



### Dr Phil's Diagnosis...

Welcome to the first edition of ReportISM, the newsletter produced by ConsultISM, the experts in the ISM Code.

We have been running for nearly a year now it's been a hugely exciting and busy time and our perceived need for the services offered by ConsultISM have been fully vindicated based upon the appointments received. We are meeting more and more people across the industry who share our vision of ISM excellence.

Together we can make ISM work...we must remember that ISM can be the best friend a shipowner can ever hope for, or the worst enemy it could ever imagine!

## ReportISM



Through ReportISM we aim to provide you with the latest news, views and ideas on effective safety management and ISM compliance along with news of industry and Governmental developments in this important area.

Every quarter the ReportISM newsletter will be published providing coverage of recent developments and future ISM issues, as well as telling you about the best practices we have seen and warning you about some of the worst.

The concept is simple, we aim to share our thoughts and the ConsultISM philosophy of improvement and excellence. We will distil the vast amount of information available, gathering relevant news, reports and intelligence to provide you with an insight into a broad range of ISM and maritime safety issues.

ReportISM will provide news on current issues and changing legislation to arm you with knowledge of contemporary concerns and any potential

difficulties, providing advice to avoid complications, accidents and expense, with the aim of helping you to make your SMS the best it can be.

**Dr Phil Anderson,**  
BA (Hons), D.Prof, FNI, MEWI, AMAE  
Master Mariner, Managing Director

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# ISM on “mock” Trial

Since the earliest days of the International Safety Management (ISM) Code, much energy has been devoted, by legal academics and practicing lawyers in examining the Code’s potential legal impact upon a ship’s operating company. Still some issues remain unaddressed

- The legal impact of breaching the ISM Code;
- Corporate culpability for ships involved in criminal offences/loss of life
- Possible loss of limitation of liability.

With such legal implications still in need of clarification, a very important and timely event took place this summer, as the London Shipping Law Centre (LSLC) conducted an ISM Code ‘mock trial’ at the offices of A. Bilbrough & Co.

The trial involved an imaginary scenario in which a container ship had suffered a collision, fire and subsequent damage to cargo. The collision was caused when the bridge watchkeeper fell asleep at a critical moment in the English Channel, and when the ship caught fire, following the collision, it turned out that the newly joined Chief Engineer was initially incapable of operating the CO2 fire-fighting system.

Claimants were the cargo owners, who sought to prove that the defendants had failed to exercise “due diligence” to make the vessel seaworthy at the commencement of the voyage. To achieve this, evidence of documentation and ISM implementation was used extensively by the counsel for the claimants, and was crucial in determining the seaworthiness of the ship.

The judge concluded that the ship was indeed unseaworthy by virtue of the fatigue suffered by the watchkeeper and the Chief Engineer’s “disabling want of knowledge” of the fire fighting system, both of which stemmed from an unsatisfactory Safety Management System.

The “mock trial” was presided over by The Hon. Mr Justice Gross and the trial team comprised of, amongst others, ConsultISM’s Dr Phil Anderson as Expert Witness, Mr Tim Young Q.C., Mr Bernard Eder Q.C. and moderated by Dr. Aleka Mandaraka-Sheppard of the University College London and Founding Director of the LSLC.

Even though this was only a mock trial, based upon an imaginary scenario and documentation, the ‘case’ demonstrated how a conflict in the ISM system, or any inaccurate record keeping could expose the Company and



its officers to intense scrutiny in court.

It also revealed how lawyers and expert witnesses can highlight weaknesses of the SMS, and how the ISM system can become the best friend a defendant could ever wish for, or the worst enemy he ever could imagine, all depending upon how well it has been developed and implemented.

The packed venue confirmed the event a huge success. Indeed the event proved so popular that it is to be repeated on the 23<sup>rd</sup> November 2005 with ConsultISM again acting as Expert Witness.

