



FALKLAND ISLANDS

Maritime (Polar Code) Regulations 2019

(No. 20 OF 2019)

ARRANGEMENT OF PROVISIONS

Regulation

PART 1 - INTRODUCTION

1. Title
2. Commencement
3. Interpretation
4. Application
5. Exemptions
6. Equivalents
7. Agreements with survey and certification organisations

PART 2 – REQUIREMENTS OF SOLAS

8. Interpretation of Part 2
9. Application of Part 2
10. SOLAS requirements for new ships
11. SOLAS requirements for existing ships
12. Alternative designs and arrangements

PART 3 - REQUIREMENTS OF MARPOL

13. Requirements of Annex I of MARPOL
14. Requirements of Annex II of MARPOL
15. Requirements of Annex IV of MARPOL
16. Requirements of Annex V of MARPOL

PART 4 - SURVEY AND CERTIFICATION

17. Interpretation of Part 4
18. Initial surveys of Falkland Islands ships
19. Renewal surveys of Falkland Islands ships
20. Responsibilities of owners and masters

21. Additional surveys of Falkland Island ships
22. Certification of Falkland Islands ships
23. Survey and certification of Falkland Islands ships by other Contracting States
24. Survey and certification of non-Falkland Islands ships by the Governor
25. Duration and validity of Polar Ship certificate
26. Extension of periods of validity of Polar Ship certificate
27. Procedure to be adopted when a ship is deficient
28. Arbitration
29. Cancellation and surrender of Polar Ship certificate
30. Display of Polar Ship certificate
31. Inspection of ships

PART 5 - ENFORCEMENT

32. Prohibition on operating in Polar waters without appropriate documentation
33. Offences and penalties
34. Defences



FALKLAND ISLANDS

Maritime (Polar Code) Regulations 2019

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

I make these regulations under sections 131 and 132 of the Maritime Ordinance 2017 and on the advice of Executive Council —

PART 1 - INTRODUCTION

1. Title

These regulations are the Maritime (Polar Code) Regulations 2019.

2. Commencement

(1) In respect of new ships (*as defined under regulation 8(1)*), these regulations come into force on publication in the *Gazette*.

(2) In respect of existing ships (*as defined under regulation 8(1)*), these regulations come into force on such date as the Governor may notify by notice published in the *Gazette*.

3. Interpretation

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

“**Annex I of MARPOL**” means MARPOL, Annex I (Regulations for the prevention of pollution by oil);

“**Annex II of MARPOL**” means MARPOL, Annex II (Regulations for the control of pollution by noxious liquid substances in bulk);

“**Annex IV of MARPOL**” means MARPOL, Annex IV ((Regulations for the prevention of pollution by sewage from ships);

“**Annex V of MARPOL**” means MARPOL, Annex V (Regulations for the prevention of pollution by garbage from ships);

“**Antarctic area**” means the sea area south of latitude 60°S;

“**Arctic waters**” means those waters which are located north of a line from latitude 58°00'.0 N and longitude 042°00'.0 W to latitude 64°37'.0 N, longitude 035°27'.0 W; and

- (a) from there by a rhumb line to latitude 67°03'.9 N, longitude 026°33'.4 W;
- (b) from there by a rhumb line to latitude 70°49'.56 N and longitude 008°59'.61 W (Sørkapp, Jan Mayen) and by the southern shore of Jan Mayen to 73°31'.6 N and 019°01'.0 E by the Island of Bjørnøya;
- (c) from there by a great circle line to latitude 68°38'.29 N and longitude 043°23'.08 E (Cap Kanin Nos);
- (d) from there by the northern shore of the Asian Continent eastward to the Bering Strait;
- (e) from the Bering Strait westward to latitude 60° N as far as Il'pyrskiy and following the 60th North parallel eastward as far as and including Etolin Strait;
- (f) from there by the northern shore of the North American continent as far south as latitude 60° N;
- (g) from there eastward along parallel of latitude 60° N, to longitude 056°37'.1 W; and
- (h) from there to the latitude 58°00'.0 N, longitude 042°00'.0 W.

“**Authority**” has the same meaning given in section 2 of the Ordinance;

“**certifying authority**” means the Governor or any organisation which has an agreement with the Governor in accordance with regulation 7;

“**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 either —

- (a) the Merchant Shipping Ordinance 2001; or
- (b) Part 3 of the Ordinance;

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

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

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

“**MARPOL**” means the International Convention for the Prevention of Pollution from Ships, 1973;

“**MCA**” means the Maritime and Coastguard Agency, an executive agency of the United Kingdom Department for Transport;

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

“**Merchant Shipping Notice M1613**” means a notice described as such, adopted and issued by the Governor or the Authority under section 307A of the Ordinance which is equivalent to, or based on, the United Kingdom Merchant Shipping Notice M1613 issued by the MCA;

“**Polar Code**” means the International Code for Ships Operating in Polar Waters, consisting of the Introduction, Parts I-A and II-A and Parts I-B and II-B as —

(a) adopted by —

(i) the Maritime Safety Committee of the IMO on 21 November 2014; and

(ii) the Marine Environment Protection Committee of the IMO on 15 May 2015; and

(b) amended and in force in the Falkland Islands from time to time;

“**Polar Code certificate**” means, in relation to a ship, a certificate issued in accordance with regulation 22 in a form corresponding to the relevant model given in Appendix I of the Polar Code;

