functions and recommended designations
9. III Code – Extract from the Annex to IMO Resolution A.1070(28)
10. Pilotage and VTS – IMO Resolutions
11. VTS – extract from SOLAS Chapter V, Regulation 12

PGHB  
12/02/2018  
Updated 02/05/2018

## **Objectives of the Maritime Consultancy**

To provide advice on what a future Maritime Authority might look like (scale, scope & structure) taking account of:

- Modern Maritime & Harbour administration/governance capable of discharging its functions in accordance with the law and international obligations.
- The introduction of the new legislation recognising that the provisions of the Ordinances may be phased particularly with regard to secondary legislation.
- ILL Code and FIG obligations in relation to international maritime Conventions which have been extended to the Falklands.
- The range and scale of issues set out in the March 2017 MCA monitoring Report.

To set out cost and other resource implications in relation to the recommendations.

To consider the appropriate separation between the regulator and the operator of facilities and vessels.

To recognize that there will not necessarily be a unique answer on all issues and to set out options for consideration. In this context recommendations should be differentiated between what is essential and what might be desirable.

To take account of existing FIG resources and potential private sector opportunities with delivery achieved as efficiently as possible.

## **2.1 Advisory Notes - Tonnage Regulations under the Maritime Ordinance 2017**

### **Background**

For vessels to be registered in the Falkland Islands, tonnage regulations need to be in place. For vessels on international voyages and which are 24m or more in length, the regulations are to be in accordance with the International Tonnage Convention of 1969.

### **The Legislation**

Sections 17 to 19 provide for tonnage calculated according to regulations made by the Governor. At the same time, section 312(4) saves certain UK statutory instruments, as amended by the Merchant Shipping (Adoption of Legislation) Ordinance 1992.

The Merchant Shipping (Tonnage) Regulations 1997 as amended up to 2005 and the Merchant Shipping (Fishing Vessels - Tonnage) Regulations 1988 as amended up to 1998 are the most up-to-date and currently in-force UK tonnage regulations.

These UK regulations have been considered against the requirements in the relevant sections of the Maritime Ordinance 2017. They have also been considered against the Tonnage Convention. As amended by the Adoption of Legislation Ordinance 1992 so as to apply in the Falkland Islands, they appear consistent and they meet the requirements.

### **Conclusion**

There appears no urgent need to draft new regulations specifically to come into force at the same time as the Ordinance itself.

### **Recommendations**

1. It is recommended that unless repeal or modification occurs in the UK making them no longer applicable, the UK Regulations may continue in force until such time as the Falkland Islands Government wish to replace them.
2. When new Regulations specific to the FI are drafted, it would be an opportunity to have one single set instead of continuing to have a separate set for fishing vessels of less than 15m LOA. Some tidying up of what is strictly necessary could occur at the same time.

PGHB 15/12/2017

## **2.2 Advisory Note - Calculation of Tonnage for the Convention on Limitation of Maritime Claims (LLMC), 1976, as amended by its Protocol of 1996**

### **Background**

The Convention on Limitation of Maritime Claims (LLMC) allows shipowners and salvors to set limits of liability concerning claims resulting from loss of life, personal injury and other damage. These limits are based on the tonnage of the vessel concerned. Given that tonnage can be defined and calculated in a number of ways, the method used for the calculation must be clearly stated in law.

### **United Kingdom Legislation**

The correct tonnage calculation to be used for UK ships is laid out in the Merchant Shipping (Liability of Shipowners and Others) (Calculations of Tonnage) Order 1986 (SI 1986 No. 1040). It applies to tonnage calculated under article 6 of the LLMC Convention and under paragraph 5 of Part II of Schedule 7 to the Merchant Shipping Act 1995 (originally schedule 4 to the Merchant Shipping Act 1979).

### **Falkland Island Legislation**

The Maritime Ordinance 2017 provides for the LLMC Convention and its related 1996 Protocol. The Convention, as applicable under the Ordinance, is to be found at Schedule 5.

For the purpose of the tonnage calculation, section 312(4) of the Ordinance saves what appears to be the relevant UK statutory instrument, as amended by the Merchant Shipping (Adoption of Legislation) Ordinance 1992 and as cited above.

However, there are two crucially important points of difference between the UK Act of 1995 and the Falkland Islands' Maritime Ordinance: (i) There is intentionally no Part II in the relevant schedule to the Ordinance and (ii) as part of law drafting efficiency article 6 of the Convention has an additional paragraph, paragraph 5, which defines how the tonnage for claims should be calculated instead of leaving it to be dealt with by subsidiary legislation.

These differences mean that there is no legal requirement or mechanism for Regulations to be made under the Maritime Ordinance to define tonnage for the purpose of the Convention. The differences make the UK SI otiose and the additional paragraph 5 of article 6 of the Convention is sufficient. Furthermore, section 312(5) of the Ordinance then applies –

*(5) If there is no corresponding provision of this Ordinance under which any item of subsidiary legislation referred to under subsection (4) is or could be made, the item is repealed or disapplied, as the case may be, except that it continues to have effect in relation to proceedings that had commenced before the repeal or disapplication.*

[Unless advised otherwise, it is assumed that there are no outstanding proceedings as referred to here].

## **Conclusion**

There is no need for new subsidiary legislation to define the tonnage calculation for the purposes of the LLMC Convention. Once the Maritime Ordinance 2017 comes into force the UK SI will automatically be disapplied.