ConsultISM was delighted to participate in the Mock Trial and to help raise the awareness of some of the outstanding legal issues surrounding ISM. However, the main thrust of the work of ConsultISM Ltd is the provision of Expert Witnesses and Expert Advisors on the ISM Code and the management of safety to the Courts, Lawyers, Insurers, ship operators and potential claimants.

[www.london-shipping-law.com](http://www.london-shipping-law.com) for more details.

# ConsultISM speaks

Earlier this year, at the invitation of Strategic Dataworks Ltd, ConsultISM addressed a prestigious gathering of ship operators in the glorious setting of the Barber Surgeons Hall, in London.

Strategic Dataworks is a company providing high quality and innovative software solutions to help ease the workload of implementing a successful Safety Management System.

We were asked to address issues regarding ISM compliance, the creation of effective and workable Safety Management Systems, and the essence of the ConsultISM philosophy.

Consultant Steven Jones, representing ConsultISM Ltd., addressed the issue squarely by providing a critical review of what was wrong with the industry pre-ISM, an era when the merchant fleet was losing ships at a faster rate than at any time since the U-boat wolf packs of the Second World War. Before moving on to explore the concept of safety and the evolution of ISM.

So why, we asked, had shipping got into this mess? The answer was as simple as it was depressing; the industry had plainly not regulated itself! As an antidote to this we then probed the introduction of management systems, and examined the evolution of technical safety

requirements into the human element, both afloat and ashore.

Admittedly all has not been plain sailing for the ISM Code. Why, we asked, was a code intended to improve standards and to ensure the safety and support of seafarers, viewed with such apathy, fear and loathing?

Many companies had apparently been operating safely for years and yet they appeared to panic in the face of ISM and the huge weight of expectation that it spread.

Many lost confidence in the things that they had been doing so well, for so long before ISM.

If a competitor had an SMS which encompassed 30 files on the shelf, then blimey we'd better make ours 40...just in case! Regardless of what they actually contained!

We went on to point out that there is no model or perfect SMS – only the right one that works for your company, people and vessels.

Where can it go wrong we asked? Quite simply if the SMS is failing then so too does every facet of a vessels operation... we viewed three examples of such failing systems...the three "Un's".

**Unwieldy:** Shelf-after-shelf of folders and files, page-after-page of unnecessary checklists. A dictatorial and clumsy system quashes the professionalism and prowess of those trying to use it.

**Unworkable:** A system not suited for the company, the ship, or crew...the off-the-shelf system. If a system is incapable of working, it will not work!

**Unbelievable:** If the people having to work with, or through a system begin to question its validity then it has failed and will never be effective.



UNWIELDY



UNWORKABLE

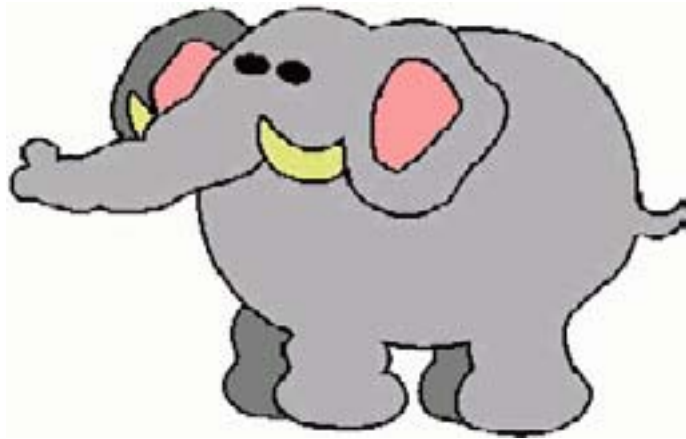


UNBELIEVABLE

So what does a working SMS look like, the crowd asked? Well it's a bit like trying to describe an elephant to someone who has never seen one. It's extremely difficult to express, but you are never in any doubt once you actually see one.

A copy of the presentation can be accessed at [www.consultism.co.uk](http://www.consultism.co.uk)

Remembering the old ISM maxim of "Say, Do and Prove!" we ended by hammering home the message that if your SMS doesn't actually say what you do then you can never prove otherwise...and as the London Shipping Law Centre "mock trial" proved, such weaknesses are easily exploited by a lawyer searching for the "Smoking Gun" in the audit trail.