“**Polar Water Operational Manual**” means the Polar Water Operational Manual required to be carried on board a ship by Chapter 2 of Part I-A of the Polar Code;

“**Polar waters**” means the Antarctic area and Arctic waters;

“**RO Code**” means the IMO’s Code for Recognized Organizations relating to the recognition of survey and inspection organisations and introduced by IMO Resolutions MSC.350(92), amending SOLAS, MSC.356(92), amending the 1988 Protocol to the International Convention on Load Lines, 1966, and MEPC.237(65), amending Annex I and Annex II of MARPOL, and contained in IMO Resolutions MSC.349(92) and MEPC.237(65);

“**ship**” includes every description of vessel used in navigation;

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

“**surveyor**” means a surveyor of ships, or any other person appointed by a certifying authority other than the Governor to be a surveyor, and “**survey**” means a survey carried out by a surveyor;

“**the Ordinance**” means the Maritime Ordinance 2017; and

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

(2) References in these regulations to —

- (a) a United Kingdom enactment “**as applied by the Law Revision and Publication Ordinance 2017**” is a reference to that enactment as applied to the Falkland Islands under section 21 of the Law Revision and Publication Ordinance 2017 and as modified or amended in accordance with sections 22 and 24 of that Ordinance;
- (b) “**endorsement**” in relation to a Polar Ship certificate means an endorsement drawn up in English which —
 - (i) is issued in connection with a certificate described in regulation 22; and
 - (ii) satisfies the requirements specified in the Polar Code applicable to that certificate,and “**endorse**” and “**endorsed**” are to be construed accordingly;
- (c) a “**renewal survey**” is a reference to a survey of a ship undertaken at intervals not exceeding five years from the date of either —
 - (i) the initial survey undertaken before the ship was put into service; or
 - (ii) a previous renewal service,as the case may be; and
- (d) an “**intermediate survey**” is a reference to a survey required to be undertaken in respect of a ship under Regulation 10 of Chapter 1 of the Annex to SOLAS.

(3) Any approval, exemption, direction or notice given by the Governor pursuant to these regulations is valid only if given in writing and may be —

- (a) given subject to such conditions and limitations as the Governor may specify; and
- (b) altered or cancelled by a notice given in writing by the Governor,

and any reference in these regulations to the provision of any approval, exemption, direction or notice “**in writing**” includes the provision of such communication by electronic mail, facsimile or similar means which are capable of producing a document containing the text of any communication.

(4) Any reference in these regulations to a term which is defined in the Polar Code and which is not defined in sub-regulation (1) has the meaning given in that Code.

(5) Any reference in these regulations to a specific provision in SOLAS, MARPOL, the Polar Code or the RO Code is to be construed as—

- (a) a reference to the provision in that instrument as modified from time to time; and

(b) a reference, if the instrument is replaced by another instrument, to the corresponding provision in that other instrument.

(6) For the purposes of sub-regulation (5), SOLAS is modified if omissions, additions or other alterations to the text take effect in accordance with Article VIII of that Convention.

(7) For the purposes of sub-regulation (5), MARPOL is modified if omissions, additions or other alterations to the text take effect in accordance with Article 16 of that Convention.

(8) For the purposes of sub-regulation (5), the Polar Code and the RO Code are modified if amendments to those Codes are adopted, brought into force and take effect in accordance with—

(a) Article VIII of SOLAS;

(b) Article 16 of MARPOL; or

(c) 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.

(9) A modification to, or replacement of —

(a) SOLAS by virtue of sub-regulation (6); or

(b) the Polar Code or the RO Code by virtue of sub-regulation (8)(a);

has effect at the time that such modification or replacement comes into force in accordance with Article VIII(vii) of SOLAS.

(10) A modification to, or replacement of —

(a) MARPOL by virtue of sub-regulation (7); or

(b) the Polar Code or the RO Code by virtue of sub-regulation (8)(b);

has effect at the time that such modification or replacement comes into force in accordance with Article 16(2)(g) of MARPOL.

(11) A modification to, or replacement of, the Polar Code or the RO Code by virtue of sub-regulation (8)(c) has effect at the time specified in any Resolution described in that sub-regulation.

(12) No modification or replacement of a reference to an instrument by virtue of sub-regulation (5) affects any rights or liabilities arising before the date on which the modification or replacement first takes effect.

4. Application

(1) These regulations apply to a Falkland Islands ship which operates in Polar waters.

(2) These regulations do not apply to —

- (a) a warship;
- (b) a naval auxiliary vessel;
- (c) a United Kingdom Government ship used for the time being only in United Kingdom government non-commercial service; or
- (d) a Falkland Islands Government ship used for the time being only in Falkland Islands Government non-commercial service.

5. Exemptions

- (1) Subject to sub-regulation (3), the Governor may exempt any ship or any description of ship from any of the provisions of these regulations.
- (2) An exemption under sub-regulation (1) must not be granted unless the exemption is permitted under SOLAS or MARPOL, as the case may be.
- (3) The owner and master of a Falkland Islands ship in respect of which an exemption has been granted under this regulation must comply with any conditions or limitations specified by the Governor under regulation 3(3).