PGHB  
6/01/2018

## **Advisory Note - Load Line Regulations for the Convention on Load Lines 1966 and its Protocol of 1988**

### **Background**

The Load Lines Convention provides for the determination of the freeboard of ships by subdivision and damage stability calculations in an internationally agreed and standard way. The associated regulations aim to ensure the watertight integrity of ships' hulls below the freeboard deck. These are vital to ship safety. The Falkland Islands' government currently applies the Convention through UK legislation.

### **United Kingdom Legislation**

The relevant UK legislation is the Merchant Shipping (Load Line) Regulations 1998 (SI 1998 / No. 2241). On the commencement of the Falkland Islands Maritime Ordinance 2017, this UK legislation will continue to apply via section 312(4), as amended by the Merchant Shipping (Adoption of Legislation) Ordinance 1992.

The UK legislation as applicable through this savings provision has been considered against the requirements in the relevant sections of the Maritime Ordinance 2017. It has also been considered against the Load Lines Convention. They appear consistent and meet the relevant safety requirements for ships on the Falkland Islands' register as well visiting vessels.

### **Convention Applicability**

The Convention is not applicable to all shipping. Those to which it does **not** apply include warships, small ships (that is ships under 24m or if built before the Convention came into force, of less than 150gt), pleasure vessels and fishing boats. Given the make-up of the Falkland Islands' registry with its predominance of fishing vessels and just four vessels to which the Convention is applicable, it might appear of little relevance. However, its importance locally lies in its applicability to visiting foreign vessels. These vessels must carry the relevant loading marks and certificates of assignment issued by their own government. It means the government can enforce this vital safety legislation in such vessels if required.

### **Local or Temporary Exemptions**

Under the UK legislation as amended and made applicable to the Falkland Islands, the Governor may make exemptions as and when required. For example, this may be to allow a vessel which normally trades locally to undertake an international voyage.

## **The Falkland Islands Register and Future Regulations**

There may be circumstances when the use of the amended UK legislation ceases to be relevant to the Falkland Islands. In that case, appropriate subordinate legislation would have to be enacted locally, principally under section 84 of the Maritime Ordinance 2017.

### **Conclusion**

Whilst a watching brief should be kept on changing circumstance, there is no immediate need for new subordinate legislation and the existing provisions are adequate to allow commencement of the Maritime Ordinance 2017.

PGHB  
31/01/2018

**D R A F T****DESIGNATION, FUNCTIONS AND RESPONSIBILITIES OF THE  
FALKLAND ISLANDS MARITIME AUTHORITY.****MADE BY THE GOVERNOR UNDER THE HARBOURS AND PORTS  
ORDINANCE 2017**

**Nothing in this document purports to include the delegation of the power of the Governor to make orders or regulations under either the Harbours and Ports Ordinance 2017 or the Maritime Ordinance 2017.**

**Designation**

This Designation meets the requirement under section 4(1) of the Harbours and Ports Ordinance 2017 that "The Governor must designate a body as the Falkland Islands Maritime Authority."

Until I make a new designation and as authorised by section 4(2) of the Ordinance, I hereby designate the Department of Natural Resources to be the (interim) Falkland Islands Maritime Authority, hereinafter referred to as the Authority.

**Functions and Responsibilities of the Authority and Harbour Master**

In accordance with section 4(3) of the Harbours and Ports Ordinance 2017 the Authority shall have the general responsibility -

*(i) to regulate ports and harbours, Falkland Island ships, merchant shipping and seafarers in the waters of the Falkland Islands and*

*(ii) to carry out related Flag, Coastal and Port State responsibilities in accordance with the Code for the Implementation of International Instruments (known as the III Code) and all applicable international maritime and labour Conventions.*

Notwithstanding the generality of the above responsibility, the following is included in (but not restricted to) the Authority's specific functions:

1. The Authority is to fulfil its legal responsibilities as specified in the Harbours and Ports Ordinance 2017 and the Maritime Ordinance 2017.
2. The Authority will act on behalf of the Government of the Falkland Islands as the Administration for ships registered in the Falkland Islands and in accordance with the Conventions of the International Maritime Organization (IMO) as listed in Annex 1 to this document.
3. The Department of Natural Resources is to ensure that the Authority operates sufficiently separately from the other functions of the Department and from the

commercial administration of ports and harbours that there are no actual or perceived conflicts of interest. Reporting lines and day-to-day administration must not prevent the independence of the Authority in meeting its regulatory functions and international responsibilities such as Port State Control and accident investigation.

Regarding the Harbour Master and notwithstanding any other responsibilities, under section 5(2)(a) of the Harbours and Ports Ordinance, I hereby confer upon him the primary function as the professional Head of the Authority.

### Investigation of Marine Accidents

In respect of section 249(1) of the Maritime Ordinance 2017, the Harbour Master is hereby appointed as Chief Inspector of Marine Accidents.

The Authority shall act as the Administration as referred to in SOLAS regulation I/21 and MARPOL 73/78 articles 8 and 12, undertaking to investigate any casualty occurring to ships under its flag subject to those Conventions and to supply me with pertinent information concerning the findings of such investigations for onward transmission to the IMO.

Reporting and the carrying out of investigations are to be conducted under Part 11 of the Maritime Ordinance 2017 and in accordance with the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012, (subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992) until Regulations are made by me under section 249 (3). Notwithstanding the requirements of the Ordinance, such matters are always to be in accordance with IMO standards MSC-MEPC.3/Circ.1, Resolution MSC.255(84) or any subsequent standards replacing or amending these.