Nelly, the SMS elephant

## DOC and SMC Removals

The UK Maritime and Coast Guard Agency (MCA) recently withdrew the ISM Document of Compliance and Safety Management Certificates from four Wightlink Fast Ferries.

is unable to operate these vessels without creating a risk of serious danger to safety of life and property without undertaking further corrective measures.

The belief within the industry has long been that such withdrawals are rare, but more and more we are hearing that companies are having their DOC's and SMC's withdrawn – leading to the ships and the Company being unable to trade.

A MCA spokesman, said withdrawal of the international safety management document of compliance and safety management certificates followed two unreported engine fires on board one of the vessels.

The MCA advised Wightlink of its decision and discussed proposals in order to restore the withdrawn certificates, which were eventually reinstated.

Be warned, it can and does happen!

The removal of the certificates resulted in the immediate suspension of services on the ferries. The MCA went on to add that the reason for the withdrawal was the consideration that the company

There have certainly been anecdotal stories of Flag State Administrations removing or cancelling SMC's and DOC's as a result of major non-compliances but very rarely have such actions been made public.



# Can't see the Code for the trees

Amongst the key complaints about ISM is paperwork...there is often too much, far too much. In addition to this it is very often "flogged", with entries which are simply fabricated (see pages 6 and 7 for further comments on this subject).

Often we see that safety management systems are failing because of this over emphasis on paperwork. But why is there so much paper? Well, to fully comply with the ISM Code you have to document all that you do, and what better way than with a pen and paper? Well times are changing...

There are now alternatives out there. Today, powerful document management solutions allow users to work with, administer, modify, update and distribute and keep records with ease and with minimum paperwork.

All too often we hear that crews are losing the battle with paperwork and so the use of such systems really can make life better for those onboard, and easier too for those ashore managing the system remotely.

There are huge benefits to be

- Shipboard personnel can have easy access to the latest version of the SMS manuals.
- The ease of finding the right information in a critical situation can improve safety on board.
- Document management can make it easier for ship operators to keep up with regulations and to avoid detentions.
- Good quality and workable document systems demonstrate that steps are being taken to ease the administrative burden

achieved in managing and manipulating the data onboard.

However good the software is, and regardless of the investment made, document management will not help a Safety Management System that does not adequately reflect the vessel, crew or cargo. Hiding behind elaborate and powerful software will not obscure the fact that when accidents happen they happen because of failings in the SMS.

It is also true that in light of the potential need to demonstrate full legislative compliance and

to be able to defend claims in court ship operators can no longer rely on ad hoc management of their messages, documents, images and videos – they need efficient and effective systems which can achieve the desired results including producing, should it be required, objective evidence confirming the necessary compliance.

ConsultISM has seen a number of systems in operation, including the Strategic Dataworks Safety and Security Module, the Ulysses System, the D@tatrac innovations and we do believe that they can be beneficial when used to support a well developed SMS which embodies the beliefs and values of the Company and those involved in the implementation of the system.

It is crucial to understand, that however many high-tech features the software might have it can never compensate for a working safety culture amongst those involved in the implementation process.

Choose your software carefully, but your safety systems even more so...

If you believe that these document management systems could benefit your company, please feel free to contact ConsultISM for an impartial assessment of the best ways in which to harness technology within your SMS.



# Flogged logs cost dearly



Anecdotal stories have long reported widespread irregularities with watch-keepers completing their hours of work / hours of rest records as required under:

**Section A-VIII/1 of the STCW Code.**

ConsultISM staff have encountered a number of specific instances where this practice is apparent – what we do not know is just how widespread the falsification of records actually is.

What we can say, without hesitation, is that the practice is not only dangerous and irresponsible – it can also expose the ship operator to enormous potential liabilities.