6. Equivalentents

Any fitting, material, appliance or apparatus may be fitted in or carried on a Falkland Islands ship as an alternative to one that complies with these regulations if it has been approved by the Governor and —

- (a) the owner or master of the ship has made an application to the Governor for permission to fit or carry the fitting, material, appliance or apparatus;
- (b) a surveyor —
 - (i) is satisfied that, subject to any conditions or limitations that the surveyor considers necessary, the alternative fitting, material, appliance or apparatus is at least as effective as one that complies with these regulations; and
 - (ii) has endorsed the application to the Governor to that effect; and
- (c) the fitting, material, appliance or apparatus is fitted or carried on the ship, and used, in accordance with any conditions or limitations set out in the approval.

7. Agreements with survey and certification organisations

- (1) The Governor may enter into an agreement with a person to authorise that person or specified employees, agents or contractors of that person to undertake surveys of ships and issue and endorse Polar Ship certificates on behalf of the Governor under these regulations.
- (2) Until such time as regulations are made enabling the Governor to recognise organisations in accordance with the RO Code, a person must not be authorised pursuant to an agreement under sub-regulation (1) unless that person is —

- (a) the MCA or an employee of the MCA; or
 - (b) an organisation recognised for the purposes of the RO Code by the MCA.
- (3) A person authorised by the Governor under sub-regulation (1) must be authorised in accordance and agree to comply with the relevant requirements of —
- (a) SOLAS and MARPOL; and
 - (b) the RO Code.

PART 2 - REQUIREMENTS OF SOLAS

8. Interpretation of Part 2

(1) In this Part —

“**existing ship**” means a ship constructed before 1st January 2017; and

“**new ship**” means a ship constructed on or after 1st January 2017.

(2) Any reference in this regulation to the date by which a ship is constructed is a reference to the date on which —

- (a) the keel of the ship is laid; or
- (b) the ship is at a stage of construction at which —
 - (i) construction identifiable with a specific ship has begun; and
 - (ii) assembly of that ship has commenced comprising at least 50 tonnes or one per cent of the estimated mass of all structural material, whichever is less.

9. Application of Part 2

(1) This Part applies to a Falkland Islands ship to which SOLAS applies operating in Polar waters.

(2) This Part does not apply to —

- (a) a fishing vessel;
- (b) a pleasure yacht not engaged in trade;
- (c) a ship not propelled by mechanical means;
- (d) a wooden ship of primitive build; or
- (e) a cargo ship of less than 500 gross tonnage.

10. SOLAS requirements for new ships

The owner and master of a new ship to which this Part applies must ensure that by the compliance date, the construction and operation of the ship complies with Part I-A of the Polar Code.

11. SOLAS requirements for existing ships

(1) The owner and master of an existing ship to which this Part applies must ensure that by the compliance date, the construction and operation of the ship complies with Part I-A of the Polar Code.

(2) For the purposes of this regulation, “**compliance date**” means in relation to an existing ship the date of —

- (a) the first intermediate survey; or
- (b) the first renewal survey,

whichever first occurs after these regulations come into force.

12. Alternative designs and arrangements

(1) An item of equipment or arrangement specified in sub-regulation (2) which deviates from the requirements of chapters 3, 6, 7 and 8 of Part I-A of the Polar Code may be fitted in or applied to a Falkland Islands ship as an alternative to equipment or arrangements that comply with these regulations (“the alternative item of equipment or arrangement”) if the alternative item of equipment or arrangement —

- (a) has been approved by the Governor in accordance with sub-regulation (3); and
- (b) complies with the functional requirements and provides an equivalent level of safety to those chapters.

(2) The equipment and arrangements are —

- (a) structural arrangements;
- (b) machinery;
- (c) electrical installation;
- (d) fire safety design and arrangement measures; and
- (e) life-saving appliance and arrangements.

(3) The Governor must not approve an alternative item of equipment or arrangement under sub-regulation (1) unless —

- (a) the owner or master of the ship has made an application to the Governor for permission to fit or use the alternative item of equipment or arrangement;

- (b) a surveyor, having carried out an engineering analysis and evaluation in accordance with IMO Guidelines —
 - (i) is satisfied, subject to any conditions or limitations that the surveyor considers necessary, that the alternative item of equipment or arrangement is at least as effective as one that complies with these regulations; and
 - (ii) has endorsed the application to the Governor to that effect;
 - (c) the alternative item of equipment or arrangement is fitted in or applied, and used, on the ship in accordance with any conditions or limitations set out in the approval; and
 - (d) the alternative item of equipment or arrangement approved by the Governor, together with any conditions or limitations, is recorded in —
 - (i) the ship's Polar Ship certificate; and
 - (ii) the ship's Polar Water Operational Manual.
- (4) In this regulation, “**IMO Guidelines**” means —
- (a) the Guidelines for the approval of alternatives and equivalents as provided for in various IMO Instruments (MSC.1/Circ.1455);
 - (b) the Guidelines on alternative design and arrangements for SOLAS Chapters II-1 and III (MSC.1/Circ. 1212); and
 - (c) the Guidelines on alternative design and arrangements for fire safety (MSC/Circ.1002).

