PUBLIC

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Trial Period of Alternative Ships' Customs Inward Reporting and Clearance Arrangements using Electronic Means

Paper No: 43/15

Date: 25 March 2015

Report of: Director of Emergency Services/Collector of Customs

---

1.0 Purpose

To seek Executive Council's approval for the Collector of Customs to trial and develop an alternative (and optional) Ships' Customs inward reporting and clearance system using electronic means in respect of fishing vessels that are solely operating within the FICZ/FOCZ.

2.0 Recommendations

2.1 That Executive Council is advised to agree:

(a) for the Collector of Customs (CofC) with the voluntary assistance of members of the Falkland Islands Fishing Companies Association (FIFCA), to trial, further develop and evolve, an alternative Ships' Customs inward reporting and clearance system using electronic means in respect of fishing vessels that are operating only within the FICZ/FOCZ, and;

(b) that only the masters of fishing vessels, that are fishing exclusively within the FICZ/FOCZ and associated with FIFCA are eligible to participate in this initial trial, and;

(c) for this trial to commence on 01 April 2015 and be operated for a continuous period of nine months in the first instance, and;

(d) for the DES and CofC to provide Executive Council with a factual update after six months in regard to how this electronic reporting arrangement is working and whether there is merit in developing it further, including the impact of remuneration for staff.

3.0 Additional Budgetary Implications

None

4.0 Background

4.1 On 08 May 2013, the Chair of Falkland Islands Fishing Companies Association (FIFCA) wrote to the Director of Emergency Services, requesting that FIG consider a series of proposals including the introduction of an electronic ship's inward reporting and departure clearance system in respect of fishing vessels and in particular, those that are flagged in the Falkland Islands (FI). An e-mail copy version of their letter is provided for information at **Annex A.**

4.2 A meeting to discuss the proposals included in the letter was held between FIFCA members and relevant FIG officers, on 26 February 13. In regard to the proposal that FI flagged vessels should perhaps be treated differently from a customs perspective because of their FI flag status, the CofC advised that this was untenable because their general operational arrangements were no different to other similar vessels operating in FI waters. Intermittent exchanges of e-mails then took place over a prolonged period of time; delays incurred were a consequence of other pressing work commitments, staff absences and also a long period of illness on the part of the CofC.

4.3 Although the CofC did initially have reservations in regard to the introduction of such an electronic reporting arrangement, this was because he knew that it could potentially have the effect of bringing radical change in regard to how the C&IS would perform its shipping related border control duties in the future. He did however also acknowledge that such a change in procedural arrangements would if properly and carefully progressed also have merit, provided the corresponding physical controls at the port and documentary reporting requirements are upgraded to support such a change. Further lengthy discussions then took place between the FIFCA secretary, Mr Andrew Pollard and then in November 14 and again in late January 15 in order to iron out some of the quandaries that had come to mind in regard to how such a system might properly work in the case of the FI's shipping patterns and ports environments.

<u>Current Statutory Requirements and Procedural Practices relating to Ships Arriving and Departing from the FI</u>

4.4 The Falkland Islands Customs Ordinance 2003 contains very similar provisions to the UK Customs and Excise Management Act. Under the relevant provisions of this Ordinance, the master of every vessel arriving from or proceeding to any place outside the FI's territorial limits is required to ensure due report is made to Customs as follows:

<u>Report Inwards</u>

Report inwards must be made within 24 hours of a vessel's arrival to a port or other approved place. If the report as submitted is complete and in order, customs will then grant authority for the master to proceed with their intended unloading and loading operations and/or the embarkation/disembarkation of crew and passengers.

Clearance Outwards

When a vessel has completed all of its intended operations and activities and is about to proceed to a destination outside the FI a departure report must be submitted in order for a customs outwards clearance to be obtained.

4.5 The documents which masters of ships or their authorised representatives, where applicable, are currently expected to provide when making a "Report Inwards" or a "Clearance Outwards" report ordinarily comprises of:

- a General declaration (1 copy on arrival, and 1 when requesting departure clearance)
- a Maritime Declaration of Health (currently all cruise vessels on arrival only)
- Crew and passenger lists (arrival and departure except where there are no changes)
- Crew and passengers embarking/disembarking lists (as applicable)
- Crew's personal effects declaration (arrival/departure)
- Ships stores declaration
- Cargo manifest or if there are un-manifested goods other than stores also on board, a cargo declaration form

Other standard documents that may be required on occasions include:

- Request to Land dutiable/other stores or transfer stores to another vessel, if applicable
- Request to Ship dutiable/other stores, if applicable

4.6 As the Customs and Immigration Service (C&IS) deals with both Customs and also Immigration formalities at the same time in respect of visiting vessels, its existing declaration documents have been configured to meet the needs of both statutory functions. However, there currently remains some room for improvements and clearer guidance is also in the process of being drawn up.