### Pilotage

The Authority must fulfil its duties to consider what pilotage services are needed and make due provision for them in accordance with section 43 of the Harbours and Ports Ordinance 2017.

In due course the Authority is to make recommendations to me as to the Regulations that may be required under sections 46(2) and 52 of the Ordinance.

### Pollution from Ships

As authorised by section 292(2) of the Maritime Ordinance 2017, I hereby delegate to the Authority "the preparation, review and implementation of a national plan setting out arrangements for responding to incidents which cause or may cause marine pollution with a view to preventing such pollution or reducing or minimising its effects." This plan shall cover both the harbour and territorial waters of the Falkland Islands but may be limited to pollution from ships. The draft plan should be brought to the Executive Council for approval.

### Port State Control

Until I make Regulations under section 42(j) of the Harbours and Ports Ordinance 2017, within its resources and as authorised by current applicable legislation, the Authority shall only carry out appropriately targeted Port State Control (PSC) of foreign vessels in accordance with the procedures for PSC adopted by the IMO under Resolution A.1052(27) or subsequent standards replacing or amending that Resolution.

### Registration of Ships

This shall be carried out by, or on behalf, of the Authority, in accordance with the relevant regulations under Part 3 of the Maritime Ordinance 2017.

### Vessel Traffic Services (VTS)

Recognising the obligation of the government of the Falkland Islands to consider an appropriate VTS under SOLAS Chapter V, Regulation 12, the Authority is to make plans for such a service, taking into account the volume and type of shipping traffic and the degree of navigational risk.

Implementation of the service shall be within agreed resources and as far as possible be in accordance with the Guidelines on Vessel Traffic Services adopted by the Organization by resolution A.857(20).

This Designation and the associated conferring of Functions and Responsibilities shall come into effect on \_\_\_\_\_ .

Nigel Phillips CBE

Governor

Dated: \_\_\_\_\_

**D R A F T**

## Annex 1 to the Designation of the Authority

### Falkland Islands Adoption of IMO Conventions

Convention	Convention Name	Entry into Force
SOLAS	Protocol 1988 International Convention for the Safety of Life at Sea	30 Jan 04
ColRegs 1972	Convention on the International Regulations for Preventing Collisions at Sea	15 July 77
MARPOL 1978 Annexes I, II, III & V	International Convention for the Prevention of Pollution from Ships (Oil, Noxious Liquids, Dangerous Goods and Garbage)	14 Nov 95
LL 1966	International Convention on Load Lines 1966 & Protocol of 1988	19 May 04
Tonnage 1969	International Convention on <a href="#">Tonnage Measurement of Ships</a>	16 June 95
Intervention 1969	International Convention relating to intervention on the high seas in cases of oil pollution casualties Intervention 1969	08 Sept 82
	Intervention Protocol 1973	30 March 83
CLC Protocol 92	International Convention on <a href="#">Civil Liability for Oil Pollution Damage</a> CLC Protocol 1992	30 May 96
Fund Protocol 1992	<a href="#">International Fund for Compensation for Oil Pollution Damage</a> Fund Protocol 1992	30 May 96
PAL / Athens 1974	Athens Convention relating to the <a href="#">Carriage of Passengers</a> and their Luggage by Sea, 1974	28 April 89
	Athens Protocol 2002	On Commencement of Maritime Ordinance 2017
LLMC 1976	Convention on <a href="#">Limitation of Liability for Maritime Claims</a>	01 Dec 86
Salvage 1989	International Convention on <a href="#">Salvage</a>	30 May 97
LC 1972	Convention on the Prevention of Marine Pollution by <a href="#">Dumping of Wastes and Other Matter</a>	17 Nov 75
	LC 1978 Amendments	21 March 80
	LC Protocol 1996	24 March 06
UNCLOS	United Nations Convention on the Law of the Sea	25 July 97

## Harbour Master's Functions – some priorities

The Harbour Master as Maritime Regulator should lead on a number of functional priorities that follow the introduction of the two principal Ordinances and the establishment of the Authority. The following is an indicative guide:

1. In conjunction with the Attorney General's office, analysis is required of the 'saved' subordinate legislation applicable under the Maritime Ordinance. This would be a key task of the newly appointed Project Officer.
2. Set up Ill Code review meetings and Project Board as detailed in the body of this report. These might also be tasks for the newly appointed Project Officer.
3. A Pilotage Board should be set up as a part of the new Authority. This might include at least one experienced and impartial Master Mariner who does not work for FIG. There is a legal duty to consider the development of relevant pilotage areas, the introduction of compulsory pilotage, qualifications of pilots and the granting of pilotage exemption certificates. Only once these have been clarified can regulations be drafted if required.
4. Port State Control could be implemented in an appropriately managed way without demanding much new resourcing. Some targeting of higher risk vessels is required. However, new PSC regulations may be needed to ensure the right powers are available to the Authority.
5. Consideration should be given for the framework for effective and independent accident investigations. Instructions for law drafting of regulations may be needed if the extant UK regulations (SI 2012/1743) as applied to the Falkland Islands are unsuitable.
6. A local version of the UK Small Commercial Vessel Code tailored to the specific needs of the Islands should be developed and related boatmaster licencing considered.