Further, if it is established that the falsification of the records was done with the knowledge of the ship operators, or if they should have been aware of the practice through the internal

audit process for example, then they may, in certain circumstances find themselves having to try and persuade a court of law that they should still be entitled to limit their financial liability or convince their insurers that they should still be entitled to benefit of their insurance cover – it really could be that serious!

Let us consider the real problem.

The root of the issue is clearly an attempt to tackle the problem of watch-keepers working excessive hours with the consequent risk of fatigue and the dangerous situations which can develop as a result.

An imaginary, but not at all exaggerated or unrealistic scenario was set out in the ISM Mock Trial (as reported on page 2). In which the Navigating officer of the watch had been working hours in excess of

those allowed under the STCW regulations – or more correctly, had not had the minimum hours of rest prescribed.

The recorded hours did not indicate any irregularity but an experienced investigator had little difficulty identifying a number of specific work related activities which the particular officer must have been involved in and for which there was no record.

Once such irregularities are discovered they would not only draw serious doubt upon the reliability of that particular document but, in the eyes of the Judge and the Court, the whole of the evidence presented in support of the ship operators case could be seriously contaminated. This in turn would, in all probability, have very serious consequences as far as the ship operator's legal defence is concerned.

The reason why the falsification of the records takes place appears to be rooted in the conflict which can arise between the commercial operation of the ship and safety. More and more ship operators and their staff are recognising that there can never be any question or doubt about this issue – safety has got to come first – every time.

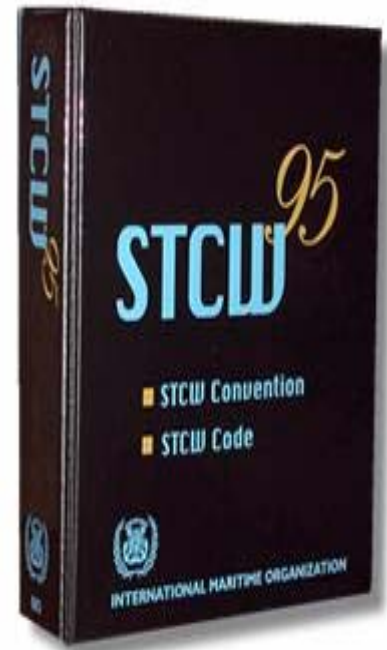
This is not just an idealistic pipedream – it is a reality and any ship operator who believes otherwise should recognise the very serious risks they are running.

Whilst we generally tend to think about civil type actions we should never forget that not only Masters and officers on board are exposed to criminal liabilities but also the Shipowner, the Chief Executive and Board Members as well as the D.P. and other line managers. There are a whole range of fines which they may face personally and also quite lengthy prison sentences. This may also include manslaughter charges both personally and corporately.

The point to remember is that the Courts will be examining the documentation and records very carefully. If it does transpire that falsification of records has taken place then this will, almost certainly, have serious consequences for all involved if the falsification does have any relevance to the alleged criminal offence.

It cannot be stressed too strongly just how crucial it is to emphasise to all involved the importance of accurately recording hours of rest / work as required by STCW. If the commercial operation of the ship is such that the personnel

resources on board are not sufficient to perform all the tasks required within the time available then a proper solution must be found. If this involves delaying the ship sailing until the watchkeepers have had sufficient rest then that is what must be done. If it requires an additional watch-keeping officer to be placed on board – maybe during the loading / discharging operation then so be it – that is what must be done. An unacceptable solution is to “flog the log” and sail with un-rested / fatigued watch-keepers.



## Section A-VIII/1 of the STCW Code stipulates:

### Fitness for duty:

- All persons who are assigned duty as an officer in charge of a watch or as a rating forming part of a watch shall be provided a minimum of 10 hours of rest in any 24-hour period.
- The hours of rest may be divided into no more than two periods, one of which shall be at least 6 hours in length.
- The requirements for rest periods laid down in paragraphs 1 and 2 need not be maintained in the case of an emergency or drill or in an overriding operational condition.
- Notwithstanding the provisions of paragraphs 1 and 2, the minimum period of ten hours may be reduced to not less than six consecutive hours provided that any such reduction shall not extend beyond two days and not less than 70 hours rest are provided each seven day period
- Administrations shall require that watch schedules be posted where they are easily accessible.