PART 3 - REQUIREMENTS OF MARPOL

13. Requirements of Annex I of MARPOL

- (1) This regulation applies to a Falkland Islands ship operating in Polar waters to which Annex I of MARPOL applies.
- (2) The owner and master of a ship to which this regulation applies must ensure that the construction and operation of the ship complies with Regulation 43 (special requirements for the use or carriage of oils in the Antarctic area) of Annex I of MARPOL.
- (3) The owner and master of a ship to which this regulation applies must ensure that the construction and operation of the ship complies with Chapter 1 of Part II-A of the Polar Code.
- (4) The prohibition of any discharge into the sea of oil or oily mixtures in Arctic waters in paragraph 1.1.1 of Part II-A of the Polar Code does not apply to —
 - (a) the discharge into the sea of oil or oily mixture necessary for the purpose of securing the safety of the ship, including the safety of those on board, or saving life at sea; or

- (b) the discharge into the sea of oil or oily mixture resulting from damage to a ship or its equipment, provided that —
 - (i) all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimising the discharge; and
 - (ii) the owner or the master has not acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or
 - (c) the discharge into the sea of substances containing oil when being used for the purpose of combating specific pollution incidents in order to minimise the damage from pollution, where the discharge is approved by —
 - (i) the Governor; and
 - (ii) any Government in whose jurisdiction it is contemplated the discharge will occur.
- (5) In ensuring compliance with sub-regulation (3)(b) consideration must be given to the guidance in Part II-B of the Polar Code.

14. Requirements of Annex II of MARPOL

- (1) This regulation applies to a Falkland Islands ship operating in Polar waters certified to carry noxious liquid substances in bulk.
- (2) The owner and master of a ship to which this regulation applies must ensure that the construction and operation of the ship complies with Chapter 2 of Part II-A of the Polar Code.
- (3) Sub-regulation (2) does not apply to the discharge into the sea of noxious liquid substances or mixtures containing such substances when such a discharge —
 - (a) is necessary for the purpose of securing the safety of the ship, including the safety of those on board, or saving life at sea; or
 - (b) results from damage to a ship or its equipment provided that —
 - (i) all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing or minimising the discharge; and
 - (ii) the owner or the master has not acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result; or
 - (c) is for the purpose of combating specific pollution incidents in order to minimise the damage from pollution, and the discharge is approved by —
 - (i) the Governor; and
 - (ii) any Government in whose jurisdiction it is contemplated the discharge will occur.

(4) In ensuring compliance with sub-regulation (2)(b) consideration must be given to the guidance in Part II-B of the Polar Code.

15. Requirements of Annex IV of MARPOL

(1) This regulation applies to a Falkland Islands' ship operating in Polar waters to which Annex IV of MARPOL applies and which is —

- (a) of 400 gross tonnage and above; or
- (b) of less than 400 gross tonnage which is certified to carry more than 15 persons.

(2) The owner and master of a ship to which this regulation applies must ensure that the construction and operation of the ship complies with Chapter 4 of Part II-A of the Polar Code.

(3) Sub-regulation (2)(b) does not apply to —

- (a) the discharge of sewage from a ship necessary for the purpose of securing the safety of the ship, including the safety of those on board, or saving life at sea; or
- (b) the discharge of sewage resulting from damage to a ship or its equipment if all reasonable precautions have been taken before and after the occurrence of the damage, for the purpose of preventing or minimising the discharge.

16. Requirements of Annex V of MARPOL

(1) This regulation applies to a Falkland Islands ship operating in Polar waters to which Annex V of MARPOL applies.

(2) The owner and master of a ship to which this Part applies must ensure that the construction and operation of the ship complies with Chapter 5 of Part II-A of the Polar Code.

(3) In ensuring compliance with sub-regulation (2)(b) consideration must be given to the guidance in Part II-B of the Polar Code.

(4) Sub-regulation (2)(b) does not apply —

- (a) to the discharge of garbage from a ship necessary for the purpose of securing the safety of a ship and those on board or saving life at sea;
- (b) to the accidental loss of garbage resulting from damage to a ship or its equipment, provided that all reasonable precautions have been taken before and after the occurrence of the damage, to prevent or minimise the accidental loss;
- (c) to the accidental loss of fishing gear from a ship provided that all reasonable precautions have been taken to prevent such loss;
- (d) to the discharge of fishing gear from a ship for the protection of the marine environment or for the safety of that ship or its crew; or

- (e) in respect of a ship en route, to the discharge of food wastes where it is clear that the retention on board of those food wastes presents an imminent health risk to those on board the ship.

(5) For the purpose of this regulation, a ship is “**en route**” if it is under way at sea on a course which so far as practicable for navigational purposes will cause any discharge to be spread over as great an area of the sea as is reasonably practicable.

PART 4 - SURVEY AND CERTIFICATION

17. Interpretation of Part 4

In this Part —

“**Contracting State**” means a State or Territory which has consented to be bound by SOLAS and MARPOL; and

“**relevant requirements**” means the relevant requirements concerning the construction and operation of a Falkland Islands ship operating in Polar waters contained in regulations 10, 11(1), 13(2) and (3), 15(2) and 16(2).

18. Initial surveys of Falkland Islands ships

The owner and master of a Falkland Islands ship to which these regulations apply must ensure that the ship does not operate in Polar waters unless —

- (a) an initial survey has been carried out in respect of the ship;
- (b) at the date of the survey the surveyor is satisfied that the structure, equipment, systems, fittings, arrangements and materials comply with the relevant requirements; and
- (c) a Polar Ship certificate has been issued in respect of the ship and that certificate is valid.