4.7 Unless in the particular circumstances the CofC has conditionally approved otherwise, all vessels must arrive and depart from a location in the Falkland Islands that has been declared by the Governor to be a Customs Port. The current Declared Customs Ports are: Stanley, Port William, Mare Harbour (under the Naval Ports Ordinance) and Fox Bay. By order made under the Harbours Ordinance, these ports (with the exception of Mare Harbour) are also defined as Designated Harbours and harbour dues are therefore also payable in addition to customs services and clearances fees. On 26 October 1982, Berkeley Sound also became a Designated Harbour, but due to its logistical remoteness it was not declared a Customs Port.

4.8 Apart from in exceptional circumstances, the landing and unloading of stores and the embarkation and disembarkation of passengers and crew should only be conducted at an "Approved Wharf". Those currently approved for the Stanley

area are FIPASS and the FIC East Jetty. The Collector may also approve other wharves by notification in the Gazette. Given that most of our cruise vessels passengers coming ashore in Stanley land at the Public Jetty and we now have the TDF, there are obviously outstanding issues to address in regard to the approval of wharves. There is also a conflict with the Government Wharfs Ordinance as section 3 provides that the Public Jetty is the only place boats plying to or from vessels in the harbour may call at during the hours of darkness.

4.9 Notwithstanding FIPASS and the FIC East Jetty are defined as being Approved Wharves in the Customs Ordinance, reality is that Stanley's port infrastructure including its transit sheds/warehousing and other cargo and stores holding areas are on the whole of a poor standard and security controls are weak. At this current time for example, persons can easily access most of the FI port area where these approved wharves are situated without permission and also board or disembark from most vessels without challenge or on leaving the port area, having to pass through any kind of control. Of course, it is also the case that the C&IS does not have spare staff resource capacity to enable them to operate any kind of control points or conduct regular checks on persons entering or leave the vicinity of the port area. It is therefore clearly the case that the weakest and most vulnerable point of control from a customs and immigration perspective has to be the FI's sea ports and therefore there is a need for this shortcoming to be addressed as soon as is reasonably possible.

4.10 Current arrangements in respect of the inwards and departure customs clearance of vessels using the ports of Stanley and Port William requires a C&I officer to physically board the vessels in order to undertake applicable checks when they arrive and also when they are due to depart. Where a vessel is only going to be in port for a short period, arrival and departure formalities are completed at the same time.

4.11 In the case of vessels using Berkeley Sound, only merchant vessels, e.g. reefers and tankers are attended. Fishing vessels ordinarily enter and depart from this location simply by filing an arrival and departure report to the Fisheries Department as generally there is next to no interaction between these vessels and shore-side. Where crew members are to be embarked or disembarked from vessels in Berkeley Sound, the respective vessel's agent currently provide details directly to the C&IS office.

4.12 The costs of the launch hire for transportation of officers to vessels in order to conduct customs clearance formalities is currently the responsibility of the vessel's owners/operators. When vessels have just arrived to port, the master generally also needs the services of a launch in order to attend to their own needs and requirements.

4.13 When Executive Council Paper 22/07 - Addendum to Staffing Paper 295/06 was considered by Members at their meeting of 25 January 2007, the CofC's arguments that for commercial reasons, the customs ports of Stanley/Port William should remain open all hours were not accepted and Members instructed that the ports should be closed to shipping between the hours of mid-night and 06.00 hours. In practice this decision has indeed had the effect of minimising the

number of physical call outs for C&I officers between those hours but has not eliminated them. In addition to vessels occasionally arriving with crew members requiring urgent medical attention or to disembark someone in the early hours to enable them to depart on the Airbridge, there are also seasonal periods during which fishing vessels arrive within the 'closed port' hours in order to take their turn transhipping their catches to reefers in Port William or at FIPASS and/or to take bunkers. Now that oil exploration activity has recommenced there has also recently been the occasional oil rig support vessel that has requested clearance within the 'closed port' hours and the C&I officers of today fully recognise that in the commercial world if time isn't money it the missing of a commercial opportunity.

4.14 Although C&I officers are called out much less often to attend arriving or departing vessels during the 'closed port' hours, the reality is that the our port is not really closed as such. During the busier periods of the year it is actually open all hours, with transhipment operations taking place and launches to-ing and fro-ing between vessels in Stanley Harbour and Port William and indeed also going to and coming back from Berkeley Sound.

