
STATUTORY INSTRUMENTS

1998 No. 1561

**MERCHANT SHIPPING
SAFETY**

**The Merchant Shipping (International Safety
Management (ISM) Code) Regulations 1998**

<i>Made</i>	- - - -	<i>24th June 1998</i>
<i>Laid before Parliament</i>		<i>29th June 1998</i>
<i>Coming into force</i>	- -	<i>1st July 1998</i>

Whereas in so far as these Regulations are made under section 85 of the Merchant Shipping Act 1995(1) the Secretary of State has consulted the persons referred to in section 86(4) of that Act;

Now, therefore, the Secretary of State for the Environment, Transport and the Regions, in exercise of the powers conferred by—

- (i) section 85(1)(a) and (b), (3) and (5) to (7) and 86(1) of that Act; and
- (ii) the Merchant Shipping (Control of Pollution) (SOLAS) Order 1998(2);

and all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998 and shall come into force on 1st July 1998.

(2) The Merchant Shipping (Operations Book) Regulations 1988(3) are hereby revoked.

Interpretation

2.—(1) In these Regulations:

“audit” means a systematic and independent examination to determine whether the safety management system is suitable to meet the objectives set out in Section 1 of the Code, and, so far as the system has been operated, that the system has been implemented effectively.

(1) S.I.1995 c. 21; sections 85 and 86 were amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28) section 8, and apply to hovercraft by virtue of the Hovercraft (Application of Enactments) Order 1989 (S.I. 1989/135).
(2) S.I. 1998/1500.
(3) S.I. 1988/1716, amended by S.I. 1997/3022.

Such audits shall take into account the Guidelines on the Implementation of the ISM Code by Administrations, adopted by IMO pursuant to Assembly Resolution A. 788 (19);

“authorised person” means a person authorised by the Secretary of State to carry out inspections and audits for the purpose of these Regulations and includes any surveyor of ships appointed under section 256 of the Merchant Shipping Act 1995;

“bulk carrier”, “chemical tanker”, “gas carrier”, “high speed craft”, “mobile offshore drilling unit” and “oil tanker” have the meanings given by Regulation 1 of Chapter IX of SOLAS;

“cargo ship” means a cargo ship within the meaning of the Merchant Shipping (Cargo Ship Construction) Regulations 1997(4);

“company” means the owner of a ship to which these Regulations apply or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner;

“Document of Compliance” means the Document of Compliance referred to in Regulation 4 of Chapter IX of SOLAS;

“IMO” means the International Maritime Organisation;

“ISM Code” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as adopted by IMO by Resolution A.741 (18);

“the Maritime and Coastguard Agency (MCA)” means the Maritime and Coastguard Agency, an executive agency of the Department of the Environment, Transport and the Regions;

“Merchant Shipping Notice” means a Notice described as such and issued by the Maritime and Coastguard Agency;

“passenger ships of Classes I, II and II(A)” means passenger ships so classified within the meaning of the Merchant Shipping (Passenger Ship Construction) Regulations 1984(5);

“Safety Management Certificate” means the Safety Management Certificate referred to in Regulation 4 of Chapter IX of SOLAS;

“safety management system” means a structured and documented system enabling company personnel to effectively implement the company safety and environmental protection policy;

“ship” includes hovercraft, and “master” shall be construed accordingly;

“SOLAS” means the International Convention for the Safety of Life at Sea, 1974(6) its Protocol of 1978(7) and its amendments, in force at 1st July 1998;

“tons” has the meaning given in regulation 2(1) of the Merchant Shipping (Cargo Ship Construction) Regulations 1997; and

“United Kingdom ship” means a ship which—

- (a) is a United Kingdom ship within the meaning of section 85(2) of the Merchant Shipping Act 1995; or
- (b) is a hovercraft registered under the Hovercraft Act 1968(8).

(2) Any reference in these Regulations to SOLAS or the ISM Code shall include a reference to any document amending it and specified in a Merchant Shipping Notice.

(3) In interpreting the ISM Code—

- (a) the requirements of the ISM Code having been made mandatory under regulation 4 the language thereof shall be construed accordingly; and

(4) S.I. 1997/1509.

(5) S.I. 1984/1216, to which there are amendments not relevant to these Regulations.

(6) Cmnd. 7874.

(7) Cmnd. 7346.

(8) 1968 c. 59.

- (b) references to the Administration shall, in relation to United Kingdom ships, be references to the Secretary of State.