7. Approved and fully integrated Vessel Traffic Services<sup>14</sup> (VTS) are needed to replace the existing arrangement whereby port control is handled by fisheries officers. This must reflect (a) the need for separation between fisheries functions and the role of the Authority, (b) new requirements concerning compulsory pilotage and (c) the safe management of all visiting vessels especially oil exploitation support vessels if this industry is to be developed further by Premier Oil and others.
8. Consideration of the requirements that should be met by Premier Oil regarding ships, platforms and crew. These requirements will include the use of a properly constituted and appropriate VTS, designated anchorages, appropriate routing, compulsory pilotage, control of cargo and passenger transfers at sea and bunkering.
9. Consideration of a Falkland Islands' version of the UK Port Marine Safety Code.
10. Help to identify the Authority and its officers as independent of and separate from historic fisheries functions:
  - New email addresses for HM, staff and Authority
  - Update and rename current website - [www.fig.gov.fk/fisheries/index.php/harbour](http://www.fig.gov.fk/fisheries/index.php/harbour)
  - Remove website with references to previous Harbour Master – [www.fis.com/falklandfish/html/harbour.html](http://www.fis.com/falklandfish/html/harbour.html)
  - Create link from QHM website to the new website for the Authority.
11. As part of maintaining important relations and awareness of relevant issues and as far as resources allow maintain and develop engagement with MCA, Red Ensign Conference, IMO (through MCA and IHMA) and UKHMA / SASHMA. [Where possible it will be valuable for the AG, Law Officers and the new DHM to be likewise engaged].

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<sup>14</sup> As required by SOLAS Chapter V, Regulation 14

## Commercial Port Matters

The consultant spent time at the interim port storage system (FIIPSS) during his visit as well as meeting people in government and industry concerned with port infrastructure. On these occasions future port needs were discussed in the context of the formation of the Maritime Authority and the development of new port legislation. Although already referred to in the body of the report, it is valuable to summarise key points:

1. The Maritime Authority cannot easily be the commercial port manager or operator whilst also being the regulatory body. If its role in setting port dues (as laid down in sections 27 to 31 of the Harbours and Ports Ordinance) is to remain, the Harbour Master must be separated from that process so that he is free to be the professional expert, particularly regarding Port State Control. This might be solvable as a structural and reporting-line issue.

2. The alternative is that the setting, collection and spending of harbour dues should be entirely by the commercial port operator. Amendment of the Ordinance to replace the Authority with the commercial operator as the person able to impose charges would be necessary to achieve this. Port users will still be protected by overcharging or discriminatory charging in the provision in section 28 that requires charges to be reasonable and there is a good mechanism for objections to be made at section 30.

It is thought that if this alternative route were followed, the port operator will need a considerably longer lease and commercial incentives to improve profitability and provide for future funding. In return FIG (but not the Authority) may require some income, equivalent to a shareholder dividend.

3. Commitment to a permanent long-term replacement for FIIPSS and the Temporary Port Facility (TDF) is urgently required. This needs to be in the FIG capital projects programme and a senior government person appointed as its champion or sponsor.

## Table of UK Statutory Instruments that will continue to apply

### Law Revision and Publication Ordinance 2017. Published July 31, 2017

#### Schedule 1 UK Enactments which apply to Falkland Islands. Extract from Part 2, Secondary Legislation

**Note** – In accordance with section 312 of the Maritime Ordinance 2017 and subject to certain conditions, "all items of subsidiary legislation will continue in force (in so far as they are not inconsistent with this Ordinance) as if made under the corresponding provision of this (Maritime) Ordinance until amended or replaced under this Ordinance."

Instrument		Provisions Applying to the Falkland Islands	Exclusions, modifications and other qualifications
Fishing Vessels (Certification of Deck Officers and Engineer Officers) Regulations (SI 1984/1115)	1984	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Fishing Vessels (Life-Saving Appliances Regulations) (SI 1988/38)	1988	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992
Fishing Vessels (Safety Provisions) Rules (SI 1975/330)	1975	Whole Rules	The Rules are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Fishing Vessels (Safety Training) Regulations (SI 1989/126)	1989	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Accident Reporting and Investigation) Regulations (SI 2012/1743)	2012	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.

<b>Instrument</b>		<b>Provisions Applying to the Falkland Islands</b>	<b>Exclusions, modifications and other qualifications</b>
Merchant Shipping (Cargo Ship Construction) Regulations (SI 1997/1509)	1997	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations (SI 1999/1869)	1999	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Crew Accommodation) Regulations (SI 1997/1508)	1997	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations (SI 1975/2220)	1975	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen)(Fishing Vessels) Regulations (SI 1972/919)	1972	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations (SI 1997/2367)	1997	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations (SI 1996/75)	1996	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.

Instrument		Provisions Applying to the Falkland Islands	Exclusions, modifications and other qualifications
Merchant Shipping (Diving Safety) Regulations (SI 2002/1587)	2002	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Emergency Information for Passengers) Regulations (SI 1990/660)	1990	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Entry Into Dangerous Spaces) Regulations (SI 1988/1638)	1988	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Fees) Regulations (SI 2006/2055)	2006	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Fees) Regulations (SI 2015/315)	2015	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Fire Protection) Regulations (SI 2003/2950)	2003	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Fishing Vessels - Tonnage) Regulations (SI 1988/1909)	1988	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Formal Investigations) Rules (SI 1985/1001)	1985	Whole Rules	The Rules are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Gas Carriers) Regulations (SI 1994 2464)	1994	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Increased Penalties) Regulations (SI 1979/1519)	1979	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.

