



MERCHANT SHIPPING (ISPS CODE) REGULATIONS 2018

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Statutory Document No. 2018/0278

*Merchant Shipping Act 1985*

MERCHANT SHIPPING (ISPS CODE) REGULATIONS 2018

Laid before Tynwald: 20 November 2018
Coming into Operation: 1 December 2018

The Department for Enterprise, having carried out the consultation required by section 1(1) and section 2(2) of the Merchant Shipping Act 1985, makes the following Regulations under section 1 and section 2 of that Act.

PART 1 – INTRODUCTORY

1 Title

These Regulations are the Merchant Shipping (ISPS Code) Regulations 2018.

2 Commencement

These Regulations come into operation on 1 December 2018.

3 Interpretation

In these Regulations –

“**Act**” means the *Merchant Shipping Act 1985*;

“**1988 Protocol**” means the Protocol adopted on 11 November 1988 by the IMO International Conference on the Harmonized System of Survey and Certification (1988 SOLAS Protocol), which came into force on 3 February 2000;

“**cargo ship**” means a ship which is not a passenger ship;

“**company**” in relation to a ship means –

- (a) the owner of a ship; or
- (b) any other organisation or person (for example, the manager, or bareboat charterer of the ship) –
 - (i) that has assumed responsibility for operation of the ship from the owner; and

- (ii) that, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the SOLAS Convention;

“**Continuous Synopsis Record**” or “**CSR**” means the Continuous Synopsis Record specified by SOLAS Chapter XI-1 regulation 5;

“**Contracting Government**” means the government of a country which has consented to be bound by the SOLAS Convention;

“**controlled marine area**” has the meaning given by section 7 of the *Marine Infrastructure Management Act 2016*;

“**Declaration of security**” means an agreement, reached between a ship and either a port facility or another ship with which it interfaces, specifying the security measures each party to the agreement will implement;

“**Department**” means the Department for Enterprise;

“**fishing vessel**” means a vessel used for catching fish, whales, seals, walrus or other living resources of the sea;

“**foreign ship**” means any ship that is not a Manx ship;

“**IMO**” means the International Maritime Organization;

“**ISPS Code**” means the International Ships and Port Facility Security Code adopted by Resolution 2 of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974, on 12 December 2002 and which came into force on 1 July 2004, and includes all amendments made to that Code up to and including those adopted by IMO Resolution MSC.196(80) on 20 May 2005 which came in to force on 1 January 2009;

“**inspector**” means a person appointed as an inspector under section 3 of the Act;

“**international voyage**” means a voyage from a country to a port outside that country;

“**Manx ship**” has the meaning given by section 1 of the *Merchant Shipping Registration Act 1991* and includes a ship registered under Part IV of that Act (the Demise Charter Register);

“**MSN**” means a Manx Shipping Notice issued by the Department, and includes any document which amends that notice;

“**passenger ship**” means a ship which carries more than 12 passengers;

“**pleasure vessel**” has the meaning given by regulation 6 of the Merchant Shipping (Pleasure Vessel) Regulations 2003¹;

“**RSO**” means any of the recognised organisations specified in MSN 020 which are authorised by the Department to undertake the specified function;

¹ SD 396/03

- “**ship security plan**” means a plan developed to ensure the application of measures on board the ship designed to protect persons on board, cargo, cargo transport units, ship’s stores or the ship from the risks of a security incident;
- “**SOLAS Convention**” means the International Convention for the Safety of Life at Sea 1974, as amended by the 1988 Protocol;
- “**SOLAS Chapter XI-1**” means Chapter XI-1 of the SOLAS Convention including all amendments made to that Chapter up to and including those adopted by IMO Resolution MSC.194(80) on 20 May 2005 (which came in to force on 1 January 2009);
- “**SOLAS Chapter XI-2**” means Chapter XI-2 of the SOLAS Convention including all amendments made to that Chapter up to and including those adopted by IMO Resolution MSC.194(80) on 20 May 2005 (which came in to force on 1 January 2009); and
- “**territorial waters of the Island**” means —
- (a) the territorial sea adjacent to the Isle of Man (as that term is defined in section 1(1) of the *Territorial Sea Act 1987* (as applied to the Island); and
 - (b) the controlled marine area.

