



## FALKLAND ISLANDS

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### Maritime (International Safety Management Code) Regulations 2019

(No. 19 OF 2019)

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## FALKLAND ISLANDS

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### Maritime (International Safety Management Code) Regulations 2019

(made: 18 September 2019)  
(published: 25 September 2019)  
(coming into force: in accordance with regulation 2)

IN EXERCISE of my powers under sections 84 and 85 of the Maritime Ordinance 2017 and on the advice of Executive Council I make the following regulations —

#### PART 1 – GENERAL

##### 1. Title

These regulations are the Maritime (International Safety Management Code) Regulations 2019.

##### 2. Commencement

These regulations come into force on a day appointed by the Governor by notice in the *Gazette*.

##### 3. Interpretation

(1) In these regulations unless the context otherwise requires —

“**audit**”, in relation to a safety management system, means a systematic and independent examination, taking into account the Revised Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations adopted by the IMO pursuant to Assembly Resolution A.1022(26), to determine whether the system is suitable to meet the objectives set out in paragraph 1.2 of the ISM Code and, so far as the system has been operated, whether the system has been implemented effectively;

“**authorised person**” means a person authorised by the Governor to carry out audits for the purpose of these regulations and includes any surveyor of ships appointed under section 238 of the Ordinance;

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

“**Certifying Authority**” means the Governor or any organisation or authorised contractor of the organisation which has an agreement with the Governor in terms of regulation 9(2);

“**Document of Compliance**” means a document issued under regulation 9(3) which complies with paragraph 13.2 of the ISM Code;

“**high speed craft**” means a craft as defined in Regulation X-1/3 of SOLAS;

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

“**inspector**” means a person appointed under section 238 of the Ordinance;

“**Interim Document of Compliance**” means a document issued in accordance with regulation 10 which complies with paragraph 14.1 of the ISM Code;

“**Interim Safety Management Certificate**” means a document issued in accordance with regulation 10 which complies with paragraph 14.2 of the ISM Code;

“**intermediate audit**” means an audit conducted for the purpose set out in paragraph 13.8 of the ISM Code;

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

“**ISM company**” means —

- (a) where a person who is not the owner of the ship has assumed responsibility for the operation of the ship and has agreed with the owner to take over all the duties and responsibilities imposed by the ISM Code, that person; or
- (b) in all other cases, the owner of the ship;

“**master**”, in the application of these regulations to hovercraft, includes the captain of a hovercraft;

“**mobile offshore drilling unit**” means a vessel capable of engaging in drilling operations for the exploration for or exploitation of resources beneath the sea-bed such as liquid or gaseous hydrocarbons, sulphur or salt;

“**offshore terminal**” means an installation situated away from the shore, where bulk, fluid or gas cargo (or more than one of these) is —

- (a) transferred between ships,
- (b) loaded onto a ship after having been transported from the shoreline, or
- (c) unloaded from a ship for transporting to the shoreline;

“**passenger**” means any person carried on a ship except —

- (a) a person employed or engaged in any capacity on board the ship on the business of that ship; and
- (b) a child under one year of age;

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

“**pleasure vessel**” means —

- (a) any vessel which at the time it is being used is —
  - (i) in the case of a vessel wholly owned by —
    - (aa) an individual or individuals, used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or
    - (bb) a body corporate, used only for sport or pleasure and on which the persons on board are employees or officers of the body corporate, or their immediate family or friends; and
  - (ii) on a voyage or excursion which is one for which the owner does not receive money for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion; or
- (b) any vessel wholly owned by or on behalf of a members’ club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club,

where, in the case of any vessel referred to in (a) or (b), no other payments are made by or on behalf of users of the vessel, other than by the owner; and in this definition “**immediate family**” means, in relation to an individual, the spouse or civil partner of the individual, and a relative of the individual or the individual’s spouse or civil partner; and “**relative**” means brother, sister, ancestor or lineal descendant;

“**relevant document**” means a Document of Compliance, an Interim Document of Compliance, a Safety Management Certificate or an Interim Safety Management Certificate;

“**Safety Management Certificate**” means a document issued in accordance with regulation 9(4) which complies with paragraph 13.7 of the ISM Code;

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

“**ship**” includes a hovercraft, a mobile offshore drilling unit, a passenger submersible craft and a high speed craft;

“**SOLAS**” means the International Convention for the Safety of Life at Sea 1974, its protocols of 1978 and 1988 and all amendments to them in force on the date these regulations come into force; and

“**the Ordinance**” means the Maritime Ordinance 2017.