19. Renewal surveys of Falkland Islands ships

The owner and master of a Falkland Islands ship to which these regulations apply must ensure that the ship does not operate in Polar waters after the date of expiry of a relevant Polar Ship certificate in respect of that ship unless —

- (a) a renewal survey has been carried out in respect of the ship;
- (b) at the date of the survey the surveyor is satisfied that the structure, equipment, systems, fittings, arrangements and materials comply with the relevant requirements; and
- (c) a new Polar Ship certificate has been issued in respect of the ship following the relevant renewal survey and that certificate is valid.

20. Responsibilities of owners and masters

(1) This regulation applies to —

- (a) a Falkland Islands ship; and
 - (b) a non-Falkland Islands ship which has been surveyed under regulation 24, which operates in Polar waters.
- (2) The owner and master of every ship to which this regulation applies must ensure that —
- (a) the ship conforms with the relevant requirements which apply to the ship, so as to ensure that the ship in all respects remains fit to operate in Polar waters without presenting an unreasonable threat of harm to the marine environment and without danger to the ship or persons on board;
 - (b) after any survey of the ship required by these regulations has been completed, no change is to be made in the structural arrangements, machinery, equipment and other items covered by the survey, except by direct replacement, without the approval of —
 - (i) the certifying authority who appointed the surveyor to carry out the survey; or
 - (ii) the Governor, where the relevant survey was carried out and the relevant Polar Ship certificate was issued by a Contracting State other than the Falkland Islands following a request made by the Governor pursuant to regulation 23; and
 - (c) whenever an accident occurs to a ship or a defect is discovered, either of which affects the safety of the ship or the efficiency or completeness of its life-saving appliances or other equipment, it is reported —
 - (i) at the earliest opportunity to the certifying authority; and
 - (ii) if a Falkland Islands ship is in such a case in a port outside the Falkland Islands, to the appropriate authorities of the country in which the port is situated.
- (3) Whenever an accident or defect is reported to a certifying authority in accordance with sub-regulation (2)(c)(i) and the ship in question is in a port outside the Falkland Islands, the certifying authority or proper officer must take all appropriate steps to ascertain that the requirement in sub-regulation (2)(c)(ii) has been complied with.
- (4) If a report is made under sub-regulation (2)(c)(i), the certifying authority must determine whether a survey is necessary, and if so, require one to be carried out.
- (5) If the survey referred to in sub-regulation (4) shows that repairs are required, or if any important repairs or renewals are otherwise made to the ship or its equipment, a further survey must be carried out on the completion of those repairs or renewals.
- (6) In sub-regulation (2) “**direct replacement**” means the direct replacement of equipment and fittings with equipment and fittings that conform with the relevant requirements which apply to that ship.

21. Additional surveys of Falkland Islands ships

- (1) This regulation applies to a Falkland Islands ship where —

- (a) a repair resulting from a survey referred to in regulation 20(4) has been made to the ship;
or
 - (b) an important repair or renewal has been made to the ship.
- (2) The owner and master of a Falkland Islands ship to which this regulation applies must ensure that the ship does not operate in Polar waters unless —
- (a) an additional survey has been carried out in respect of the ship;
 - (b) at the date of the survey the surveyor is satisfied that —
 - (i) the repair or renewal has been made effectively;
 - (ii) the materials used in, and the workmanship of, the repair or renewal are satisfactory in all respects; and
 - (iii) the ship complies in all respects with the requirements of these regulations; and
 - (c) the surveyor has issued a report expressing the satisfaction required by paragraph (b).
- (3) For the purposes of sub-regulation (1)(b) an important repair or renewal is a repair or renewal which is required to be effected in order to—
- (a) address a defect which substantially affects the integrity of the ship or the efficiency or completeness of the equipment of the ship; or
 - (b) ensure compliance with the requirements of Annexes I and II of MARPOL.
- (4) In the case of a dispute as to whether a repair or renewal effected or intended to be effected in respect of a ship is an important repair or renewal for the purposes of sub-regulation (1)(b), the owner or master of a ship may serve a written request upon the Authority seeking advice.
- (5) A repair or renewal is to be regarded as not being an important repair or renewal for those purposes unless the Authority advises to the contrary within 21 days of receipt of a request under sub-regulation (4).

22. Certification of Falkland Islands ships

- (1) A certifying authority must issue a relevant Polar Ship certificate in respect of a Falkland Islands ship where —
- (a) a surveyor makes a notification to the certifying authority that a relevant initial or renewal survey has been carried out;
 - (b) the notification described in paragraph (a) includes confirmation that, at the date of that survey, the surveyor is satisfied that the ship complies with the relevant requirements which apply to that ship; and

- (c) any fee due under the Merchant Shipping (Fees) Regulations 2006 (SI 2055/2006) (as applied by the Law Revision and Publication Ordinance 2017) has been paid to that authority.

(2) A certifying authority must issue a relevant Polar Ship certificate in respect of a ship which becomes a Falkland Islands ship on transfer from the flag of another Contracting State where —

- (a) a certificate which satisfies the requirements of the Polar Code has been issued by a Contracting State other than the Falkland Islands in respect of the ship;
- (b) the certificate described in paragraph (a) was valid immediately before the transfer;
- (c) the certifying authority has caused a survey to be carried out in respect of the ship; and
- (d) the certifying authority is satisfied that —
 - (i) the condition of the ship and its structure, equipment, systems, fittings, arrangements and materials is such that it is fit to operate in Polar waters without presenting an unreasonable threat of harm to the marine environment; and
 - (ii) no change, other than a change referred to in sub-regulation (3), has been made to the structure of the ship or its equipment, systems, fittings, arrangements or materials covered by the last survey carried out in accordance with the requirements of the Polar Code without the approval of the Contracting State in question.