4.15 At the meeting of Executive Council of 16 November 2006, Members considered Paper 293/06 submitted by the CofC which proposed modifications to Customs clearance procedures relating to the smaller cruise vessels arriving to outlying Camp locations (undeclared ports) before proceeding to Stanley. The proposed modified procedures as were approved, include the requirement for masters to forward electronically to the C&IS all relevant documentation relating to their Report Inwards in advance of their intended arrival to the outlying Camp location they wish to visit. Their report must also include a Maritime Declaration of Health. Provided all is found to be in order and after consultation with the Chief Medical Officer when appropriate, a conditional customs inwards clearance (and Maritime Health "free pratique") is granted. This then permits the respective vessel to land their passengers for shore excursions.

4.16 When the vessel in question arrives to Stanley, officers then board it to collect and check the original signed documentation and examine/stamp staff's and passengers' passports. This arrangement has generally worked well, albeit on occasions the inwards reports as first received have been found to be incomplete. When this occurs, delays ensue whilst the correct information is sought. It is also of course sometimes the case that during the working week the required reports are not received during normal office hours. When this happens it necessitates an officer having to remain in the office or come back later to process the overdue report once it has been sent through. Of course there are also instances when these reports are received on weekends and on public holidays which also necessitates an officer coming in to the C&I office in order to process them. Given the nature of fishing vessel operations, it is not uncommon for the masters of fishing vessels to defer their entry into port until a later time and continue fishing and therefore C&I officer might find themselves waiting for a report that in fact is not going to come in until a much later time.

4.17 Cruise vessels arriving directly to Stanley also file reports electronically in advance of their arrival as per 4.9 above. This is because all cruise vessels must

submit a Maritime Declaration of Health and because of the large numbers of crew and passengers involved, time is needed to closely scrutinise the lists of persons on board in advance of the ship's arrival because any person who is not travelling on a valid passport or seaman's book is not permitted to come ashore. Such special procedural arrangements in respect of cruise vessels and other vessels carrying more than twelve passengers is common practice in many countries.

Current Charging Arrangements in Respect of Customs Clearance and Customs Services Fees

4.18 The current Customs Clearance and Customs Services fees rates that apply in respect of vessels arriving and departing the FI are provided in the following table

Customs Clearance Fees (for inwards & also departure)	**Declared Ports £**	**Undeclared Ports £**
Vessels not exceeding 50 tons	26.15	129.70
Vessels exceeding 50 tons	52.30	259.30
Customs Services Fees*	**Normal Hours**	**Outside Normal Hours**
Hourly Fee, per hour or part thereof	£ 38.20	£ 57.30
Minimum Fee	£ 76.40	£114.60

* The Customs (and Immigration) Services Fees also apply where ever the services of a C&I officer is required e.g. the Customs Airport at Mount Pleasant

Financial Considerations

4.19 At some time during the late 1980's, the Financial Secretary of the time advised the CofC that the Customs Department (as it was then) should seek to ensure that its total operating expenditure costs are recovered through the application of 'user pays' customs fees and therefore all taxes or duties imposed should be considered as being the department's "net profit". This advice has continuously adhered to. Using FY 2013/14 estimated revenue and expenditure values as an example, the below table clearly demonstrates this, as the total fees revenue accrued in that year exceeded the C&IS's total expenditure by approximately £155.6 thousand.

Category	**£**	£	£
(Maritime) Customs Services Fees	207,443		
(Maritime) Clearance Fees	146,155		
Total Maritime Fees		**353,598**	
Other Customs Services Fees	79,767		
Immigration & Other Misc. Fees	63,886		
Total Other Fees		**143,653**	
Total Maritime and Other Fees			**497,251**

(Total) Taxes, Duties and Harbour Dues	2,973,159		**2,973,159**
Approximated Total Revenue	**3,470,410**		**3,470,410**
Total C&IS Expenditure	**341,600**		**341,600**

4.20 If this long standing 'user pays' financial ethos is to be maintained, careful consideration will need to be afforded in regard to from where an acceptable level of C&I services fees revenue can be achieved in the future if significant changes to the procedural Reporting arrangements of vessels is adopted on a permanent basis and expanded on following the completion of the proposed trial period.

5.0 Other Countries' Customs Clearance Procedural Arrangements Relating to Vessels Using Their Ports

5.1 During the past year, as and when other work commitments have allowed, the CofC has spent a significant amount of time perusing information on the Internet relating to the customs clearance of vessels procedural arrangements being operated in various other countries. In addition to looking at some of the reporting systems in place in other British Overseas Territories such as Anguilla and Bermuda, he has also looked at those of larger countries such as: Canada, New Zealand, Australia and the United Kingdom. Regrettably, the level of information available on the Internet in respect of some of these countries' current procedural customs reporting arrangements does not include much practical detail in regard to how their systems actually operate.