Application

- 3.—(1) Subject to paragraphs (2) and (4) below, these Regulations apply to—
 - (a) United Kingdom ships wherever they may be; and
 - (b) other ships while they are within United Kingdom waters.
- (2) These Regulations apply to—
 - (a) (i) passenger ships of Classes I, II and II(A); and
 - (ii) oil tankers, chemical tankers, gas carriers, bulk carriers, and cargo high-speed craft, of 500 tons or more, which engage in international voyages; and
 - (b) on and after 1st July 2002, to other cargo ships and mobile offshore drilling units, of 500 tons or more, which engage in international voyages.
- (3) These Regulations apply to every company operating a ship to which these Regulations apply.
- (4) These Regulations do not apply to those companies and ships to which Council Regulation (EC) No. 3051/95 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries)(9) applies.

Duty to comply with the ISM Code

- 4. Every company shall comply with the requirements of the ISM Code as it applies to that company and to any ship owned by it or for which it has responsibility.

Duty to hold certificates

- 5.—(1) No company shall operate a ship unless that company holds a valid Document of Compliance.
- (2) No company shall operate a ship unless there is in force in respect of that ship a valid Safety Management Certificate.
- (3) No United Kingdom ship shall be operated unless:
 - (a) the company holds a Document of Compliance issued or accepted by the Secretary of State; and
 - (b) there is in force in relation to the ship a Safety Management Certificate issued by the Secretary of State.
- (4) For the purposes of this regulation a Document of Compliance or Safety Management Certificate is not valid if it has not been endorsed, in the circumstances required by the ISM Code, showing, in the case of a Document of Compliance satisfactory annual audits, or in the case of a Safety Management Certificate, a satisfactory intermediate audit.

Duty to carry certificates

- 6. It shall be the duty of every company to ensure that a valid Safety Management Certificate and a copy of the Document of Compliance is carried on board each ship to which these Regulations apply.

(9) OJ No. L320, 30.12.95, p.14, supplemented by S.I. 1997/3022.

Duty of master

7. The master of every ship shall operate his ship in accordance with the safety management system on the basis of which the Safety Management Certificate was issued.

Designated person

8.—(1) The company shall designate a person who shall be responsible for monitoring the safe and efficient operation of each ship with particular regard to the safety and pollution prevention aspects.

(2) In particular, the designated person shall—

- (a) take such steps as are necessary to ensure compliance with the company safety management system on the basis of which the Document of Compliance was issued; and
- (b) ensure that proper provision is made for each ship to be so manned, equipped and maintained that it is fit to operate in accordance with the safety management system and with statutory requirements.

(3) The company shall ensure that the designated person—

- (a) is provided with sufficient authority and resources; and
- (b) has appropriate knowledge and sufficient experience of the operation of ships at sea and in port,

to enable him to comply with paragraphs (1) and (2) above.

Issue of Document of Compliance and Safety Management Certificate

9.—(1) If the Secretary of State is satisfied that a company operating United Kingdom ships complies with the requirements of the ISM Code he may issue it with a Document of Compliance valid for a period not exceeding five years.

(2) If the Secretary of State is satisfied that a ship is operated by a company to which he has issued a Document of Compliance and that the company and its shipboard management operate in accordance with the safety management system he has approved, he shall issue in respect of that ship a Safety Management Certificate valid for a period not exceeding five years.

(3) Where a company operating ships which are registered in more than one country, but at least one of which is registered in the United Kingdom, complies with the requirements of the ISM Code the Secretary of State may accept a Document of Compliance issued by the government of one of those countries to which SOLAS applies, if prior to the issue of that document he has agreed to accept it. Conditions for acceptance may include completion of a satisfactory audit of the company by an authorised person.

(4) Where a company newly registers a ship in the United Kingdom, the Secretary of State may accept a Document of Compliance issued by the government of a country to which SOLAS applies in which ships operated by the company are registered. Conditions for acceptance may include completion of a satisfactory audit by an authorised person.

(5) If the Secretary of State is satisfied that a United Kingdom ship is operated by a company which has a Document of Compliance accepted by the Secretary of State under paragraph (3) or (4) above and that its shipboard management operates in accordance with a safety management system which complies with the ISM Code he shall issue in respect of that ship a Safety Management Certificate valid for a period not exceeding five years.

Interim certificates

10. (1) (a) Where a company is newly established, or the company assumes, for the first time, the responsibility for operating a ship type not covered by a Document of Compliance the company already holds, an interim Document of Compliance may be issued to facilitate implementation of the ISM Code.

(b) An interim Document of Compliance, valid for no more than 12 months, may be issued to a company following a demonstration that the company has a safety management system that meets the objectives of section 1.2.3 of the ISM Code. The company shall demonstrate plans to implement a safety management system meeting the full requirements of the ISM Code within the period of validity of the interim Document of Compliance.