4 Application

- (1) Unless expressly provided otherwise, Parts 1 and 2 of these Regulations apply to —
 - (a) a Manx ship which engages on international voyages; and
 - (b) the company of that ship.This is subject to paragraph (3).
- (2) Unless expressly provided otherwise, Parts 1 and 3 of these Regulations apply to a foreign ship whilst it is within the territorial waters of the Island. This is subject to paragraph (3).
- (3) These Regulations do not apply to a Manx ship or a foreign ship which is —
 - (a) a cargo ship of less than 500gt;
 - (b) a pleasure vessel;
 - (c) a fishing vessel;
 - (d) a ship not propelled by mechanical means;
 - (e) a wooden ship of primitive build; and
 - (f) a warship, naval auxiliary and other ships owned or operated by a Contracting Government and used only on Government non-commercial service.

5 Company's responsibility

- (1) The company of a ship must ensure that the ship complies with such of the requirements of these Regulations as apply in relation to a ship of its description.
- (2) Paragraph (1) applies whether or not these Regulations impose an obligation on another person.
- (3) A company which fails to comply with paragraph (1) commits an offence and is liable —
 - (a) on conviction on information —
 - (i) in the case of a body corporate, to a fine; or
 - (ii) in the case of an individual, to a fine or custody for a term not exceeding 2 years, or both; or
 - (b) on summary conviction, to a fine not exceeding level 5 on the standard scale.

6 Provisions relating to offences

- (1) It is a defence for a person charged with an offence under these Regulations to show that he or she took all reasonable steps to avoid the commission of the offence.
- (2) If the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person —
 - (a) commits the offence; and
 - (b) may be charged with and convicted of the offence by virtue of this regulation,whether or not proceedings are taken against the first-mentioned person.
- (3) If a body corporate commits an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of —
 - (a) a director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person who was purporting to act in any such capacity,he or she, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.
- (4) If the affairs of a body corporate are managed by its members, paragraph (3) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.

- (5) For the purposes of this regulation, “**body corporate**” includes a limited liability company constituted under the *Limited Liability Companies Act 1996* and, in relation to that company, any reference to a director or other officer of a body corporate is a reference to a member and to the company’s manager and registered agent.

PART 2 – MANX SHIPS

7 Requirement to comply

- (1) A ship and its company must comply with such of the requirements of —
- (a) SOLAS Chapter XI - 1 regulation 5;
 - (b) SOLAS Chapter XI - 2;
 - (c) Part A of the ISPS Code; and
 - (d) Part B of the ISPS Code,
- as apply to a company or ship of its description.
Subparagraph (d) is subject to paragraph (2).
- (2) Sections 8 to 13 of Part B of the ISPS Code are mandatory for all ships.
- (3) If there is a footnote in SOLAS Chapter XI-I regulation 5, SOLAS Chapter XI-2 or the ISPS Code, and it is clear from the wording and the context that the content of the footnote or of a document referred to in the footnote is intended to form part of the requirement, then such content must be treated as part of the requirement.
- (4) Unless the context clearly indicates otherwise, references to ‘Administration’ in SOLAS Chapter XI-2 or the ISPS Code are to be read as references to the Department or RSO, subject to any more specific provision in these Regulations or MSN 064.
- (5) For the purposes of SOLAS Chapter XI-2 and the ISPS Code, references to ‘Administration’ or ‘Contracting Government’ in relation to the setting of security levels, security related advice and activity must be read as a reference to the Department of Her Majesty’s Government in the United Kingdom specified in MSN 064.
- (6) For the purposes of SOLAS Chapter XI-2 and the ISPS Code, references to ‘Administration’ in relation to ship security plans must be read as a reference to the Department.

8 Continuous Synopsis Record

For the purposes of SOLAS Chapter XI-1 regulation 5, a CSR may only be issued by the Department.

9 Ship Security Alert System

- (1) For the purposes of SOLAS Chapter XI-2 regulation 6.2.1, the competent authority is specified in MSN 064.
- (2) In addition to the requirement in SOLAS Chapter XI-2 regulation 6.2.1 to transmit a ship-to-shore security alert to the competent authority, the ship-to-shore security alert system, when activated, must also initiate and transmit a ship-to-shore security alert to the other parties specified in MSN 064.
- (3) The ship-to-shore security alert system, when activated, must transmit the following information –
 - (a) the identity of the ship;
 - (b) the location of the ship; and
 - (c) an indication that the ship is under threat or has been compromised.

10 Master's discretion for ship safety and security

For the purposes of SOLAS Chapter XI-2 regulation 8.2, which permits the master to implement temporary security measures, reference to 'the Administration' in the phrase 'inform the Administration' must be read as a reference to the Department.

11 Declaration of security

- (1) For the purposes of the ISPS Code, Part A section 5.7, a Declaration of Security must be retained –
 - (a) on board the ship for a minimum period of 12 months or 10 port visits, whichever is the greater; and
 - (b) on board or ashore for a further 2 years following the expiry of the 12 month period or 10 port visits specified in paragraph (a).
- (2) If the Declaration of Security is kept ashore in accordance with paragraph 1(b), this must be made available upon request to the Department or RSO as soon as practicable, but in any case within 3 months.