5.2 It is apparent that because individual countries have developed their own distinct ships' reporting arrangements and port management systems to suite the particular types of shipping movements occurring in their respective geographical areas there do exist quite a number of similarities such as most, if not all of the bigger countries that were looked at do not appear to charge any fees for Customs clearance services. Presumably this is because of their significant levels of import and excise duties and ad valorem taxes that are applied to a broad range of products in those countries whilst in the FI we thankfully only have the imposition of import duty in respect of alcoholic beverages and tobacco products to contend with. What is also consistent in regard to all of the countries is that their reporting rules are very clear and properly supported with subsidiary legislation. A further similarity the other countries have, including the OT's is that all have secure and regulated ports and port facilities.

<u>Preferred Customs Reporting Model for the FI</u>

5.3 The United Kingdom (UK) have been operating and refining an electronic inwards reporting system since 2003. Their current general arrangements require all vessels entering its territorial waters and proceeding to a declared port (apart from a few exceptions) to submit in electronic form, their arrival report to their National Clearance Hub (NCH) located in Manchester. Their monitoring and data

information systems are of course extremely complex and also encompass the electronic declaration and release of cargo and goods. Before cargo and stores can be discharged or loaded, or any person or its passengers or crew permitted to embark or disembark, the master of the vessel must receive acknowledgement from the NCH that it has been granted permission to proceed with carrying out their business. Requests for departure clearance must also be sent to this same hub.

5.4 The physical monitoring and inspection of foreign-going vessels lying in UK ports rests with small Customs and Border Force units which board vessels either on a random or targeted basis and check its stores against the declarations previously submitted to the NCH and also search for undeclared concealed goods. Any goods not declared for which a reasonable explanation is not provided and any goods found concealed are seized and become forfeit to the Crown. Prosecution proceedings may also be initiated if significant quantities are discovered.

5.5 Given that FI Customs and Immigration primary legislation is reflected of the UK it would certainly make god sense to follow the UK model, but with modifications to suit local requirements, and where appropriate by also taking on board some aspects of other countries' procedures if they appear more fitting to the needs of the FI.

6.0 Outline of the Key Aspects of New Reporting Procedural Arrangements That Will be Followed by Participating Fishing Vessels During the Trial Period

6.1 The following is an outline of the new reporting procedural arrangements that will be followed by departing vessels making their reports during the trial period. As this is a trial there undoubtedly will teething problems and modifications to the arrangements may be needed in regard to the documentation and also the process if practical shortcomings have been identified. These procedures to be followed should also assist in improving controls in respect of persons disembarking or crew being paid off and in respect of the loading and unloading of stores and other goods.

Arrival

- On making the decision to proceed into a FI port, the master should alert their agent of their intentions. If the estimated arrival time to the limits of the port in question is going to be outside of normal office hours or on a weekend or a Public holiday, then advance notice to the vessel's agent must be given who can in turn, alert the duty C&I officer to the fact a vessel is due to arrive and they can therefore expect a further call later on.

- In the case of there being passengers to disembark or crew to be paid off as soon as possible after arrival, advance notice of this fact should also be given as a C&I officer may wish to examine the persons who will be disembarking and inspect the personal effects they may be carrying.

- On arriving to the limits of a FI port, or not later than 24 hours of arrival, copies of the documents as outlined at the first part of 4.4 above, plus a newly devised Master's Undertaking and Statement of Intentions form must be forwarded by e-mail or fax to the vessel's agent and also directly to the C&IS office. For customs inwards reporting purposes only, the limits of a port is the approaches to the entrance of the port in question and extending , up to 12 miles out to sea and 12 miles in either direction of its entrance.

- If an application to ship new dutiable stores/other stores this may be forwarded for processing at the time of making the Inwards Report but can also be submitted to the C&IS in advance at any time whilst the vessel remains in port must be submitted for signing off done before the stores in question are loaded.

- If there are any stores or other goods not included on a manifest, then a Declaration of Cargo/other goods should be completed and also forwarded with the other necessary documentation.

- Upon receipt of the Inwards report documentation, if it is found to be all in order, the C&I officer will acknowledge receipt of it by date stamping the form and sending a copy of to the e-mail address or fax number it was received from. If the C&I officer has any instructions relating to the inwards report to relay these will be sent at the same time. Until the endorsed copy of the General declaration has been received, no person (other than an authorised person) may board or disembark from a vessel, nor may bulk be broken or any cargo or stores or other goods landed or loaded.