(3) The changes referred to in sub-regulation (2)(d)(ii) are the direct replacement of equipment and fittings with equipment and fittings that conform with the relevant requirements.

(4) A Polar Ship certificate must be issued in the form appropriate to that ship as prescribed in the Polar Code.

23. Survey and certification of Falkland Islands ships by other Contracting States

(1) The Governor may request a Contracting State other than the Falkland Islands to carry out a survey of a Falkland Islands ship for the purposes of these regulations.

(2) If a Contracting State which has received a request under sub-regulation (1) is satisfied that the relevant requirements as notified by the Governor have been complied with in respect of that ship, that State must —

- (a) issue or authorise the issue of a relevant Polar Ship certificate in respect of that ship; or
- (b) endorse, or authorise the endorsement of, an existing relevant certificate.

(3) Where a relevant Polar Ship certificate is issued or endorsed in accordance with sub-regulation (2) —

- (a) the Governor is to be treated as the certifying authority in relation to that certificate; and

- (b) any reference in these regulations to the certifying authority that issued a certificate is, in the case of a certificate to which this regulation applies, to be treated as a reference to the Governor.

24. Survey and certification of non-Falkland Islands ships by the Governor

(1) The Governor, when requested to do so by a Contracting State other than the Falkland Islands, may cause a survey to be carried out in respect of a ship which is not a Falkland Islands ship which will operate in Polar waters.

(2) If a survey described in sub-regulation (1) has been carried out and the Governor is satisfied that the relevant requirements are complied with, the Governor must, subject to the payment of any fee due under the Merchant Shipping (Fees) Regulations 2006 (SI 2055/2006) (as applied by the Law Revision and Publication Ordinance 2017) —

- (a) in the case of a ship for which there is no Polar Ship certificate, issue a new certificate; or
- (b) in the case of a ship for which there is an existing Polar Ship certificate, endorse that certificate.

(3) A certificate issued or endorsed under sub-regulation (2) —

- (a) must be in the form appropriate to that ship as prescribed in the Polar Code;
- (b) must contain a statement that it has been so issued or endorsed; and
- (c) has the same effect as if it had been issued or endorsed by the Contracting State who made the request referred to in sub-regulation (1).

(4) The Governor must, as soon as possible after completion of a survey carried out under sub-regulation (1), send to the Contracting State who made the request a copy of —

- (a) the report of that survey; and
- (b) any certificate issued or endorsed under sub-regulation (2).

(5) The Governor must not issue or endorse a certificate in respect of a ship which —

- (a) is registered in a country which is not a Contracting State; or
- (b) is not so registered, but is entitled to fly the flag of a country which is not a Contracting State.

25. Duration and validity of Polar Ship certificate

(1) Subject to the following sub-regulations and to regulations 27(3) and 29(3), a Polar Ship certificate issued in respect of a Falkland Islands ship is valid for such period as is specified in the certificate, not exceeding five years beginning with the date of completion of the relevant initial or renewal survey which immediately preceded the issue of the certificate.

(2) Subject to sub-regulation (3) and regulation 26(9), where a renewal survey of a Falkland Islands ship is completed —

- (a) within the final three month period of a Polar Ship certificate; or
- (b) after the expiry of the latest Polar Ship certificate,

the new Polar Ship certificate issued following completion of the renewal survey is valid for such period as is specified in that certificate, beginning with the date of the completion of the renewal survey and ending with a date not exceeding five years from the date of expiry of the previous relevant certificate.

(3) A Polar Ship certificate issued in respect of a Falkland Islands ship ceases to be valid —

- (a) if the ship is transferred to the flag of another State;
- (b) if the ship is enabled to operate in Polar waters when —
 - (i) an important repair or renewal has been made to the ship; but
 - (ii) the requirements of regulation 21 have not been complied with;
- (c) if a survey under regulations 18 or 19 is not completed in accordance with the requirements of these regulations;
- (d) if the Polar Ship certificate is not endorsed in accordance with the requirements of these regulations;
- (e) upon a new Polar Ship certificate being issued in respect of that ship; or
- (f) upon the date of expiry of the certificate.

(4) Where a Falkland Islands ship is transferred to the flag of another Contracting State, and within three months after the date of transfer the Government of that State so requests, the Governor must send that Government a copy of —

- (a) the Polar Ship certificate issued in respect of that ship; and
- (b) any current survey report, if available, in respect of that ship.

(5) In this regulation any dispute as to whether a repair or renewal is an important repair or renewal is subject to the procedure prescribed in regulation 21(4) and (5), and —

“**final three month period**” means the period of three months ending on the date of expiry of the certificate in question; and

“**important repair or renewal**” has the meaning given in regulation 21(3).

26. Extension of periods of validity of Polar Ship certificate

(1) Where —

- (a) a renewal survey has been completed by a surveyor; but
- (b) a new Polar Ship certificate in respect of that renewal survey cannot be issued or placed on board the ship before the date on which the existing Polar Ship certificate is due to expire,

the surveyor may endorse the existing Polar Ship certificate.

(2) Where a Polar Ship certificate has been endorsed under sub-regulation (1), that certificate is valid for such further period as is specified in the certificate, not exceeding five months beginning with the original date of expiry of the certificate.