<b>Instrument</b>		<b>Provisions Applying to the Falkland Islands</b>	<b>Exclusions, modifications and other qualifications</b>
Merchant Shipping (Liability of Shipowners and Others)(Calculation of Tonnage) Order (SI 1986/1040)	1986	Whole Order	The Order is subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Life-Saving Appliances for Ships of Classes III to VI(A)) Regulations (1999/2723)	1999	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Life-Saving Appliances for Ships Other than Ships of Classes III to VI(A)) Regulations (SI 1999/2721)	1999	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Load Line) Regulations (SI 1998/2241)	1998	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Maritime Labour Convention)(Medical Certification) Regulations (SI 2010/737)	2010	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Musters and Training and Decision Support Systems) Regulations (SI 1999/2722)	1999	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Official Log Books) Regulations (SI 1981/569)	1981	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.

<b>Instrument</b>		<b>Provisions Applying to the Falkland Islands</b>	<b>Exclusions, modifications and other qualifications</b>
Merchant Shipping (Official Log Books)(Fishing Vessels) Regulations (SI 1981/570)	1981	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Passenger Ship Construction: Ships of classes I, II, II(A)) Regulations (SI 1998/2514)	1998	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Prevention and Control of Pollution) Order (SI 1987/470)	1987	Whole Order	The Order is subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Prevention and Control of Pollution) Order (SI 1990/2595)	1990	Whole Order	The Order is subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Prevention of Oil Pollution) Order (SI 1983/1106)	1983	Whole Order	The Order is subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Prevention of Oil Pollution) Regulations (SI 1996/2154)	1996	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Prevention of Pollution by Garbage) Regulations (SI 1998/1377)	1998	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Prevention of Pollution by	2006	Whole Order	The Order is subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.

Instrument		Provisions Applying to the Falkland Islands	Exclusions, modifications and other qualifications
Sewage and Garbage) Order (SI 2006/2950)			
Merchant Shipping (Provisions and Water) Regulations (SI 1989/102)	1989	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Radio Installations) Regulations (SI 1998/2070)	1998	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Radio)(Fishing Vessels) Regulations (SI 1999/3210)	1999	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Radio)(Fishing Vessels) Rules (SI 1974/ 1919)	1974	Whole Rules	The Rules are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992
Merchant Shipping (Repatriation) Regulations (SI 1979/97)	1979	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations (SI 1995/2498)	1995	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Safety at Work Regulations)(Non-UK Ships) Regulations (SI 1988/2274)	1988	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Safety of Navigation) Regulations (SI 2002/1473)	2002	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992

<b>Instrument</b>		<b>Provisions Applying to the Falkland Islands</b>	<b>Exclusions, modifications and other qualifications</b>
Merchant Shipping (Seamen's Wages and Accounts)(Fishing Vessels) Regulations (SI 1972/1701)	1972	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Small Workboats and Pilot Boats) Regulations (SI 1998/1609)	1998	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping (Tonnage) Regulations (SI 1997/1510)	1997	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations (SI 1997/2962)	1997	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations (SI 2006/2184)	2006	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping and Fishing Vessels (Personal Protective Equipment Regulations (SI 1999/2205)	1999	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.
Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations (SI 2006/2183)	2006	Whole Regulations	The Regulations are subject to the modifications specified in Schedule 2 of the Merchant Shipping (Adoption of Legislation) Ordinance 1992.

## Summary of Main Legal Powers and Functions

### Maritime Ordinance 2017

<b>Section</b>	<b>References to or Duties of the Maritime Authority of the Falkland Islands</b>	<b>Recommended Person Responsible</b>
57	Issue of special certificates of competence	HM
78(2)	Determining eligibility for financial assistance for relief crew travel costs	HM
136	Waste management plan & provision if required	<i>Atlink</i>
137(1)	Waste charges may be imposed by regulation	<i>Atlink</i> to advise
143	Protects authority for acts done regarding oil discharge	n/a
145(1)	Master to report oil spill to authority	Report to HM
147	Governor gives directions to HM and / or Authority regarding ship incident to prevent or reduce oil pollution (SOSREP powers)	HM
155 5(c)	Authority takes security where HM has detained ship for suspected s.140 (oil discharge) offence	FS on behalf of Authority
200	Limits liability of Authority	n/a
203	Authority to be consulted regarding Aids to Navigation (ATN)	HM
206	Authority to detain ship if ATN is damaged etc.	HM
237	Powers of Authority in relation to wrecks in or near harbour	HM

<b>Section</b>	<b>Reference to or Duties of Marine Officer / HM</b>	<b>Recommended Person Responsible</b>
147	Governor gives directions to prevent or reduce oil pollution following incident	HM (SOSREP powers)
155 (1)	HM may detain ship for suspected s.140 (oil discharge) offence	HM
204(1)	HM may publish & update info on ATN	HM
207 (3) & (4)	HM powers to extinguish false or unauthorised lights.	HM
241	Powers of inspectors and surveyors - accidents at sea, compliance with Ordinance regarding hull and machinery and prevention of pollution.	HM, other officers or inspectors

### Maritime Ordinance 2017 (Ctd)

<b>Section</b>	<b>Reference to or Duties of Chief Executive of the Falkland Islands Government</b>	<b>Recommended Person Responsible</b>
233(2)	CE may appoint one or more persons to be Receiver of Wreck	1. HM - vessel in distress e.g. s217, 218 2. Collector of Customs for custody, valuation, asset ownership, cargo e.g. s 222 to 225