(2) Any reference in these regulations to a specific provision in SOLAS or the ISM Code is to be construed as a reference —

- (a) to the provision in that instrument as modified from time to time; and
- (b) if the instrument is replaced by another instrument, to the provision in that other instrument.

(3) For the purposes of sub-regulation (2) —

- (a) SOLAS is modified if omissions, additions or other alterations to the text take effect in accordance with Article VIII of that Convention; and
- (b) the ISM Code is modified if amendments to that Code are adopted, brought into force and take effect in accordance with —
  - (i) Article VIII of SOLAS; or
  - (ii) a Resolution of either the Maritime Safety Committee or the Marine Environment Protection Committee of the IMO in accordance with the rules of procedure of the respective Committee.

(4) A modification to, or replacement of, SOLAS or the ISM Code by virtue of sub-regulation (3) has effect at the time that such modification or replacement comes into force in accordance with Article VIII(vii) of SOLAS.

(5) A modification to, or replacement of the ISM Code by virtue of sub-regulation (3)(b)(ii) has effect at the time specified in any Resolution described in that paragraph.

(6) No modification or replacement of a reference to an instrument by virtue of sub-regulation (2) affects any rights or liabilities arising before the date on which the modification or replacement has effect.

(7) In interpreting the ISM Code for the purposes of these regulations reference to the Administration in relation to Falkland Islands ships is to be taken as reference to the Governor.

#### **4. Application**

(1) These regulations apply to a ship which —

- (a) is within a category of ship described in sub-regulation (2); and
- (b) is either —
  - (i) a Falkland Islands ship; or

(ii) any other ship (not being a Falkland Islands ship) while it is within Falkland Islands waters.

(2) A ship is within this sub-regulation if it is —

- (a) a passenger ship, including a passenger high speed craft;
- (b) a cargo ship of 500 gross tonnage or more, engaged in international voyages; or
- (c) a mobile offshore drilling unit of 500 gross tonnage or more, engaged in international voyages.

(3) These regulations do not apply to —

- (a) a fishing vessel;
- (b) a warship;
- (c) a naval auxiliary;
- (d) a United Kingdom Government ship used for non-commercial purposes;
- (e) a Falkland Islands Government ship used for non-commercial purposes;
- (f) a pleasure vessel;
- (g) a ship not propelled by mechanical means; or
- (h) a wooden ship of primitive build.

(4) In this regulation —

“**Falkland Islands Government ship**” has the same meaning given in section 2 of the Ordinance;

“**Falkland Islands ship**” means a ship registered in the Falkland Islands in accordance with Part 3 of the Ordinance;

“**Falkland Islands waters**” means the sea or other waters within the seaward limits of the territorial sea of the Falkland Islands; and

“**United Kingdom Government ship**” has the same meaning given in section 2 of the Ordinance.

## **PART 2 – COMPLIANCE WITH ISM CODE**

### **5. Duty on ISM company to comply with ISM Code**

An ISM company must not operate a ship to which these regulations apply unless the requirements —

- (a) in Part A of the ISM Code are complied with in relation to that ship; and
- (b) in regulation 6 are complied with in relation to that ship.

## **6. Certification requirements**

- (1) The requirements referred to in regulation 5(b) are that —
  - (a) the ISM company holds a valid Document of Compliance or Interim Document of Compliance in respect of the ship, and a copy is carried on board; and
  - (b) a valid Safety Management Certificate or Interim Safety Management Certificate has been issued in respect of that ship, and the original is carried on board.
- (2) For the purposes of this regulation —
  - (a) a copy of a relevant document must display all the endorsements which have been made to the original document;
  - (b) a relevant document is not valid if it has been suspended or cancelled; and
  - (c) a relevant document is not valid in connection with a ship which is not a Falkland Islands ship if it does not display endorsements showing satisfactory annual or intermediate audits (as appropriate) as required by the ISM Code.

## **7. Duty of master**

The master of a ship to which these regulations apply must operate that ship in accordance with the safety management system on the basis of which the Safety Management Certificate or Interim Safety Management Certificate was issued.