(3) Where —

- (a) a renewal survey in respect of a Falkland Islands ship has not been completed before the date on which a Polar Ship certificate expires; and
- (b) at the date of expiry the ship is not in the port in which the survey is to be carried out,

the certifying authority that issued the Polar Ship certificate may extend the period of validity of that certificate for a period not exceeding three months, if it appears to the certifying authority that it is proper and reasonable to do so solely for the purpose of enabling that ship to proceed to the port in which the survey is to be carried out.

(4) Where the period of validity of a Polar Ship certificate has been extended under sub-regulation (3), the owner and master must ensure that the ship does not operate in Polar waters (other than, in the case of a ship in Polar waters, for the purpose of proceeding out of those waters), until a new Polar Ship certificate has been issued in respect of that ship.

(5) Subject to sub-regulation (6), the certifying authority that issued a Polar Ship certificate in respect of a Falkland Islands ship engaged solely on short voyages may extend the period of validity of that certificate for a period not exceeding one month.

(6) A certifying authority must not extend the period of validity of a Polar Ship certificate under sub-regulation (5) if the period of validity of that certificate has already been extended under sub-regulation (2) or (3).

(7) Subject to sub-regulation (8) and to regulations 27(3) and 29, where a renewal survey has been completed and a new Polar Ship certificate has been issued in respect of a ship referred to in sub-regulation (3) or (5), the new Polar Ship certificate is valid for such period as is specified in the certificate, not exceeding five years beginning with the original date of expiry of the previous Polar Ship certificate.

(8) In the circumstances described in sub-regulation (9) the period of validity of a new Polar Ship certificate which is —

- (a) issued in respect of a ship referred to in sub-regulation (3) or (5); or
- (b) issued in respect of a ship referred to in regulation 25(2)(b) after the date of expiry of a Polar Ship certificate,

is such period as is specified in the new certificate, not exceeding five years beginning with the date of the completion of the renewal survey in question.

(9) The circumstances are where the owner of the ship —

- (a) submits a request to the certifying authority for the new period of certification to begin on the date of the completion of the renewal survey;
- (b) satisfies the certifying authority that the owner is justified in making such a request; and
- (c) complies with any reasonable additional survey requirements which the certifying authority may impose.

(10) Where the period of validity of a Polar Ship certificate is extended under sub-regulation (3) or (5), or an endorsement is to be made pursuant to sub-regulation (1), the certifying authority in question must endorse the relevant Polar Ship certificate.

(11) In this regulation —

“**short voyage**” means a voyage which —

- (a) does not exceed 1,000 nautical miles between the last port of call in the country in which the voyage begins and the last port of call in the voyage before beginning any return voyage; and
- (b) on any return voyage does not exceed 1,000 nautical miles between the port of call in which the ship begins its return voyage and the first port of call in the country in which the voyage began,

and, for the purposes of this definition, no account is to be taken of any deviation by a ship from its intended voyage due solely to stress of weather or any other circumstances that neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled; and

“**the original date of expiry**” means the date on which a Polar Ship certificate would have expired but for any extension of its period of validity.

27. Procedure to be adopted when a ship is deficient

(1) This regulation applies to a Falkland Islands ship where a surveyor determines that —

- (a) the condition of the ship or its equipment does not correspond substantially with the particulars of the Polar Ship certificate (if any) issued in respect of the ship; or
- (b) a ship is not fit to operate in Polar waters without presenting an unreasonable threat of harm to the marine environment.

(2) In the circumstances described in sub-regulation (1) the surveyor must —

- (a) immediately advise the owner or master of the corrective action which, in the opinion of the surveyor, is required; and

(b) where the ship has a valid Polar Ship certificate, notify the certifying authority that issued the Polar Ship certificate as respects that ship that the owner or master has been so advised.

(3) The certifying authority must suspend the validity of any Polar Ship certificate if the corrective action advised in accordance with sub-regulation (2)(a) is not taken within the time specified by the surveyor.

(4) Where a certifying authority suspends the validity of the Polar Ship certificate issued in respect of a ship, it must immediately give notice of such suspension —

(a) to the owner of the ship; and

(b) where the ship is in a port outside the Falkland Islands, to the appropriate maritime authorities of the country in which the port is situated.

(5) Where the owner of the ship is given notice of suspension, that owner must notify the master of the ship in question of the suspension.

28. Arbitration

(1) If an applicant is dissatisfied for any reason with the outcome of a survey carried out in respect of a Falkland Islands ship for the purposes of these regulations, the applicant may serve a written notice on the responsible person within 21 days of receiving notification of that outcome—

(a) stating that there is a dispute in relation to the survey; and

(b) requesting that the dispute be referred to a single arbitrator.

(2) Subject to sub-regulation (3), an arbitrator referred to in sub-regulation (1) must be appointed by agreement between the applicant and the responsible person.

(3) In default of an agreement between the applicant and the responsible person, the arbitrator is such person as may be appointed in terms of section 93(6) of the Ordinance following a request made by —

(a) a party, after giving written notice to the other party; or

(b) the parties jointly.