(2) (a) An interim Safety Management Certificate, valid for not more than six months, may be issued in respect of a new ship on delivery, when a company takes on the responsibility for the management of a ship which is new to the company or when a ship is transferred between flag states. The Secretary of State, may, as he considers appropriate, extend the validity of the interim Safety Management Certificate for a further six months.

(b) An interim Safety Management Certificate shall only be issued when the Secretary of State is satisfied that—

- (i) the Document of Compliance, or the interim Document of Compliance, is relevant to that ship type;
- (ii) the safety management system provided by the company for the ship includes all key elements of the ISM Code and has been assessed during the audit for issuance of the Document of Compliance or issuance of the interim Document of Compliance;
- (iii) the master and relevant senior officers are familiar with the safety management system and the planned arrangements for its implementation;
- (iv) instructions which have been identified as essential to be provided prior to sailing have been given;
- (v) plans for audit, by the company, of the ship within three months exist; and
- (vi) the relevant information on the safety management system is given in a working language or languages understood by the ship's personnel.

Issue and endorsement of Safety Management Certificate by another government

11. The Secretary of State may request, through a proper officer or otherwise, the government of a country to which SOLAS applies—

- (a) to conduct an audit of the safety management system operated onboard a United Kingdom ship, and
- (b) if satisfied that the requirements of the ISM Code are complied with, to issue to the ship a Safety Management Certificate or authorise such issue or, where appropriate endorse such certificates in accordance with the requirements of SOLAS after intermediate audit. A certificate issued in accordance with such a request shall contain a statement that it has been so issued and shall have the same effect as if it was issued by the Secretary of State.

Issue of certificates on behalf of other governments

12. The Secretary of State may, at the request of a government of a country to which SOLAS applies, audit the safety management systems of companies and ships registered in that country and, if satisfied that the requirements of the ISM Code are complied with, and that the audit has been satisfactorily completed in accordance with these Regulations, issue to the company a Document of Compliance or, in respect of the ship a Safety Management Certificate, or, where appropriate,

endorse such certificates in accordance with the requirements of SOLAS after annual or intermediate audits. A certificate issued in accordance with such a request shall contain a statement that it has been so issued and shall have the same effect as if it was issued by that government and not by the Secretary of State.

Annual audit of Document of Compliance

13. The Secretary of State shall carry out an annual audit of the safety management system of every company to which he has issued a Document of Compliance, within three months of the anniversary date of the Document of Compliance.

Intermediate audit of Safety Management Certificate

14. The Secretary of State shall carry out an intermediate audit of each ship, to ensure that the conditions for the continued validity of the Safety Management Certificate are being met, between the second and third anniversaries of the Safety Management Certificate issued by him, and at other times if he thinks fit.

Renewal of certificates

15. Before the renewal of any certificate the Secretary of State shall carry out a renewal audit of the company or ship during the six month period preceding the expiry date of the Document of Compliance or Safety Management Certificate as the case may be, to ensure that compliance with the requirements of the ISM Code is maintained.

Powers of audit, inspection, suspension of service and detention

16. (1) (a) Any authorised person may audit the safety management system of any company.
- (b) If an authorised person considers that a company, notwithstanding that it holds a Document of Compliance, is unable to operate ships without creating a risk of—
- (i) serious danger to safety of life; or
 - (ii) serious damage to property; or
 - (iii) serious harm to the environment,
- or that the company does not hold a Document of Compliance, he may suspend the operation of ships by that company until such time as any such risk is removed or a valid Document of Compliance is held.
- (c) Where a service is to be suspended pursuant to sub-paragraph (b) above the authorised person shall serve on the company a notice stating that the operation of the service specified in the notice shall be suspended.
- (2) (a) Any authorised person may inspect any ship, and any such inspection may include an audit of its safety management system.
- (b) If an authorised person is satisfied on inspecting a ship that there is a failure to comply in relation to that ship with the requirements of regulation 4 or 5 he may detain the ship.
- (c) In any case where a ship is liable to be detained, section 284 of the Merchant Shipping Act 1995⁽¹⁰⁾ (which relates to the detention of the ship) shall have effect in relation to the ship subject to the modification that as if for the words “this Act” wherever they appear, there were substituted “the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998.”

⁽¹⁰⁾ Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997, Schedule 1, paragraph 5.

(d) Where a ship is detained in relation to a failure to comply with a requirement of these Regulations sections 96 and 97 of the Merchant Shipping Act 1995 shall apply to the notice of detention as they apply to a detention notice under section 95, and as if for references to the ship being dangerously unsafe there were substituted references to it being in breach of these Regulations.

(3) An authorised person exercising functions under this regulation shall have the powers conferred on an inspector by section 259 of the Merchant Shipping Act 1995.