## **8. Designated person**

- (1) In relation to a ship to which these regulations apply, the ISM company must —
  - (a) designate a person to discharge the responsibility described in sub-regulation (2); and
  - (b) ensure that the designated person —
    - (i) is provided with sufficient authority and resources; and
    - (ii) has appropriate knowledge and sufficient experience of the operation of ships at sea and in port,to discharge that responsibility.
- (2) The responsibility of the designated person is —
  - (a) to monitor the safe and efficient operation of that ship with particular regard to safety and pollution prevention aspects;

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

### **PART 3 – CERTIFICATION**

#### **9. Issue and endorsement of documents by Certifying Authority**

(1) A Certifying Authority may issue and endorse relevant documents as appropriate in connection with a Falkland Islands ship where satisfied that the relevant requirements of the ISM Code have been met.

(2) The Governor may enter into an agreement with an organisation or an authorised contractor of such organisation pursuant to common rules and standards for ship inspection and survey organisations, and for the relevant activities of maritime administrations in accordance with Regulation XI-1/1 of SOLAS to act as a Certifying Authority on behalf of the Governor and to issue and endorse the relevant documents mentioned under sub-regulation (1).

(3) If the Certifying Authority is satisfied that an ISM company operating a ship to which these regulations apply complies with the requirements of the ISM Code, the Certifying Authority may issue the ISM company with a Document of Compliance valid for a period not exceeding five years.

(4) If the Certifying Authority is satisfied that a ship is operated by an ISM company which has been issued with a Document of Compliance and that the ISM company operates in accordance with the safety management system the Certifying Authority has approved, the Certifying Authority must issue, in respect of that ship, a Safety Management Certificate valid for a period not exceeding five years.

(5) Where an ISM company operates ships which are registered in more than one country, but at least one of which is registered in the Falkland Islands and complies with the requirements of the ISM Code, the Certifying Authority may accept a Document of Compliance issued by the government of one of those other countries to which SOLAS applies if, prior to the issue of that document, the Certifying Authority has agreed to accept it.

(6) Where an ISM company newly registers a ship in the Falkland Islands, the Certifying Authority may accept a Document of Compliance issued by the government of another country to which SOLAS applies in which ships operated by the ISM company are registered.

(7) If the Certifying Authority is satisfied that a Falkland Islands ship is operated by an ISM company which has a Document of Compliance accepted under sub-regulations (5) or (6) and that it operates in accordance with a safety management system which complies with the ISM Code, the Certifying Authority must issue in respect of that ship a Safety Management Certificate valid for a period not exceeding five years.



(8) The Certifying Authority may require an ISM company described under sub-regulations (5) and (6) to be audited by an authorised person before accepting the Document of Compliance issued to that ISM company.

## **10. Interim certificates**

(1) Subject to sub-regulation (2), where an ISM company is newly established, or the ISM company assumes, for the first time, the responsibility for operating a ship type not covered by a Document of Compliance the ISM company already holds, the Certifying Authority may issue an Interim Document of Compliance to facilitate implementation of the ISM Code.

(2) The Certifying Authority may issue an Interim Document of Compliance valid for no more than 12 months to an ISM company following a demonstration that the ISM company —

- (a) has a safety management system that meets the objectives of section 1.2.3 of the ISM Code; and
- (b) plans to implement a safety management system which will meet the full requirements of the ISM Code within the period of validity of the Interim Document of Compliance.

(3) Subject to sub-regulation (4), the Certifying Authority may issue an Interim Safety Management Certificate, valid for not more than six months, in respect of a new ship on delivery, when an ISM company takes on the responsibility for the management of a ship which is new to the ISM company or when a ship is transferred between flag states.

(4) The Certifying Authority may issue an Interim Safety Management Certificate only when it is satisfied that —

- (a) the Document of Compliance, or the Interim Document of Compliance, is relevant to that ship type;
- (b) the safety management system provided by the ISM 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;
- (c) the master and the designated person are familiar with the safety management system and the planned arrangements for its implementation;
- (d) instructions which have been identified as essential to be provided prior to sailing have been given;
- (e) the ISM company has arranged for the audit of the ship within three months from the time when any of the events described under sub-regulation (3) take place; and
- (f) the relevant information on the safety management system is given in a working language or languages understood by the ship's personnel.

(5) Where it is appropriate to do so, the Certifying Authority may extend the validity of the Interim Safety Management Certificate once for a further six months.

## **11. Issue and endorsement of documents by other governments**

Where —

- (a) the Governor has asked the government of a country which is party to SOLAS to conduct an audit of the safety management system operated on board a Falkland Islands ship; and
- (b) that government, after carrying out the audit, is satisfied that it is appropriate to issue or endorse a relevant document in accordance with the ISM Code, pursuant to a request by the Governor under paragraph (a); and
- (c) that government has issued or endorsed such a document,

that document has the same effect for the purposes of Falkland Islands law as if it had been issued or endorsed by the Governor under these regulations.