<b>Section</b>	<b>Reference to or Duties of Director of Natural Resources</b>	<b>Recommended Person Responsible</b>
103(2)(b)	As Director of Fisheries, to advise Governor concerning ships with trans-shipment licences in force – construction, equipment, manning and operational matters	Director would take advice from HM
161(1)	Must report annually on performance of MA & HM regarding oil pollution, prevention and prosecutions	DNR but HM to prepare notes.
309(1)	Forms – Governor to prescribe forms etc. but may delegate this to Authority or DNR	Delegate as relevant

<b>Section</b>	<b>Reference to or Duties of Governor</b>	<b>Recommended Person Responsible</b>
249 (1)	Must appoint Chief Inspector of Marine Accidents	Appoint HM
290(1), (2) & (5)	Prevention of oil pollution, coordination and plans rest with Governor but can be delegated	Delegate to Authority
13(3)	Registrar functions can be delegated to another by Governor.	No action recommended at this stage.
292 (4)	Registrar functions can be delegated by Governor, but not functions under Part 2 of Ordinance. Noted there appear to be none under Part 2 to delegate.	n/a

### Harbours and Ports Ordinance 2017

<b>Section</b>	<b>Reference to or Duties of Governor</b>	<b>Recommended Person Responsible</b>
4 (1), (2) & (3)	Governor designates Maritime Authority and confers functions or responsibilities on it.	HM to prepare draft designation. ExCo to approve.
5 (2)(a)	Governor confers functions or responsibilities on HM	HM with DNR to prepare draft.
5 (2) (b)	Governor may give general or specific directions to HM in relation to his functions	n/a at this stage

## **Harbours and Ports Ordinance 2017 (Ctd)**

7 (a)	Governor may declare and define limits of naval ports	As advised jointly by QHM & HM
7(b)	Governor may declare and define limits of other ports	As advised by HM
25(2)	Governor gives direction as to character of buoys in harbour limits	As advised by HM
26(1), (2) & (3)	Governor must sanction characteristics, alterations and discontinuation of ATN	As advised by HM
46(2)	Governor may make regulations for operation of pilot boats	As advised by HM
52	Governor may make pilotage regulations	As advised by HM
53 (2)	Harbour works and dredging – Governor may designate Authority or appoint a public officer to be licensing authority.	Consider options here. Is it better if this goes to Director, DNR?
53 (3) – (6)	Harbour works related matters	Depends on 53(2)
56	Governor may make regulations for harbour works and dredging. Note that the duty and right of the Authority to carry out maintenance dredging are recognised.	As advised jointly by DNR, HM & QHM

<b>Section</b>	<b>Reference to or Duties of Maritime Authority</b>	<b>Recommended Person Responsible</b>
15(1)	Authority may give harbour directions in accordance with section 16 of Ordinance.	As advised by HM
15(6)	Authority may delegate the issuing of directions to the Harbour Master.	Where delegated, HM to have duty to inform Authority
25(1)	Authority to make provisions for lighthouses and laying down of buoys within port limits	As advised by HM
26	Any new Lights, beacons or buoys or alterations or discontinuation of same to have sanction of Governor in writing.	As advised by HM
27(1)	Authority has power to impose harbour dues	HM may advise. DNR / FS to have responsibility.
Part 5 43 - 51	Authority has duty to consider need for pilotage services, authorisation of pilots, qualifications, suspension and revocation, employment of pilots, approval of pilot boats, issuing of pilotage directions and approval of PECs	As advised by HM

## **III Code – Extract from Annex to the IMO Resolution A.1070(28)**

Pages 4 - 6

### **PART 1 COMMON AREAS**

#### **Objective**

1 The objective of this Code is to enhance global maritime safety and protection of the marine environment and assist States in the implementation of instruments of the Organization.

2 Different States will view this Code according to their own circumstances and should be bound only for the implementation of those instruments to which they are Contracting Governments or Parties. By virtue of geography and circumstance, some States may have a greater role as a flag State than as a port State or as a coastal State, whilst others may have a greater role as a coastal State or a port State than as a flag State.

#### **Strategy**

- 3 In order to meet the objective of this Code, a State is recommended to:
- .1 develop an overall strategy to ensure that its international obligations and responsibilities as a flag, port and coastal State are met;
  - .2 establish a methodology to monitor and assess that the strategy ensures effective implementation and enforcement of relevant international mandatory instruments; and
  - .3 continuously review the strategy to achieve, maintain and improve the overall organizational performance and capability as a flag, port and coastal State.

#### **General**

4 Under the general provisions of treaty law and of IMO conventions, States should be responsible for promulgating laws and regulations and for taking all other steps which may be necessary to give those instruments full and complete effect so as to ensure safety of life at sea and protection of the marine environment.

5 In taking measures to prevent, reduce and control pollution of the marine environment, States should act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.

### III Code – Extract from Annex to the IMO Resolution A.1070(28) (Ctd)

#### Scope

6 The Code seeks to address those aspects necessary for a Contracting Government or Party to give full and complete effect to the provisions of the applicable international instruments to which it is a Contracting Government or Party, pertaining to:

- .1 safety of life at sea;
- .2 prevention of pollution from ships;
- .3 standards of training, certification and watchkeeping for seafarers;
- .4 load lines;
- .5 tonnage measurement of ships; and
- .6 regulations for preventing collisions at sea.