12 Ship security plan

For the purposes of the ISPS Code, Part A section 9.4, the ship security plan must be written in the working language or languages of the ship and, if this is not in English, must be accompanied by an English translation.

13 Records

- (1) For the purposes of the ISPS Code, Part A section 10.1, the records specified in sections 10.1.1 to 10.1.10 must be retained –
 - (a) on board the ship for a minimum period of 12 months or 10 port visits, whichever is the greater; and
 - (b) on board or ashore for a further 2 years following the expiry of the 12 month period or 10 port visits specified in paragraph (a).
- (2) If the records specified in paragraph (1) are kept ashore in accordance with paragraph 1(b), the records must be made available upon request to the Department or RSO as soon as practicable, but in any case within 3 months.
- (3) The records specified in paragraph (1) must be written in the working language or languages of the ship and, if this is not in English, must be accompanied by an English translation.

14 Duration and validity of International Ship Security Certificate

- (1) For the purpose of the ISPS Code, Part A section 19.3.1, an International Ship Security Certificate is valid for the period stated in it which must not exceed 5 years.
- (2) To avoid doubt, the requirement in paragraph (1) is subject to the provisions of the ISPS Code, Part A section 19.

15 Equivalent security arrangements

- (1) In accordance with SOLAS Chapter XI-2 regulation 12, the Department may allow a particular ship or a group of ships to implement other security measures equivalent to those prescribed in SOLAS Chapter XI-2, the ISPS Code Part A, or the ISPS Code Part B sections 8 to 13.
- (2) An equivalent security arrangement under paragraph (1) may only be granted to a ship or group of ships provided that such security measures are at least as effective as those prescribed in SOLAS Chapter XI-2, the ISPS Code Part A, or the ISPS Code Part B sections 8 to 13.
- (3) An equivalent security arrangement issued in accordance with paragraph (1) is only valid if –
 - (a) it is in writing; and
 - (b) it specifies the date on which it takes effect.
- (4) If any condition specified in accordance with paragraph (3)(a) is not complied with, the security arrangements will thereby be invalidated and the ship or group of ships, as the case may be, will be deemed to not have met the relevant requirements of this Part.

16 Exemption

- (1) In accordance with SOLAS Chapter I regulation 4(a), a ship which is not normally engaged on international voyages but which, in exceptional circumstances, is required to undertake a single international voyage, may be exempted by the Department from any of the requirements of SOLAS Chapter XI - 1 regulation 5, SOLAS Chapter XI - 2 and the ISPS Code.
- (2) The Department may grant to a ship an exemption under paragraph (1) only if the Department is satisfied that the ship complies with safety requirements which are adequate for the voyage to be undertaken.
- (3) An exemption issued in accordance with paragraph (1) is only valid if —
 - (a) it is in writing;
 - (b) it specifies the date on which it takes effect; and
 - (c) any conditions stated in it are complied with.

17 Validity of approvals

An approval permitted by SOLAS Chapter XI-2 and the ISPS Code is only valid if —

- (a) it is in writing;
- (b) it specifies the date on which it takes effect; and
- (c) any conditions stated in it are complied with.

PART 3 – FOREIGN SHIPS

18 Requirement to comply with SOLAS Chapter XI-I regulation 5, SOLAS Chapter XI-2 and the ISPS Code

A foreign ship in the territorial waters of the Island must comply with such of the requirements of SOLAS Chapter XI-I regulation 5, SOLAS Chapter XI-2 and the ISPS Code as apply in relation to a ship of its description.

19 Inspection of a foreign ship in port

- (1) A foreign ship in a port of the Island is subject to inspection by an inspector to verify that there is on board —
 - (a) a valid CSR required by SOLAS Chapter XI-1 regulation 5; and
 - (b) a valid International Ship Security Certificate or a valid Interim International Ship Security Certificate issued under the provisions of Part A of the ISPS Code.

- (2) For the purposes of paragraph (1), an inspector may accept any certificate that he or she considers to be equivalent to the CSR required by SOLAS Chapter XI-1 regulation 5, and the International Ship Security Certificate or Interim International Ship Security Certificate issued under the provisions of Part A of the ISPS Code, if the flag State of the foreign ship is not a Party to the SOLAS Convention.