Exemptions

17. The Secretary of State may grant exemptions from all or any of the provisions of these Regulations (as may be specified in the exemption) for classes of cases or individual cases on such terms (if any) as he may specify, and may, subject to giving reasonable notice, alter or cancel any such exemption.

Suspension or cancellation of Documents of Compliance and Safety Management Certificates

18. (1) (a) The Secretary of State may by notice in writing suspend or cancel any Document of Compliance or Safety Management Certificate issued by him or at his request under these Regulations where he has reason to believe that:

- (i) the certificate was issued on false or erroneous information; or
- (ii) since any audit required by these Regulations, the management structure of either the company or ship has changed substantively,

or where any audit of a company or ship has revealed a failure to comply with regulation 4.

- (b) Any such notice shall contain the grounds for the suspension or cancellation of the certificate.
- (c) A notice shall not be given unless the holder has been given the opportunity to make representations, except where the Secretary of State considers that urgent safety or pollution prevention considerations require the notice to be given immediately.

(2) The Secretary of State may require that any Document of Compliance or Safety Management Certificate, issued by him under these Regulations, which has expired or has been suspended or cancelled, be surrendered as directed.

(3) No person shall:

- (a) intentionally alter a Document of Compliance or Safety Management Certificate;
- (b) in connection with any audit conducted pursuant to these Regulations, knowingly or recklessly furnish false information;
- (c) with intent to deceive, use, lend or allow to be used by another, a Document of Compliance or Safety Management Certificate;
- (d) fail to surrender a Document of Compliance or Safety Management Certificate required to be surrendered under paragraph (2); or
- (e) in Scotland forge any Document of Compliance or Safety Management Certificate.

Offences and penalties

19.—(1) Any contravention of regulations 4, 5, or 8 by a company shall be an offence punishable on summary conviction by a fine not exceeding the statutory maximum, or on conviction on indictment by imprisonment for a term not exceeding 2 years, or a fine, or both.

(2) Any contravention of regulation 6 by the company shall be an offence punishable on summary conviction by a fine not exceeding level 3 on the standard scale.

(3) Any contravention of regulation 7 by the master of a ship shall be an offence punishable on summary conviction by a fine not exceeding the statutory maximum, or on conviction on indictment by imprisonment for a term not exceeding 2 years, or a fine, or both.

(4) Any contravention of regulation 8(2) by the designated person shall be an offence punishable on summary conviction by a fine not exceeding the statutory maximum, or on conviction on indictment by imprisonment for a term not exceeding 2 years, or a fine, or both.

(5) Any company which operates a ship on a service when the service is suspended under regulation 16(1)(b) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

(6) Any contravention of regulation 18(3) shall be an offence, punishable on summary conviction by a fine not exceeding the statutory maximum, or on conviction on indictment by imprisonment for a term not exceeding 6 months, or a fine, or both.

Defence

20. It shall be a defence for a person charged with an offence under these Regulations to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Signed by authority of the Secretary of State

Glenda Jackson
Parliamentary Under Secretary of State,
Department of the Environment, Transport and
the Regions

24th June 1998

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Chapter IX (Management for the Safe Operation of Ships) of the Safety of Life at Sea Convention 1974, added in 1994 by a diplomatic conference, except in relation to ro-ro passenger ferries (already implemented by Council Regulation EC No. 3051/95 on the safety management of ro-ro passenger ferries and enforced by the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997).

They also repeal the Merchant Shipping (Operations Book) Regulations 1988.

The Regulations apply (on and after 1st July 1998) to non ro-ro passenger ships and certain cargo ships of 500 tons or over, and from 1st July 2002 to other cargo ships (including mobile offshore drilling units) of that size. Companies are required to comply with the International Safety Management (ISM) Code, including holding valid Documents of Compliance and Safety Management Certificates in respect of their ships. Provision is made for annual and intermediate audits of the operation of the safety management systems of companies and ships in respect of those Documents and Certificates. There is a power to suspend services.

There are ancillary provisions as to offences concerning Documents and Certificates issued pursuant to the Regulations, a general defence to offences under the Regulations and powers of detention of ships.

The ISM Code and the Safety of Life at Sea Convention 1974, its Protocol and amendments (including the added Chapter IX) may be obtained from the International Maritime Organisation, 4 Albert Embankment, London SE1.

Merchant Shipping Notices are obtainable from Eros Marketing Support Services Ltd., Delta House, Imber Court Business Park, Orchard Lane, East Molesey, Surrey KT8 0BN.

A copy of the compliance cost assessment for these Regulations can be obtained from the Marine Information Centre of the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG.