

2014 No. 1512

MERCHANT SHIPPING

SAFETY

**The Merchant Shipping (International Safety Management
(ISM) Code) Regulations 2014**

<i>Made</i> - - - -	<i>7th June 2014</i>
<i>Laid before Parliament</i>	<i>12th June 2014</i>
<i>Coming into force</i> - -	<i>18th July 2014</i>

CONTENTS

PART 1

Interpretation and Application

1. Citation, commencement and revocation
2. Interpretation
3. Application

PART 2

Compliance with ISM Code

4. Duty on ISM company where EU Regulation applies
5. Duty on ISM company where EU Regulation does not apply
6. Certification requirements of regulations 4 and 5
7. Duty of master
8. Designated person

PART 3

Certification

9. Issue and endorsement of documents by Certifying Authority
10. Issue and endorsement of documents by other governments
11. Issue and endorsement of documents on behalf of other governments
12. Exemptions
13. Suspension or cancellation of documents

PART 4
Detentions and Offences

- 14. Detention
- 15. Offences and penalties
- 16. Defence

PART 5
Miscellaneous

- 17. Amendment to Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001
- 18. Transitional provisions
- 19. Review

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a), sections 85(1), (3) and (5) to (7) and 86(1)(b) of the Merchant Shipping Act 1995(c), and the Merchant Shipping (Control of Pollution) (SOLAS) Order 1998(d).

The Secretary of State has consulted the persons referred to in section 86(4) of the Merchant Shipping Act 1995 in relation to these Regulations.

The Secretary of State is a Minister designated(e) for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to the safety of ships and the health and safety of persons on them.

PART 1
Interpretation and Application

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the Merchant Shipping (International Safety Management (ISM) Code) Regulations 2014 and come into force on 18th July 2014.

(2) The Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997(f) and the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998(g) are revoked.

Interpretation

2.—(1) In these Regulations—

“the 1995 Act” means the Merchant Shipping Act 1995;

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- (a) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51) and the European Union (Amendment) Act 2008 (c.7).
 - (b) Sections 85 and 86 were amended by sections 8 and 29 of, and Schedule 7 to, the Merchant Shipping and Maritime Security Act 1997 (c.28). Sections 85 and 86 apply in relation to hovercraft by virtue of article 4 of the Hovercraft (Application of Enactments) Order 1989 (S.I. 1989/1350, to which there are amendments not relevant to these Regulations).
 - (c) 1995 c.21.
 - (d) S.I. 1998/1500.
 - (e) S.I. 1993/595.
 - (f) S.I. 1997/3022, amended by S.I. 2001/3209.
 - (g) S.I. 1998/1561, amended by S.I. 2001/3209 and 2004/302.

“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;

“Certifying Authority” means the Secretary of State or any organisation which has an agreement with the Secretary of State pursuant to Article 5(2) of Directive 2009/15/EC of the European Parliament and of the Council of 23rd April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations(a);

“Document of Compliance” means a document issued in accordance with paragraph 13.2 of the ISM Code;

“EU Regulation” means Regulation (EC) No. 336/2006 of the European Parliament and of the Council of 15th February 2006 on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) No. 3051/95(b);

“high speed craft” means a craft to which the Merchant Shipping (High Speed Craft) Regulations 2004(c) apply;

“IMO” means the International Maritime Organisation;

“inspector” means a person mentioned in paragraph (a) or (c) of section 258(1) of the 1995 Act;

“Interim Document of Compliance” means a document issued in accordance with paragraph 14.1 of the ISM Code;

“Interim Safety Management Certificate” means a document issued in accordance 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 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;

“Maritime and Coastguard Agency” means the executive agency of the Department for Transport of that name;

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

“Merchant Shipping Notice” means a notice described as such and issued by the Maritime and Coastguard Agency, and includes a reference to any such document amending or replacing that notice which is considered by the Secretary of State to be relevant from time to time;

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

“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;

“Safety Management Certificate” means a document issued in accordance with paragraph 13.7 of the ISM Code;

(a) OJ L131, 28.5.2009 p 47.

(b) OJ L64, 4.3.2006 p 1.

(c) S.I. 2004/302, amended by S.I. 2004/2883, 2005/2114, 2006/2055 and 2012/ 2636.

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

“SOLAS” means the International Convention for the Safety of Life at Sea 1974(a), its protocols of 1978(b) and 1988(c) and all amendments to them in force on the date these Regulations come into force.

(2) Any reference in these Regulations to SOLAS or the ISM Code includes a reference to any amendments of those documents specified in a Merchant Shipping Notice as being considered relevant for the purposes of these Regulations by the Secretary of State.

(3) Any reference in these Regulations to a term which is defined in Article 2 of the EU Regulation and which is not defined in paragraph (1) has the meaning given in that article.

(4) In interpreting the ISM Code for the purposes of these Regulations—

- (a) the requirements of Part A of the ISM Code are to be construed as mandatory; and
- (b) references to the Administration are, in relation to United Kingdom ships, to be taken as references to the Secretary of State.

Application

3. These Regulations apply to—

- (a) United Kingdom ships wherever they may be; and
- (b) other ships while they are within United Kingdom waters.

PART 2

Compliance with ISM Code

Duty on ISM company where EU Regulation applies

4. An ISM company must not operate a ship to which the EU Regulation applies unless—

- (a) Article 5 of the EU Regulation; and
- (b) the requirements in regulation 6;

are complied with in relation to that ship.

Duty on ISM company where EU Regulation does not apply

5.—(1) An ISM company must not operate a ship within paragraph (2) unless the requirements in regulation 6 are complied with in relation to that ship.

(2) A ship is within this paragraph if it is—

- (a) a passenger ship which is—
 - (i) a high speed craft; or
 - (ii) classified in Class I or II in regulation 2(6) of the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998(d);
- (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) A ship is not within paragraph (2) if the EU Regulation applies in relation to that ship.

(a) Cmnd. 7874.
(b) Cmnd. 7346.
(c) Cm. 4420.
(d) S.I. 1998/2514, amended by S.I. 2000/2687.

Certification requirements of regulations 4 and 5

- 6.**—(1) The requirements referred to in regulations 4 and 5(1) are—
- (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 document must display all the endorsements which have been made to the original document;
 - (b) a document is not valid if it has been suspended or cancelled; and
 - (c) a document is not valid in connection with a ship which is not a United Kingdom ship if it does not display endorsements showing satisfactory annual or intermediate audits (as appropriate) as required by the ISM Code.

Duty of master

7. The master of a ship to which the EU Regulation applies or which is within regulation 5(2) 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, as the case may be) was issued.

Designated person

- 8.**—(1) In relation to a ship to which the EU Regulation applies or which is within regulation 5(2), the ISM company must—
- (a) designate a person who is to discharge the responsibility described in paragraph (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, as the case may be) 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

Issue and endorsement of documents by Certifying Authority

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

(2) A Certifying Authority other than the Secretary of State acts on behalf of the Secretary of State when issuing and endorsing relevant documents under paragraph (1).

Issue and endorsement of documents by other governments

10. Where—

- (a) the Secretary of State has asked the government of a country which is party to SOLAS to conduct an audit of the safety management system operated onboard a United Kingdom ship;
- (b) that government is satisfied that it is appropriate to issue or endorse a relevant document in accordance with the ISM Code, pursuant to that request; and
- (c) that government has issued or endorsed such a document,

that document has the same effect for the purposes of United Kingdom law as if it had been issued or endorsed by the Secretary of State.

Issue and endorsement of documents on behalf of other governments

11.—(1) The Secretary of State may, at the request of a government of a country which is party to SOLAS audit the safety management system of—

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

(2) Where, having carried out an audit in response to such a request, the Secretary of State is satisfied that the requirements of the ISM Code are met, the Secretary of State may issue to the ISM company a Document of Compliance or a Safety Management Certificate, or, where appropriate, endorse such a document in accordance with the requirements of SOLAS after annual or intermediate audits.

(3) Where the Secretary of State issues or endorses a document in accordance with such a request, the Secretary of State must insert in that document a statement recording the fact.