20 Provisions relating to detention

- (1) If an inspector carries out an inspection in accordance with regulation 19 and finds that —
 - (a) the certificates are not produced, have expired or ceased to be valid; or
 - (b) there are clear grounds for believing —
 - (i) the condition of the foreign ship or its equipment does not correspond substantially with the particulars of the certificate; or
 - (ii) the foreign ship or its equipment are not in compliance with the requirements of SOLAS Chapter XI-1 regulation 5, SOLAS Chapter XI-2 or the ISPS Code, Part A,
an inspector may impose any one or more of the control measures specified in paragraph (2).
- (2) The control measures which an inspector may impose on a ship in accordance with paragraph (1) include —
 - (a) inspecting the ship;
 - (b) delaying the ship;
 - (c) detaining the ship;
 - (d) restricting operations including movement within the port; and
 - (e) expelling the ship from port.
- (3) In addition (or as an alternative) to the control measures specified in paragraph (2), an inspector may impose other administrative or corrective measures that are less severe.
- (4) If an inspection is conducted, or when measures are taken, in accordance with paragraph (1), (2) or (3) —
 - (a) any measure imposed must be proportionate, taking into account the guidance given in Part B of the ISPS Code; and
 - (b) all reasonable efforts must be made to avoid a foreign ship being unreasonably delayed or detained.

- (5) If a foreign ship is detained in accordance with this regulation, section 74 of the *Merchant Shipping Registration Act 1991* (which relates to the detention of a ship) has effect, subject to the following modifications —
- (a) In sub-sections (1) and (2), after “officer of the Department,” insert **or any inspector,**
 - (b) in sub-section (3), for “this Act” (wherever occurring) substitute **the ISPS Code Regulations**; and
 - (c) after sub-section (3) add —
 - (4) In this section —**
 - “inspector”** has the meaning given by regulation 3 of the ISPS Code Regulations; and
 - “ISPS Code Regulations”** means the Merchant Shipping (ISPS Code) Regulations 2018.

PART 4 – REVOCATION AND CONSEQUENTIAL AMENDMENTS

21 Revocation

The Merchant Shipping (ISPS Code) Regulations 2004² are revoked.

22 Consequential amendments

The Schedule (consequential amendments) has effect.

MADE 27 October 2018

LAURENCE SKELLY
Minister for Enterprise

² SD 523/04

SCHEDULE

CONSEQUENTIAL AMENDMENTS

- (1) The Merchant Shipping (Manning and STCW) Regulations 2014³ are amended in regulation 22(1) by omitting “Merchant Shipping (ISPS Code) Regulations 2004”, and substituting the following –
- | **523/04** Merchant Shipping (ISPS Code) Regulations 2018 **523**.
- (2) The Merchant Shipping (Demise Charter Register) Regulations 1991⁴ are amended by omitting from Schedule 2, Part II (in the table entitled ‘Application of subordinate legislation’) the following –

523/04	Merchant Shipping (ISPS Code) Regulations 2004	The whole Regulations
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³ SD 2014/0238

⁴ SD 394/91

*EXPLANATORY NOTE**(This note is not part of the Regulations)*

These Regulations require a Manx ship and its company to comply with such of the requirements of SOLAS Chapter XI-1 regulation 5 (“CSR”), SOLAS Chapter XI-2 – Special Measures to Enhance Maritime Security, and the International Ships and Port Facility Security Code (“ISPS Code”) as apply to a company or a ship of its description.

SOLAS Chapter XI-2 and the ISPS Code form the basis of the mandatory security regime for international shipping. The ISPS Code is divided into two sections: Part A outlines detailed maritime and port security related requirements for ships and their companies, SOLAS contracting governments and port authorities. Part B of the ISPS Code provides guidelines on how to meet the requirements of Part A, of which sections 8 to 13 are to be treated as mandatory.

SOLAS Chapter XI-1 regulation 5, requires every ship to have a Continuous Synopsis Record (“CSR”) on board which provides a traceable history of the ship for its life and records all changes of owner, flag, name, Class, amongst other details.

Subject to regulation 4(3), which excludes certain vessels such as cargo ships under 500gt, pleasure vessels and fishing vessels, these Regulations apply to Manx ships and their companies, which engage on international voyages and to foreign ships whilst they are within the territorial waters of the Island.

The Regulations do not implement those measures in SOLAS Chapter XI and the ISPS Code which relate to Isle of Man port security which is the remit of the Department of Infrastructure.

These Regulations come into operation on 1 December 2018.

Further information on compliance with these Regulations can be found in MSN 064.

Copies of this document and Manx Shipping Notices are obtainable from the Isle of Man Ship Registry, Department for Enterprise, St Georges Court, Upper Church Street, Douglas, Isle of Man, IM1 1EX and can be accessed via the website: <http://www.iomshipregistry.com>