(4) No person is to be an arbitrator under this regulation unless that person is —

(a) a person who holds a certificate to act as —

(i) a master or chief mate on a seagoing ship of 3,000 gross tonnage or more, in accordance with Regulation II/2 of Chapter 2 of the Annex to the STCW Convention; or

- (ii) a chief engineer officer or second engineer officer on a seagoing ship powered by main propulsion machinery of 3,000kW propulsion power or more, in accordance with Regulation III/2 of Chapter 3 of the Annex to the STCW Convention;
- (b) a person who holds a certificate of competency equivalent to a certificate referred to in paragraph (a);
- (c) a naval architect;
- (d) a qualified person;
- (e) a person with special experience of shipping matters or of activities carried on in ports; or
- (f) a member of the Chartered Institute of Arbitrators.

(5) An arbitrator appointed under this regulation has the powers of an inspector conferred by section 241 of the Ordinance.

(6) The rules for arbitration set out in Merchant Shipping Notice M1613 applies unless alternative procedures are agreed between the applicant and the responsible person before the commencement of arbitration proceedings.

(7) In this regulation —

“**applicant**” means a person who makes an application for a survey required by these regulations;

“**qualified person**” means a person who satisfies the judicial appointment eligibility condition within the meaning of section 88 of the Constitution;

“**responsible person**” means —

- (a) the certifying authority responsible under regulation 22 or 23 for the issue of the relevant Polar Ship certificate in connection with which a survey required by these regulations is carried out; or
- (b) in the case of a dispute relating to a relevant additional survey required by regulation 21, the certifying authority which issued the relevant Polar Ship certificate in respect of the ship;

“**the STCW Convention**” means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, as amended, and any reference to a Regulation in a numbered Chapter of the Annex to the STCW Convention is a reference to a Regulation contained in the numbered Chapter in Attachment 1 to the Final Act of the 2010 Manila Conference of Parties to the STCW Convention.

29. Cancellation and surrender of Polar Ship certificate

(1) The Governor may cancel a relevant Polar Ship certificate issued in respect of a Falkland Islands ship where the Governor has reason to believe that —

- (a) the certificate was issued on the basis of false or erroneous information; or
- (b) since the completion of any survey required by these regulations, the equipment or machinery of the ship has sustained damage or is otherwise deficient.

(2) Where the Governor gives notice to the owner or master requiring that person to surrender a Polar Ship certificate issued in respect of a Falkland Islands ship and which has expired, or been cancelled, the owner or master must surrender that certificate to the Governor within 21 days of the date of that notice.

(3) In relation to a Falkland Islands ship, a person must not —

- (a) without authority, intentionally alter a Polar Ship certificate;
- (b) intentionally make a false Polar Ship certificate;
- (c) knowingly or recklessly provide false information in connection with a survey required under these regulations;
- (d) with intent to deceive, use, lend or allow to be used by another, a Polar Ship certificate; or
- (e) fail to surrender a Polar Ship certificate where required to do so under sub-regulation (2).

30. Display of Polar Ship certificate

The owner and the master of a Falkland Islands ship, in respect of which a Polar Ship certificate has been issued, must display the Polar Ship certificate and ensure that the certificate is readily available on board the ship for inspection at all times.

31. Inspection of ships

(1) In so far as sections 240 (powers to inspect ships and their equipment etc.) and 241 (powers of inspectors in relation to premises and ships) of the Ordinance apply in relation to a ship to which these regulations apply, for the purposes of checking compliance with these regulations, those sections have effect subject to the following modifications.

(2) The power in those sections to inspect a ship and its equipment, any part of the ship, any articles on board and any documentation carried in the ship, is limited to —

- (a) verifying whether a relevant Polar Ship certificate has been issued in respect of the ship and is still valid; and
- (b) inspecting the Polar Water Operational Manual,

except where there are clear grounds for believing that the condition of the ship or its equipment or its operation does not correspond substantially with the particulars of the appropriate certificate.

(3) The power in those sections to go on board a ship may only be exercised if the ship in question is —

- (a) in a port in the Falkland Islands; or
- (b) at an offshore installation in Falkland Islands fishing waters.

(4) In this regulation —

“**fishing waters**” has the same meaning given under the Fisheries (Conservation and Management) Ordinance 2005; and

“**offshore installation**” means fixed or floating platforms including drilling rigs, floating production, storage and offloading facilities used for the offshore production and storage of oil or noxious liquid substances, and floating storage units used for the offshore storage of produced oil.

PART 5 - ENFORCEMENT

32. Prohibition on operating in Polar waters without appropriate documentation

(1) The owner and master of a Falkland Islands ship to which these regulations apply must ensure that the ship does not operate in Polar waters unless it has been surveyed and there is in force a Polar Ship certificate in relation to that ship.

(2) If a Polar Ship certificate is issued subject to conditions or specifies sea areas in which the ship is certified to operate, the owner and master must ensure that all conditions are complied with or that the ship only operates in the specified sea areas.

33. Offences and penalties

Any contravention of —

- (a) regulation 5(4);
- (b) regulation 10;
- (c) regulation 11(1);
- (d) regulation 13(2) and (3);
- (e) regulation 14(2);
- (f) regulation 15(2);
- (g) regulation 16(2);
- (h) regulation 18;
- (i) regulation 19;

- (j) regulation 20(2);
- (k) regulation 21(2);
- (l) regulation 26(4);
- (m) regulation 27(5);
- (n) regulation 29(2) and (3);
- (o) regulation 30; and
- (p) regulation 32(1) and (2),

is an offence, punishable on summary conviction 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.

34. Defences

In any proceedings for an offence under these regulations, it is a defence for the person charged to show that all reasonable steps were taken by that person to ensure compliance with the provision concerned.