

Falkland Islands Government

Department Of Mineral Resources

**Policy on
Amendment/Replacement
of Dangerous Goods
Ordinance and proposals
for regulations**



Introduction

The principal Falkland Islands Dangerous Goods legislation is the Dangerous Goods Ordinance 1987 (DGO). The Ordinance provides for a licensing regime for dangerous goods supported by enforcement provisions and was intended to be underpinned by regulations.

In anticipation of the investment decision of the Sea Lion oilfield development a review of the DGO was carried out within the Department of Mineral Resources to assess whether the DGO was fit for purpose to regulate dangerous goods that may be used as part of oil exploitation.

In carrying out this review it became apparent that the DGO is poorly drafted, has not been effectively applied and the intended regulations to underpin the DGO have never been made. It also became apparent that there are a variety of hazardous and dangerous goods that are present in the Falkland Islands, but details of location, quantities and storage arrangements are unknown.

As a consequence a report was taken to Executive Council (paper 176/18) who approved bringing detailed policy proposals back to Executive Council for amending the DGO and introducing regulations to properly regulate dangerous goods that will be used by the oil industry but also to introduce a basic level of regulation for certain types and quantities of dangerous goods.

Background and Overarching Policy

The DGO was made in 1987 and commenced in 1998. The Ordinance was intended to be supported by regulations which have never been made and without which the Ordinance cannot fully operate.

The DGO is poorly drafted and other than occasional use has never been fully or effectively applied. Combined with the absence of regulations it is not currently capable of effective regulation of dangerous goods. In addition the fact that the Falkland Islands has not adopted any effective onshore health and safety legislation means that there is currently no other legislation that overlaps with the DGO and provides an alternative option for regulating dangerous goods.

The development of Sea Lion, if sanctioned, will require quantities of explosives and methanol to be conveyed and stored on shore. These goods are recognised as dangerous/hazardous in the UK and as such have a regulatory regime applied to them. In carrying out research for the review of the DGO it also became apparent that there are a variety of dangerous/hazardous goods present and used in the Falkland Islands by government, businesses and individuals and that there are no effective measure in place by which they can be regulated.

The Island Plan contains a commitment that the government will ensure that the necessary health and safety legislation and guidance is in place to protect our workforce. It contains a commitment to ensure that the Falkland Islands are a safe place for people to live. It also

states that the government will create a robust legislative framework to regulate hydrocarbons development.

On considering the report (176/18) Executive Council approved the following recommendations:

1. That amendments are developed to the DGO and draft subsidiary legislation is developed for the purpose of regulating hazardous substances required for oil exploitation.
2. That the opportunity is taken to introduce a basic level of effective regulation for dangerous/hazardous goods and properly apply licensing arrangements where necessary
3. That a detailed policy paper is brought to Executive Council setting out the details of the proposed amendments and subsidiary legislation for approval before legislative drafting commences.

This policy paper is intended to meet the Executive Council requirement for a detailed policy paper. The scope and scale of the amendments proposed may result in a replacement Ordinance rather than amendment to the existing DGO.

Policy background for proposed revision of the DGO and introduction of subsidiary legislation

In the context of an imminent decision in relation to the development of the Sea Lion Oilfield the DGO has been reviewed within DMR.

Revision of the DGO and the introduction of subsidiary legislation are needed to ensure the legislation achieves the following policy objectives:

The definition of what are to be regarded as dangerous/hazardous goods is clear and appropriate

The identity, role and powers of the licensing authority is clear

The regulatory regime applies to FIG as well as having general application

The regulatory regime is clear that it applies to the manufacture, storage/possession, transportation and use of dangerous/hazardous goods

That there are appropriate arrangements for dealing with prohibited dangerous/hazardous goods

That the requirement for a licence is clearly expressed

That exemptions from the requirement for a licence are appropriate and unambiguous

That the process for applying for and determining licence applications is clearly set down

That there is clear provision to enable the licensing authority to determine terms and conditions to apply to licences granted.

That enforcement powers, offences and penalties are clear and appropriate

That a basic level of regulation is introduced requiring notification to the licencing authority of certain types and quantities of dangerous/hazardous goods so that the emergency services know what dangerous goods are where, so as to avoid risk of harm to people and an appropriate response to an incident.

That the reporting of incidents and accidents provisions are strengthened so that licences can be reviewed and actions taken to prevent reoccurrence.

Detailed Policy for revision of the DGO and for subsidiary legislation

Goods that are hazardous/dangerous

The meaning of 'dangerous goods' in the Ordinance needs to be revisited and it is proposed that the meaning should expressed so that it includes goods that by their nature present a significant risk of harm to human health.

It is proposed that the meaning of dangerous goods should be:

"Dangerous goods" are materials or items with hazardous proprieties which, if not properly controlled, present a potential hazard to human health and safety, infrastructure and or their means of transport.