## **12. Issue and endorsement of documents on behalf of other governments**

(1) The Governor may, at the request of a government of a country which is party to SOLAS, arrange for the audit of the safety management system of —

- (a) a ship registered in that country; or
- (b) the ISM company.

(2) Where the Governor or an authorised person has carried out an audit in response to a request under sub-regulation (1) and is satisfied that the requirements of the ISM Code are met, the Governor may —

- (a) issue to the ISM company a Document of Compliance or a Safety Management Certificate; or
- (b) where appropriate, endorse such a document in accordance with the requirements of SOLAS after annual or intermediate audits.

(3) Where the Governor issues or endorses a document in accordance with a request under sub-regulation (1), the Governor must insert in that document a statement recording the fact.

(4) A document issued or endorsed in accordance with a request under sub-regulation (1) has the same effect as if it had been issued or endorsed by the government which made the request and not by the Governor.

## **13. Exemptions**

(1) The Governor may by notice in writing grant an exemption from all or any of the provisions of these regulations for such classes of case or individual cases, and on such conditions, as the Governor may specify.

(2) The Governor may amend or revoke an exemption by notice in writing containing the grounds for the amendment or revocation.

- (3) A notice under sub-regulation (2) is valid only if —
- (a) persons to whom the exemption applies were given the opportunity to make representations before the notice was given; or
  - (b) the Governor considers that urgent safety or pollution prevention considerations require the notice to be given immediately.

#### **14. Powers of audit and inspection**

(1) The Certifying Authority may arrange for an authorised person to audit the safety management system of an ISM company.

(2) If, after an audit, an authorised person considers that an ISM company, notwithstanding that it holds a Document of Compliance, is unable to operate ships without creating a risk of —

- (a) serious danger to safety of life;
- (b) serious damage to property; or
- (c) serious harm to the environment,

the authorised person may make a recommendation to the Certifying Authority to suspend the operation of ships by that ISM company until such time as any such risk is removed.

(3) Where an ISM company's service is to be suspended in terms of a recommendation made under sub-regulation (2), regulation 15 has effect and the Certifying Authority must comply with regulation 15 before suspending the ISM company.

(4) An audit of a ship to which these regulations apply may also include an inspection of the ship.

(5) If an authorised person is satisfied, on inspecting a ship to which these regulations apply, that there is a failure to comply in relation to that ship with the requirements of these regulations, the authorised person may detain the ship.

(6) In any case where a ship is to be detained, regulation 16 has effect.

(7) An authorised person exercising functions under this regulation has the powers conferred on an inspector by the Ordinance.

#### **15. Suspension or cancellation of documents**

(1) In any of the circumstances listed in sub-regulation (2), a Certifying Authority may, by notice in writing containing the grounds for the suspension or cancellation, suspend or cancel any relevant document issued under regulations 9 or 10, or issued pursuant to a request under regulation 11.

(2) The circumstances referred to in sub-regulation (1) are that —

- (a) the document was issued on the basis of incorrect information;

- (b) an audit required by Part B of the ISM Code in respect of the document has not taken place in the period required by the ISM Code;
  - (c) the management structure of the ISM company has changed since the most recent audit of the ISM company's safety management system carried out by the Governor or an authorised person;
  - (d) after an audit under regulation 14, there is a recommendation for the suspension of the operations of that ISM company; or
  - (e) the ISM company or ship is otherwise not compliant with the ISM Code.
- (3) Where a notice given under sub-regulation (1) in respect of a Document of Compliance so specifies, any associated Safety Management Certificates or Interim Safety Management Certificates must also be suspended or cancelled.
- (4) A notice under sub-regulation (1) is valid only if —
- (a) the holder of the relevant document was given the opportunity to make representations before the notice was given; or
  - (b) the Certifying Authority considers that urgent safety or pollution prevention considerations require the notice to be given immediately.
- (5) A Certifying Authority other than the Governor —
- (a) acts on behalf of the Governor when exercising functions under this regulation; and
  - (b) may only exercise functions under sub-regulation (1) in respect of a relevant document which was issued by that Certifying Authority.

## **PART 4 – DETENTION AND OFFENCES**

### **16. Detention**

(1) Where an inspector has clear grounds for believing that, in relation to a ship to which these regulations apply, there has been or will be if the ship puts to sea —

- (a) a failure to comply with regulations 5, 7 or 8; or
- (b) a breach of any term of an exemption granted under regulation 13;

the ship is liable to be detained.