7 The following areas should be considered and addressed in the development of policies, legislation, associated rules and regulations and administrative procedures for the implementation and enforcement of those obligations and responsibilities by the State:

- .1 jurisdiction;
- .2 organization and authority;
- .3 legislation, rules and regulations;
- .4 promulgation of the applicable international mandatory instruments, rules and regulations;
- .5 enforcement arrangements;
- .6 control, survey, inspection, audit, verification, approval and certification functions;
- .7 selection, recognition, authorization, empowerment and monitoring of recognized organizations, as appropriate, and of nominated surveyors;
- .8 investigations required to be reported to the Organization; and
- .9 reporting to the Organization and other Administrations.

### **III Code – Extract from Annex to the IMO Resolution A.1070(28) (Ctd)**

#### **Initial actions**

8 When a new or amended instrument of the Organization enters into force for a State, the Government of that State should be in a position to implement and enforce its provisions through appropriate national legislation and to provide the necessary implementation and enforcement infrastructure. This means that the Government of the State should have:

- .1 the ability to promulgate laws, which permit effective jurisdiction and control in administrative, technical and social matters over ships flying its flag and, in particular, provide the legal basis for general requirements for registries, the inspection of ships, safety and pollution prevention laws applying to such ships and the making of associated regulations;
- .2 a legal basis for the enforcement of its national laws and regulations including the associated investigative and penal processes; and
- .3 the availability of sufficient personnel with maritime expertise to assist in the promulgation of the necessary national laws and to discharge all the responsibilities of the State, including reporting as required by the respective conventions.

#### **Communication of information**

9 The State should communicate its strategy, as referred to in paragraph 3, including information on its national legislation to all concerned.

#### **Records**

10 Records, as appropriate, should be established and maintained to provide evidence of conformity to requirements and of the effective operation of the State. Records should remain legible, readily identifiable and retrievable. A documented procedure should be established to define the controls needed for the identification, storage, protection, retrieval, retention time and disposition of records.

#### **Improvement**

11 States should continually improve the adequacy of the measures which are taken to give effect to those conventions and protocols which they have accepted. Improvement should be made through rigorous and effective application and enforcement of national legislation, as appropriate, and monitoring of compliance.

### **III Code – Extract from Annex to the IMO Resolution A.1070(28) (Ctd)**

12 The State should stimulate a culture which provides opportunities for improvement of performance in maritime safety and environmental protection activities, which may include, inter alia:

- .1 continual training programmes relating to safety and pollution prevention;
- .2 regional and national drills on safety and pollution prevention, which engage a broad spectrum of maritime-related national, regional and international organizations, companies and seafarers; and
- .3 using reward and incentive mechanisms for shipping companies and seafarers regarding improving safety and pollution prevention.

13 Further, the State should take action to identify and eliminate the cause of any non-conformities in order to prevent recurrence, including:

- .1 review and analysis of non-conformities;
- .2 implementation of necessary corrective action; and
- .3 review of the corrective action taken.

14 The State should determine action needed to eliminate the causes of potential non-conformities in order to prevent their occurrence.

End of Extract

## IMO Resolutions regarding Pilotage and VTS

### RESOLUTION A.158 (ES.IV)

#### RECOMMENDATION ON PORT ADVISORY SERVICES

The Assembly,

*Noting* Article 16(i) of the Convention on the Inter-Governmental Maritime Consultative Organization concerning the functions of the Assembly,

*Considering* that Port Advisory Services can make a valuable contribution to safety in harbour approaches,

*Having examined* the Recommendation on Port Advisory Services adopted by the Maritime Safety Committee at its seventeenth session,

*Recommends* to governments that they:

- (a) consider setting up such services in ports and their approaches, that warrant it by the importance and nature of their traffic, particularly in oil terminals and ports where noxious or hazardous cargoes are loaded and unloaded;
- (b) instruct masters that an early indication of the expected time of arrival to the appropriate authorities would also contribute to safety, due regard being given to the actual conditions of the case and the existing local arrangements.

*27 November 1968*  
*Agenda item 4*

### RESOLUTION A.159 (ES.IV)

#### RECOMMENDATION ON PILOTAGE

The Assembly,

*Noting* Article 16(i) of the Convention on the Inter-Governmental Maritime Consultative Organization concerning the functions of the Assembly,

*Having examined* the Recommendation on pilotage adopted by the Maritime Safety Committee at its seventeenth session,

*Recommends* to governments that they should organize pilotage services in those areas where such services would contribute to the safety of navigation in a more effective way than other possible measures and should, where applicable, define the ships or classes of ships for which employment of a pilot would be mandatory.

*27 November 1968*  
*Agenda item 4*

VTS - Extract from SOLAS Chapter V, Regulation 12

- 1. Vessel traffic services (VTS) contribute to safety of life at sea, safety and efficiency of navigation and protection of the marine environment, adjacent shore areas, work sites and offshore installations from possible adverse effects of maritime traffic.*
- 2. Contracting Governments undertake to arrange for the establishment of VTS where, in their opinion, the volume of traffic or the degree of risk justifies such services.*
- 3. Contracting Governments planning and implementing VTS shall, wherever possible, follow the guidelines developed by the Organization\*. The use of VTS may only be made mandatory in sea areas within the territorial seas of a coastal State.*
- 4. Contracting Governments shall endeavour to secure the participation in, and compliance with, the provisions of vessel traffic services by ships entitled to fly their flag.*
- 5. Nothing in this regulation or the guidelines adopted by the Organization shall prejudice the rights and duties of Governments under international law or the legal regimes of straits used for international navigation and archipelagic sea lanes.*

*\* Refer to the Guidelines on Vessel Traffic Services adopted by the Organization by resolution A.857(20).*