(4) A document issued or endorsed in accordance with such a request has the same effect as if it had been issued or endorsed by the government which made the request and not by the Secretary of State.

Exemptions

12.—(1) In relation to a ship within regulation 5(2), the Secretary of State 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 terms, as the Secretary of State may specify.

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

(3) A notice under paragraph (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 Secretary of State considers that urgent safety or pollution prevention considerations require the notice to be given immediately.

Suspension or cancellation of documents

13.—(1) In any of the circumstances listed in paragraph (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 regulation 9 or issued pursuant to a request under regulation 10.

(2) The circumstances referred to in paragraph (1) are—

- (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 or on behalf of the Secretary of State; or
- (d) the ISM company or ship is otherwise not compliant with the ISM Code.

(3) Where a notice given under paragraph (1) in respect of a Document of Compliance so specifies, any associated Safety Management Certificates or Interim Safety Management Certificates are suspended or cancelled also.

(4) A notice under paragraph (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 Secretary of State—

- (a) acts on behalf of the Secretary of State when exercising functions under this regulation; and
- (b) may only exercise functions under paragraph (1) in respect of a relevant document which it issued.

PART 4

Detentions and Offences

Detention

14.—(1) Where an inspector has clear grounds for believing that, in relation to a ship to which these Regulations apply, there has been a failure to comply with regulation 4, 5, 7 or 8 or a breach of any term of an exemption granted under regulation 12 or a derogation from the ISM Code granted under Article 7 of the EU Regulation, or there will be if the ship puts to sea, 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 paragraph (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 United Kingdom ship if the ship in question is in a port or offshore terminal in the United Kingdom.

(4) Section 284 of the 1995 Act^(a) (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 Act were references to detention of the ship in question under this regulation; and
- (c) subsection (7) were omitted.

(5) Where a ship is detained under paragraph (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

^(a) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997, section 9 and Schedule 1.

(b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 284(1) of the 1995 Act.

(6) Where a ship other than a United Kingdom ship is detained, the Secretary of State 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 paragraph (1) but the failure to comply referred to in that paragraph 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 15 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 Secretary of State by way of security, or
 - (ii) security which, in the opinion of the Secretary of State, is satisfactory and is for an amount not less than £30,000 is given to the Secretary of State,by or on behalf of the ISM company or master;
- (d) where the ISM company or master is convicted of an offence under regulation 15, 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(a), and any bond or other financial security ordered by such court or tribunal is posted.

(8) The Secretary of State must repay any sum paid in pursuance of paragraph (7)(c) or release any security so given—

- (a) if no proceedings for an offence under regulation 15 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 pursuance of paragraph (7)(c) and the ISM company or master is convicted of an offence under regulation 15, 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; and
- (b) next in payment of any fine imposed by the court,

and any balance must be repaid to the first-mentioned person.

(10) Section 145 of the 1995 Act (interpretation of section 144) applies for the purposes of paragraphs (7) to (9) as if—

- (a) references to the owner of a ship were references to the ISM Company under these Regulations; and
- (b) references to an offence under section 131 were references to an offence under regulation 15.

Offences and penalties

15.—(1) Any contravention of—

- (a) regulation 4;

(a) Cmnd. 8941.

(b) regulation 5; or

(c) regulation 8(1),

is an offence by the ISM company, punishable on summary conviction by a fine not exceeding the statutory maximum, or on conviction on indictment by a fine.

(2) Any contravention of—

(a) regulation 7; or

(b) regulation 8(2),

is an offence, punishable on summary conviction by a fine not exceeding the statutory maximum, or on conviction on indictment by imprisonment for a term not exceeding two years, or a fine, or both.

(3) Any breach of a term of an exemption granted under regulation 12 or a derogation from the ISM Code granted under Article 7 of the EU Regulation is an offence by the ISM company, punishable on summary conviction by a fine not exceeding the statutory maximum, or on conviction on indictment by a fine.