Dangerous/hazardous goods include (but are not limited) to:

- Explosives
- Gases that are compressed, liquefied, or dissolved, under pressure
- Flammable liquids
- Flammable solids or substances liable to spontaneous combustion or emit flammable gases when in contact with water
- Oxidizing substances and organic peroxides
- Toxic and infectious substances
- Radioactive substances
- Corrosives
- Other substances that present a danger to human health

It is proposed that the legislation should be supported by guidance that goes into more detail describing what items are considered to be dangerous/hazardous using the IMDG and IATA

classifications so that there is clarity about what things are classified as dangerous/hazardous. This will assist and support people in complying with the regulatory requirements set out in the legislation.

How dangerous goods should be regulated

It is proposed that a licence is required for the manufacture, processing, possession, transportation and use of dangerous goods within the territory of the Falkland Islands. It is not proposed that the legislation will overlap with dangerous/hazardous goods regulations that apply to aircraft and ships. However it is also recognised that there are some dangerous goods that within certain limits do not need to be subject to a full licensing regime but nonetheless should be subject to a notification requirement so that their type, quantity and whereabouts are known.

Application for a licence

To obtain a licence an application must be made by the person responsible for the dangerous goods. This can be an individual or a corporate body, but in essence it will be the person who is responsible for the dangerous/hazardous goods and who will take responsibility for those goods in relation to compliance with the regulatory framework.

The application must be made to the licensing officer.

The application must be made 20 working days before the responsible person will be manufacturing, processing, possessing, transporting or using the dangerous goods. The licensing officer has discretion to accept late applications if there are exceptional circumstances.

The application must include the following:

- Name and contact details of the applicant who must be the 'responsible person' (if a corporate body they must provide a contact for the dangerous goods)
- Description of the dangerous goods including, quantity and relevant technical data
- Details of the purpose for which the goods are required
- Details of manufacturing process, other process, storage, transportation and use.
- Details of measures that the applicant will put in place to ensure safety of persons
- Duration of the licence required
- Declaration that the information that is given is accurate.
- The correct fee for the application to be considered (the fee is not refundable if licence is refused).

Determination of a licence

It is proposed that an application for a licence must be determined by the licensing officer. It is proposed that the process for determining a licence should be as follows:

- On receipt of an application the licensing officer will check that the application has been properly submitted within the time allowed, with the required information and with the correct fee. If the application is incorrectly submitted the licensing officer shall not consider the application until any defect has been corrected. The licensing officer may in their discretion accept a late application in exceptional circumstances.
- The licensing officer should determine a valid application within 15 working days of receipt.
- A licence may be granted subject to such terms and conditions as the licensing officer thinks fit which may include (but is not limited to):
 - Requirements for marking and notices
 - Requirements for use, storage, transportation etc
 - Requirements for training in the use and handling of the goods
 - Requirement for a contingency plan in the event of an incident
 - Requirement for adequate public liability insurance
- If the licensing officer refuses to grant a licence then they must give brief reasons for doing so.
- It is proposed that an applicant should have a right of appeal against the refusal to grant a licence or against the terms and conditions imposed on a licence

Variation of a Licence

It is proposed that the Licensing Officer may vary the terms and conditions of a licence at any time if it appears to them that such variations are required to reduce the risk of harm to human health.

A licence holder can appeal against a variation to the Magistrates Court (same rules as above to apply).

A licence holder may apply to the licensing officer to vary the terms and conditions of their licence. There will be a non-refundable fee payable for making this application. An application to vary a licence must be determined by the licensing officer within 15 working days. The licensing officer must give brief reasons for refusing an application to vary a licence.

A licence holder can appeal against a refusal to vary a licence.

Revocation of Licence

It is proposed that the licensing officer may revoke a licence if the licence holder fails to comply with the terms and conditions of the licence, or if in the opinion of the licensing officer it is necessary to revoke the licence to reduce the risk of harm to human health.

A licence holder can appeal against revocation.

Right of appeal

- An appeal must be made to the Magistrates Court

- An appeal must be made within 20 working days of the applicant being notified of the determination of the licence.
- On appeal the Court may grant the licence as determined by the licensing officer, may refuse to grant the licence or may grant the licence on such terms and conditions as the court thinks fit. The court must have the discretion to take expert advice where necessary to enable it to determine an appeal.
- Court may award costs in its discretion

Pending the outcome of any appeal the dangerous goods must be stored in accordance with the instructions of the licensing officer.

Identity, role and powers of the licensing officer

The licensing officer needs to be clearly identified. It is proposed that the licensing officer for dangerous goods is the Director of Emergency Services & Island Security and Principal Immigration Officer or such other officer as the Governor in Exco appoints.

The Licensing Officer may appoint a deputy licensing officer(s) to discharge any of the functions of the licensing officer.

In exercising their functions the licensing officer may consult with such experts as they think necessary in order for them to properly discharge their functions.