# Practical Guide to ISM

## ISM Code – A Practical Guide to the Legal and Insurance Implications - 2nd Edition

In preparation for Phase One implementation in 1998, Phil Anderson was invited by Lloyds of London Press to produce a practical guide to legal and insurance implications of the ISM Code. The first edition was published in November of that year and has become established as an industry standard work. It was felt appropriate to bring that volume up to date and we are now delighted to announce that a Second Edition will be launched in November 2005.

The ISM Code affects everyone involved with commercial shipping. It is the benchmark against which legal liability will be measured – in both civil and criminal actions. Whether you work on board ship or in an office ashore, you should always have this book close to hand for reference. Seven years on from the final deadline for phase one of implementation, this title has been fully updated to reflect developments and industry experience.

### This essential book provides

- Developments to the ISM Code since the first edition in 1998
- A number of important legal cases involving ISM related issues
- The only book to specifically addressing the legal and insurance implications of the ISM Code
- Recent amendments to the ISM Code by the IMO in 2000 and 2002
- Real examples of case studies rather than hypothetical examples
- ISM related activities of the Port State Control clearly defined

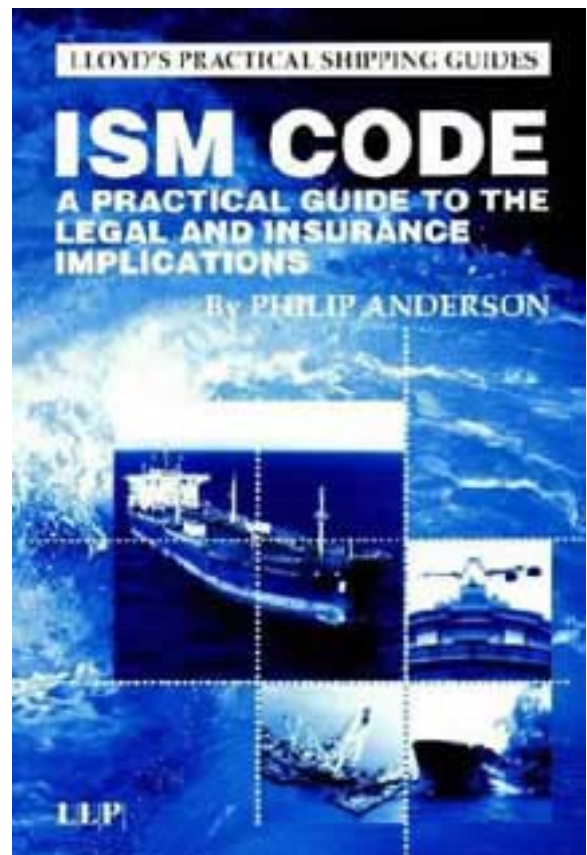
Order now at: [www.informalaw.com/ismcode](http://www.informalaw.com/ismcode)  
 ISBN: 1 84311 471 2  
 Price: £70/€109/US\$133  
 Publishing date: Autumn 2005

### Expert guidance

Widely regarded, internationally as one of leading experts on the ISM Code, Dr Phil Anderson is currently Managing Director of specialist consultancy and Expert Witness service ConsultISM. He is also President of the Nautical Institute and on the IMO list of experts and consultants.

### Who should read this book?

- Masters and officers on board ship
- Managers in the ship operators office ashore
- Marine insurance personnel
- P&I Club managers and claims executives
- Marine surveyors and consultants
- Maritime lawyers
- Maritime academies for teaching ISM to officers studying for their professional certificates



## Keep up-to-date

Whilst recently reviewing Safety Management Manuals in a number of different Companies it became apparent that some have not been brought up to date to reflect the amendments which occurred to the ISM Code on 1<sup>st</sup> July 2002.