Defence

16. It is a defence for a person charged with an offence under regulation 15(1)(b), (1)(c), (2) or (3) to show that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

PART 5

Miscellaneous

Amendment to Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001

17. For regulation 3(2) of the Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001 **(a)** substitute—

“(2) These Regulations do not apply to those companies and ships to which the Merchant Shipping (International Safety Management (ISM) Code) Regulations 2014 apply.”.

Transitional provisions

18.—(1) References in these Regulations to Documents of Compliance, Interim Documents of Compliance, Safety Management Certificates and Interim Safety Management Certificates issued by a Certifying Authority include such documents issued by or on behalf of the Secretary of State pursuant to the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998 or Council Regulation (EC) No 3051/95 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries).

(2) The revocation of the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998 by regulation 1(2) does not affect any provision of those Regulations to the extent it may be relevant to proceedings pursuant to regulation 19 of those Regulations which exist on the date on which these Regulations come into force.

Review

19.—(1) The Secretary of State must from time to time—

(a) carry out a review of these Regulations,

(a) S.I. 2001/3209, to which there are amendments not relevant to these Regulations.

- (b) set out the conclusions of the review in a report, and
 - (c) publish the report.
- (2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the EU Regulation is supplemented by domestic legislation in other member States.
- (3) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations,
 - (b) assess the extent to which those objectives are achieved, and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Signed by authority of the Secretary of State for Transport

Stephen Hammond
Parliamentary Under Secretary of State
Department for Transport

7th June 2014

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supplement and provide for the enforcement of the rights and entitlements set out in Regulation (EC) No. 336/2006 of the European Parliament and of the Council of 15th February 2006 (OJ L 64, 4.3.2006, p. 1) on the implementation of the International Safety Management Code (“the ISM Code”) within the Community and repealing Council Regulation (EC) No. 3051/95 (“the EU Regulation”). They also restate and consolidate within a single instrument United Kingdom regulations which require ships not covered by the EU Regulation to comply with the ISM Code.

Regulation 1(2) revokes existing regulations concerning the ISM Code which are superseded by these Regulations and the EU Regulation.

Regulation 4 requires the ISM company operating a ship to which the EU Regulation applies to comply with the ISM Code. In respect of the ships not covered by the EU Regulation but to which these Regulations apply, *regulation 5* requires the ISM company operating such a ship to carry documentation demonstrating compliance with the ISM Code. *Regulation 6* sets out the documentation requirements for the purposes of regulations 4 and 5.

Regulation 7 imposes a duty on the master of a ship to discharge obligations under the ISM Code. *Regulation 8* imposes a duty on the ISM company’s designated person to discharge obligations under the ISM Code. These regulations apply both to ships to which the EU Regulation applies and ships to which regulation 5(2) applies.

Regulation 9 provides that Certifying Authorities (including the Secretary of State) may issue and endorse documents in respect of United Kingdom ships under the ISM Code. *Regulation 10* provides that the Secretary of State may ask foreign governments to issue and endorse documents in respect of United Kingdom ships on behalf of the Secretary of State. *Regulation 11* provides that the Secretary of State may issue and endorse documents in respect of foreign vessels upon request from foreign governments.

Regulation 12 is a power for the Secretary of State to issue exemptions from the requirement of these Regulations as regards ships to which regulation 5(2) applies.

Regulation 13 provides power for Certifying Authorities to suspend and cancel documents issued by or on behalf of the Secretary of State, and sets out the applicable procedure.

Regulation 14 provides power for inspectors to detain ships in respect of non-compliance with the Regulations. *Regulation 15* makes provision regarding offences and penalties in respect of non-compliance with specified regulations. *Regulation 16* contains a defence in respect of those offences (other than the regulation 15(1)(a) offence) for a person to show that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Regulation 17 amends the Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001 so that ships to which these Regulations apply are not subject to those Regulations.

Regulation 18 contains transitional provisions in respect of existing ISM Code documents and ongoing proceedings under regulations revoked by regulation 1(2).

Regulation 19 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

The ISM Code and the Safety of Life at Sea Convention 1974, its Protocols and amendments and the Revised Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations may be obtained from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR, www.imo.org/publications.

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A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

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