**Annex 3**

**HARBOURS AND PORTS ORDINANCE DRAFT IMPLEMENTATION PLAN**

<b>Action</b>	<b>Responsible Officer</b>	<b>Priority</b>	<b>Status</b>	<b>Start date</b>	<b>End Date or Timeline</b>	<b>Approval</b>
Designation of Maritime Authority	DNR/Marine Officer	HIGH	Awaiting ExCo decision	June 17	July 18	ExCo
Mapping across of existing functions to current staff. To be done in conjunction with designation	DNR/Marine Officer	HIGH	To be outline in the designation draft at Appendix 4 of the Report from Piers Baker Consultant	On appointment of Project Officer	1 year	ExCo
Commencement Notice	Legislative Drafter	HIGH	Awaiting ExCo to approve the proposed 1 July 2018 commencement date	June 17	July 18	ExCo
Declaration of ports – review if there is any further work?	DNR/Marine Officer	HIGH	Once Project Officer is in post	Once Project Officer is in post	1 year	MA
Review port regulations	DNR/Marine Officer/Legislative Drafter	MEDIUM	Once Project Officer is in post	Once Project Officer is in post	2 years	MA
Designation of Harbours -	DNR/Marine Officer	HIGH	Once Project Officer is in	Once Project Officer is in	1 year	MA

review if there is any further work?			post	post		
Procedure on issuing harbour directions	Marine Officer	HIGH	Once designation of Authority is done	Once Project Officer is in post	2 years	MA
Review harbour regulations (incl. section 42 matters)	DNR/Marine Officer/Legislative Drafter	MEDIUM	Once Project Officer is in post	Once Project Officer is in post	2 years	ExCo
Port State Control	DNR/Marine Officer	MEDIUM	Once Project Officer is in post	Once Project Officer is in post	3 years	ExCo
Pilotage – Risk based pilotage	DNR/Marine Officer	HIGH	Once Project Officer is in post	Once Project Officer is in post	1 year	ExCo
Pilotage regulations (section 52)	DNR/Marine Officer/Legislative Drafter	HIGH	Once Project Officer is in post	Once Project Officer is in post	1 year	ExCo
Dredging and other works – licensing of dredging and other work (section 56)	DNR/Marine Officer	LOW	Once Project Officer is in post	Once Project Officer is in post	5 years	ExCo

## Annex 5

### Proposed amendments to the Maritime Ordinance 2017

SUBJECT MATTER	REASON FOR AMENDMENT	PROVISION TO AMEND	PRIORITY
LLMC limits	Amend the Ordinance to reflect the limits set out in Schedule 7 of the Merchant Shipping Act 1995 by section 185(1) and (4) [these have been adopted by the MS (Adoption of Legislation) Ordinance anyway	Amend section 194 of the MO 2017 and Schedule 5 to reflect the new limits and include Part II with modifications	High
Bunker Oil Convention 2001	The MO 2017 doesn't provide for this at all – only tankers	Amend Ordinance to reflect this and then ask FCO/UK government to extend the Convention to FI	Medium (linked to III Code Obligations)
Fund Protocol 2003	(this will require ExCo approval as it imposes a contribution by FIG into the Fund)	section 163 of the Maritime Ordinance 2017	High
Merchant Shipping (Prevention of Pollution) (Intervention) (Overseas Territories) Order 1982 (SI 1982/1666)	This will need to be included in the Maritime Ordinance 2017 so there is no need to have the Merchant Shipping (Prevention of Pollution) (Intervention) Order 1980 (SI 1980/1093). This Order expanded sections 12- 16 of the Prevention of Pollution Act 1971 so that references to oil include substances other than oil. The Order provides a definition for 'substances other than oil'.	Part 7 relating to Prevention of Pollution	High
Nairobi Convention of the Removal of Wrecks 2007	The MO 2017 doesn't provide for this at all	Amend Ordinance to reflect this and then ask FCO/UK	Medium (linked to III Code Obligations)

		government to extend the Convention to FI	
Convention on Oil Pollution Preparedness, Response and Co-operation 1990	The MO 2017 doesn't provide for this at all	Amend Ordinance to provide for pollution incidents, after this amendment ask FCO/UK government to extend the Convention to FI	High
Section 194	The Schedule doesn't have Part II	Include Part II of Schedule 7 of MS Act 1995 to the Ordinance	High
Finalised List of FI Instruments	To correct the list that is in the Schedule to include all SIs	Amend Schedule 10 – Part A	High
Finalised List of UK Acts	To correct the list that is in the Schedule to include UK Acts which directly apply	Amend Schedule 10 – Part B	High
Finalised List of Orders in Council (OICs) to revoke/amend	To correct the list that is in the Schedule so that it contains all the OICs that need to be revoked	Amend Schedule 10 – Part C	High
Registration of Government Ships	The Merchant Shipping Act 1906 under section 80 provided for an Order in Council to be made to allow Territories to register government ships belonging to those territories as British ships for purposes of Merchant Shipping Acts. In 1963 the Merchant Shipping (Registration of Colonial Government Ships) Order 1963 was made which authorised the registration of Falkland Islands government ships as British ships. This can be reflected in the Ordinance so it covers all ship registrations	Amend Parts 2 and 3 to allow for the registration of Falkland Islands government ships as British Ships (section 5 already provides for this but to make it clearer). Amend section 304	High
Maritime Labour Convention	The MO 2017 doesn't provide for this at all	Amend Ordinance to reflect this and then ask FCO/UK government to extend the Convention to FI	High