The licensing officer must:

- Keep under review the definition of dangerous goods and report to Exo if any changes are required.
- Determine applications for a licence relating to dangerous goods
- Keep such records of dangerous goods as they think fit
- Make a list of dangerous goods that are prohibited dangerous goods.
- Administer the licensing framework in accordance with the legislation.

The licensing officer and any officer authorised by them should have the following powers:

- Power to determine licence applications
- Power to vary licences
- Power to revoke a licence if the terms and conditions of the licence are not being met or if the use (etc) of dangerous goods poses a risk to human health
- Power to inspect licenced dangerous goods in relation to their manufacture, processing, storage, transportation and use.
- Power to enter and search for dangerous goods where the licensing officer has reason to believe that there may be dangerous goods which should be the subject of a licence

but are not licenced, or where there may be dangerous goods subject to the notification requirement and no notice has been received.

- Power to seize or take control of dangerous goods where the officer considers that they present a significant risk of harm to human health in order to reduce the risk of harm
- Power to dispose of dangerous goods that are seized or have been taken under the control of the officer where this is necessary to reduce the risk of harm
- Power to charge the person in control of dangerous goods the costs incurred of seizing, taking control of and/or disposing of dangerous goods

Who and what the licensing regime applies to

It is proposed that the licensing regime applies to all persons (including FIG and FIDF, and possibly MOD apart from goods needed for defence purposes?) that manufacture, process, possess, transport and use dangerous goods, subject to the following exceptions:

- Goods of the type and quantity that are normally used for domestic, office, light industrial, farming or horticultural purposes, and that are not specifically identified as dangerous goods for which a licence should be held. (In practice this will mean quantities of items such as bleach, solvents, paints, fertilizer, acids, etc. held in appropriate quantities for the normal day to day use)
- Goods of the type and quantity that are subject to the notification requirement but for which a licence is not required.
- Goods exempted by regulations from the licensing requirement

Notification Requirement

It is proposed that for certain specified descriptions and quantities of dangerous goods that there will be a requirement for persons that manufacture, process, possess, transport or use them – to notify the licensing officer of that fact as soon as practical after them knowing that they will be coming into possession of the goods.

It is proposed that the dangerous goods that fall into the notification requirement be those that may pose a significant risk to human health in the event of an incident if responders are unaware that those goods in particular quantities are present. These are dangerous goods that are not of such a type or in such quantities to require the application of the full licensing regime, for example certain quantities of fuel, compressed gases or inflammable substances.

The notification must include:

- A description of the dangerous goods
- The quantity of the dangerous goods

- The location of the dangerous goods
- The contact details for the person responsible for the dangerous goods

Notifications must be renewed annually. The purpose of the notifications is to ensure that the emergency services know when they attend an incident whether it is likely that there may be dangerous goods present, what goods they are and in what quantities they are kept and can plan their response accordingly

The dangerous good to which this notification requirement applies must be listed in regulations/published schedule.

The proposed schedule of goods and quantities that would fall into the notification requirement are set out in the Appendix to this document. It is anticipated that the notification requirement will only apply to a minority of people.

It is proposed that the Licensing officer will keep a register of these notifications. The register will not be published (as this would provide the general public with a list of where dangerous/hazardous goods may be found). The register is to be used for internal security and public safety purposes by the emergency services.

Duty to report incidents

It is proposed that a duty is placed upon licence holders to report within 24 hours to the licensing officer any incident that occurs where dangerous goods presented a real risk of harm to human health.

Offences

It is proposed that it is an offence for the licence holder/person responsible to:

- manufacture, process, possess, transport or use dangerous goods (that are not exempted) without a licence (penalty level 4 fine/six months imprisonment or both)
- fail to comply with the terms of a licence (penalty level 4 fine/six months imprisonment or both)
- fail to give notification of dangerous goods (where that notification is required) (penalty level 1 fine)
- obstruct the licensing officer (and any deputies) in the performance of their functions (level 3 fine/six months imprisonment or both)
- fail to comply with an instruction from a licensing officer (penalty level 4 fine/six months imprisonment or both)
- fail to report an incident (level 3 fine/six months imprisonment or both)

On conviction the court may order forfeiture and disposal of the dangerous goods concerned (with no compensation), may order the party to pay the costs of forfeiture and disposal and

may prohibit that person from holding dangerous goods in the future for such period as the court thinks fit.

Fixed Penalties

It is proposed that for the offence of failing to give notification there should be a fixed penalty scheme as an alternative to prosecution. The appropriate level of penalty is considered to be £50. If the penalty is paid then no prosecution can be brought for the same offence.

It is proposed that the fixed penalty provisions can be modelled on those used for minor motoring offences.

Regulations

It is proposed that there should be the power to make regulations for anything in the Ordinance including:

- Forms and Fees
- Schedule of goods subject to the notification requirement
- Goods exempt from the licensing requirement
- Any other matters

Guidance

It is proposed that guidance is published alongside the revised Ordinance and regulations to assist people to understand the requirements of the Ordinance and provide appropriate guidance and information on goods that are regarded as dangerous goods.