- If the vessel is going alongside a berth or there will be a launch going to the vessel, the signed copies of all original documents must be sent ashore to the agent who must deliver them to the C&IS without undue delay. If the vessel is anchored off and is not going to have any contact by launch with the shore, in these instances the documents may be retained on board and delivered as outlined previously on the next occasion the vessel comes in to a FI port.

Departure

- When the master of a vessel is about to complete their business in port, they will then need to apply for clearance to depart. To do this they will need to send to the C&IS a departure General Declaration and other relevant documents by the same electronic means as they used when submitting the arrival documentation on arriving into port. If this occurs outside of normal working hours they will need to ask their agent to contact the on call C&I duty officer. Alternatively they can request their agent to take the documents to him for stamping and endorsement.

- If the time a vessel is going to be in port is relatively short and there will be no changes in the crew or other relevant facts, the master may submit an arrival and departure report simultaneously.

- If the master is waiting to embark passengers embark passengers or crew coming directly in transit from Mount Pleasant Airport, then the master may elect for the C&I officer to journey to the ship with the arriving passengers in order to avoid delays with their departure.

7.0 Customs and Immigration Officer's Concerns Regarding the Potential Effects to their Overtime Earning Opportunities

7.1 More on the basis of speculation and rumour, C&I officers have become increasingly worried that the trial of the new Electronic Ship Reporting Arrangements will have a negative effect in respect of their overtime opportunities, particularly if it does remain in place at the completion of the trial period. Given the small number of vessels that will be involved in the trial, the impact on their overtime earning opportunities should be negligible. In the longer term if this arrangement does remain in place, as they will still be periodically inspecting the vessels at random, the effects on their overtime should not be significant and there will of course be opportunities elsewhere with the increasing activities that are taking place in respect of oil exploration etc.

7.2 The current rates of remuneration payable to the (Grade E & F*) permanent and casual Customs & Immigration officers are as provided in the table below:

Pay Rates		
Officer Status	**Average Hourly Rate Normal Hours**	**Average Hourly Rate Outside of Hours/Weekends****
Permanent Grade E (1 officer only)	11.73	17.59
Permanent Grade F (4 officers)	£10.11	£15.16
Casual (Grade F pro-rata)****	£11.14	£11.14
'On Call' Allowances (One C&I officer always on 'on call' 24/7***)		
	Per Day, Week days	**Per day, Weekends**
Permanent Grade E&F	£11.07	£16.63
Casual	N/A	N/A

* Officers above Grade F performing operational type duties outside of normal hours/on weekends do not receive any additional remuneration.

** All C&I permanent and casual officers receive payment for the time they are actually working, adjusted to the nearest ¼ hour. There is no 'minimum call out time' arrangement.

*** There is also a "Senior 'on call" Officer" on duty on Saturdays/Sundays and Public holidays for which a daily rate of £8.31 is paid.

**** Casual officers are usually only employed in regard to attending flights arriving/departing MPA and assisting with the cruise vessels.

7.3 In the unlikely event that it does transpire for this to have a significant impact on officer's overtime earning opportunities (on which most are heavily reliant) their salaries and remunerations can be looked at and options considered, such as the payment of a minimum call out fee etc.

8.0 Financial Implications

If this trial is approved, approximately fifteen fishing vessels will be involved during the nine month period of the intended trial. Notwithstanding the small number of vessels involved, a small reduction in customs services revenue and also in staff overtime might be incurred. However, by reason that this will be a trial, the potential reduction in either revenue or expenditure, if any, is not quantifiable at the current time.

It is envisaged that there will not be any significant reduction in staff related expenditure. There may however be a very small increase in the number of hours the C&IS may require to avail themselves of the use of the Harbour Control launch. If this does occur the Fisheries Department have indicated they have sufficient funds in their launch hire vote to cater for this.

9.0 Legal Implications

None at this stage as the trial can be conducted under the existing provisions of the Customs Ordinance. However if the conclusion of the proposed trial is positive and this alternative reporting arrangement is to remain in place there will then be a need for supporting subsidiary legislation to be drafted, including the long outstanding requirement for Traveller's Allowances and Ships' Stores regulations.

10.0 Human Resources Implications

There are no immediate Human Resources implications. However if approval is granted for this trial to go ahead then depending on how these procedural electronic reporting arrangements develop and evolve during the period, it may become necessary to review C&I officers' future total annual average remuneration packages in the interests of staff retention and also so as the C&I officer positions remain attractive in the current local job market.