(2) A person having power to detain a ship may permit a ship which is liable to be detained under sub-regulation (1) to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

(3) The power under this regulation to detain a ship may only be exercised in relation to a ship other than a Falkland Islands ship if the ship in question is in a port or offshore terminal in the Falkland Islands.

(4) Section 268 of the Ordinance (*enforcing detention of a ship*) applies where a ship is liable to be detained under this regulation as if —

- (a) references to the owner of a ship were references to the ISM company under these regulations;
- (b) references to detention of a ship under the Ordinance were references to detention of the ship in question under this regulation; and
- (c) subsection (10) was omitted.

(5) Where a ship is detained under sub-regulation (1), the person detaining the ship must serve on the master of the ship a detention notice which —

- (a) states the grounds for the detention; and
- (b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 268(1) of the Ordinance.

(6) Where a ship other than a Falkland Islands ship is detained, the Governor must immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.

(7) Where a ship is detained under sub-regulation (1) but the failure to comply referred to in that sub-regulation has ceased, a person having power to detain the ship must, at the request of the ISM company or master, immediately release the ship —

- (a) if no proceedings for an offence under regulation 17 are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for such an offence, having been instituted within that period, are concluded without the ISM company or master being convicted;
- (c) if either —
  - (i) the sum of £30,000 is paid to the Government by way of security; or
  - (ii) security which, in the opinion of the Governor, is satisfactory and is for an amount not less than £30,000 is given to the Governor by or on behalf of the ISM company or master;
- (d) where the ISM company or master is convicted of an offence under regulation 17, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or

- (e) if the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982, and any bond or other financial security ordered by such court or tribunal is posted.
- (8) The Government must repay any sum paid in terms of sub-regulation (7)(c) or release any security so given —
- (a) if no proceedings for an offence under regulation 17 are instituted within the period of seven days beginning with the day on which the sum is paid or the security is given; or
  - (b) if proceedings for such an offence, having been instituted within that period, are concluded without the ISM company or master being convicted.
- (9) Where a sum has been paid, or security has been given, by any person in terms of sub-regulation (7)(c) and the ISM company or master is convicted of an offence under regulation 17, the sum so paid or the amount made available under the security must be applied as follows —
- (a) first in payment of any costs or expenses ordered by the court to be paid by the ISM company or master;
  - (b) next in payment of any fine imposed by the court; and
  - (c) any balance must be repaid to the person who paid the sum or made available the amount by way of security.
- (10) For the purposes of sub-regulations (7) to (9) —
- (a) proceedings for an offence under regulation 17 are instituted —
    - (i) when a justice of the peace issues a summons or warrant under the Criminal Procedure and Evidence Ordinance 2014 (*section 257*) in respect of the offence; or
    - (ii) when an ISM company or master is charged with the offence after being taken into custody without a warrant;
  - (b) proceedings for an offence under regulation 17 are concluded without the ISM company or master being convicted on the occurrence of one of the following events —
    - (i) the discontinuance of the proceedings;
    - (ii) the acquittal of the ISM company or master;
    - (iii) the quashing of the ISM company's or master's conviction of the offence; or
    - (iv) the grant of the Governor's pardon in respect of the ISM company's or master's conviction of the offence.
- (11) Where the application of paragraph (a) of sub-regulation (10) results in proceedings being instituted more than once, those proceedings are taken to have been instituted at the earliest of those times.

## **17. Offences and penalties**

(1) It is an offence for an ISM company to contravene regulation 5 or regulation 8(1) and, on conviction, the ISM company is liable to a fine not exceeding level 7 on the scale set out in Schedule 7 to the Ordinance or imprisonment for a term not exceeding two years, or both.

(2) It is an offence for an ISM company to contravene regulation 7 or regulation 8(2) and on conviction, the ISM company is liable to a fine not exceeding level 7 on the scale set out in Schedule 7 to the Ordinance or imprisonment for a term not exceeding two years, or both.

(3) An ISM company commits an offence if it breaches a condition of an exemption granted under regulation 13 and on conviction, the ISM company is liable to a fine not exceeding level 7 on the scale set out in Schedule 7 to the Ordinance or imprisonment for a term not exceeding two years, or both.

## **18. Defence**

It is a defence for a person charged with an offence under regulation 17 to show that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.