Some Companies are still including a copy of IMO Resolution A.741(18) and making reference to that Resolution as representing the text of the ISM Code. Clearly this is out of date and the manuals will need to be brought into line with the current status of the Code.

For clarification sake, we would advise that Resolution A.741 (18) – The International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code), which was adopted in 1993,

was amended in December 2000 by Resolution MSC.104 (73). This resolution was accepted on 1<sup>st</sup> January 2002, and the amendments entered into force on 1<sup>st</sup> July 2002. A copy of the full amended text can be downloaded from the IMO website [www.imo.org](http://www.imo.org)

For completeness sake, we should also advise that IMO Resolution A.788(19) – Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations was replaced with Revised Guidelines, which were adopted by resolution A.913(22) in November 2001 – revoking resolution A.788(19) as of 1<sup>st</sup> July 2002.

One of the key services available from ConsultISM Ltd is an objective review of ship operators Safety Management Systems both in the office ashore and on board ship. Such reviews would typically involve



a document review and an assessment of how the SMS was working in practice. Suggestions can then be made as to where there may be weaknesses in the systems and what steps might be appropriate to tighten up in those areas and make the SMS more efficient.

Such an exercise will help with the efficient running of the SMS and will also help to ensure that if an accident or incident does happen then the Company will be able to demonstrate that they had done all that they reasonably could to develop and implement their SMS. The Court Room is not the place to realise that there were weakness in your SMS!

## ISM and Seaworthiness

One of the most important ISM seminars of recent years was held in Southampton recently and Dr. Phil Anderson, was honoured to have been invited to Chair the event as well as providing the Opening Address.

The “Seaworthiness and the ISM Code” seminar had been organised by the Nautical Institute London and Solent branches under the Maritime

Excellence Programme and the general theme of ‘The Mariner and Marine Insurance’.

The programme provided a rich mixture of practicing mariners, lawyers and marine insurers both as eminent panellists and as delegates. This was a most timely event, seven years after the Phase One deadline, taking stock of developments both at a practical level on board ship

and in the ship operating Companies as well as in the Courts of Law.

The speakers papers will soon be made available – please monitor [www.consultism.co.uk](http://www.consultism.co.uk) for relevant details.



# Leading from the top

It is widely recognised and accepted that if the ISM Code is to produce meaningful results then it must be led from the top of the organisation.

Indeed paragraph 6 of the Preamble to the ISM Code reads:

...The cornerstone of good safety management is commitment from the top. In matters of safety and pollution prevention it is the commitment, competence, attitudes and motivation of individuals at all levels that determine the end result!...



Mr. Chellaram , opens proceedings

ConsultISM was delighted to have been invited to participate in a Company conference when this ideal was brought to life in a most transparent and meaningful way.

Although the Company roots are in India, Chellaram Shipping (HK) Ltd. manages a modern fleet of bulk carriers out of their offices in Hong Kong with manning through their Mumbai office.

The Company conference was held on the outskirts of Mumbai, spanning a 2 day period.

What was quite remarkable was the range of participation in the event. Leading from the front was the Chairman of the Company Mr. Lal Chellaram and the Chief Executive Mr Vishal Khurana. They had brought with them almost the entire senior management and office staff from Hong Kong. The Management and staff, at all levels, from the Mumbai office also attended. Sea staff were represented at all levels from

Masters and Chief Engineers through all ranks to Cadets.

The focus of the conference was very much safety management and Phil Anderson had been recruited to provide an external input to the debate. The impression formed by Dr. Anderson was that this was more than just a shipping company – it was a family. Open and extremely valuable exchanges took place between all delegates who were clearly working within a strong company culture where it had long since been recognised that working safely is to work successfully which is good for the Company and good for the individual.

Mr Chellaram is a living example of what it really means to lead from the top and he, and all his *'extended family'* will certainly reap the rewards of their efforts.



**Chellship**

## USCG and ISM

For those readers who operate foreign-flag ships in U.S waters, the U.S. Coast Guard's has issued an updated NVIC (Navigation and Vessel Inspection Circular) on port State Control Guidelines for the Enforcement of Management for the Safe Operation of Ships (ISM Code).

It covers USCG personnel instructions on how to enforce the requirements of the ISM Code, and stresses that "because of the general and non-prescriptive nature" of the ISM requirements, port State Control Officers "should use discretion when evaluating compliance and considering enforcement", and should not delay a ship or take penalty actions unless major non-conformities are identified.

That said, the NVIC gives extensive guidance on what may indicate a major non-

conformity. It also discusses some of the conditions that may lead the port State Control Officer to require an expanded examination of the ship's SMS.

This is an extremely useful document and even includes tables giving examples of questions the port State Control Officer may ask the Captain and key crew members during an expanded Examination... "Captain, what is the definition of a non-conformity in your SMS?"

Ship operating companies whose ships visit the USA should give serious consideration to the possibility of seeking USCG accreditation within their QUALSHIP scheme.

Details of the circular can be found at:  
[www.uscg.mil/hq/g-m/nvic/ISM%20NVIC.pdf](http://www.uscg.mil/hq/g-m/nvic/ISM%20NVIC.pdf)

Further details of QUALSHIP can be found at:  
[www.uscg.mil/hq/g-m/pscweb/qualship-FAQ.htm](http://www.uscg.mil/hq/g-m/pscweb/qualship-FAQ.htm)



## Flag and ISM

As the Gibraltar Ship Registry looks to move onto the White List it has begun a clamp down on a small number of "problematic" vessels on its books.

Over the past year, officials ejected up to 10 ships that had notched up regular port state control detentions.

A systematic review has been undertaken of the vessels flying the Gibraltar flag, and those with poor detention rates have been "booted off".

The flag State are hoping that this shedding of lower quality vessels will lift the register, and lead to them attracting more higher quality ships.

Many PSC detentions can be directly linked to ISM related deficiencies, and as such the

SMS and the implementation of ISM can have a great bearing on the detention records of a vessel, and as such its ability to trade.



## Dates for diaries

The next issue of ReportISM will land in your mailbox February 1<sup>st</sup> 2006, but in the meantime there are plenty of other exciting events coming up.

### November 2005

**1-3 The National Navigation Conference**  
London, UK

**1-5 Maritime and Inland Shipping Exhibition**  
Rotterdam, The Netherlands

**4 Seafaring: What is the future?**  
Ocean Terminal onboard 'Star Pisces', Hong Kong

**16 Safety at Sea**  
Plymouth, UK

**23 The ISM Code—A Mock Trial**  
London Shipping Law Centre, UCL

**30 – Dec 2 Ship Registers Conference**  
Le Meridien Hotel, Singapore

### December 2005

**1-2 International Maritime Arbitration Seminar**  
Lloyd's Maritime Academy, London

**6-9 Marintec China 2005.**  
Shanghai Expo Centre, China

**12-13 Middle East Money and Ships**  
Dubai, UAE

### January 2006

**18-20 INMEX Malaysia 2006**  
Kuala Lumpur, Malaysia

**24-26 Digital Ship Cyprus**  
Limassol, Cyprus

**31– 3 Feb Pacific Maritime Expo**  
Sydney, Australia

Please contact Steven Jones, for further details of these and other events, [stevenjones@consultism.co.uk](mailto:stevenjones@consultism.co.uk)

Thank you for reading this first issue of ReportISM, the quarterly newsletter from ConsultISM, the ISM Code experts and consultants. We hope that you found it interesting and useful.

The aim of ReportISM is to promote discussion, understanding and awareness of the ISM Code and the role of quality safety management to make your ships and crews safer, and make your company more profitable.

Please contact ConsultISM for more information, and a quotation, to undertake a SMS review and health check in your Company. ConsultISM can provide experts in safety management and the ISM Code to participate in seminars, conferences and training courses to help promote awareness of ISM related issues. We can also act as "expert witness" in any ISM related disputes.

If you have any comments on the articles within this issue, or if you require any ISM Code or safety management assistance please contact us:

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