

VIRGIN ISLANDS

MERCHANT SHIPPING (ISPS CODE) REGULATIONS, 2004

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 2004 NO. 42

**MERCHANT SHIPPING ACT, 2001
(No. 13 of 2001)**

Merchant Shipping (ISPS Code) Regulations, 2004

[Gazetted 26th July, 2004]

The Governor in Council, in exercise of the powers conferred by section 459 of the Merchant Shipping Act, 2001 (No. 13 of 2001), makes the following Regulations:

Citation and commencement.

1. These Regulations may be cited as the Merchant Shipping (ISPS Code) Regulations, 2004 and shall be deemed to have come into force on the 1st day of July, 2004.

Interpretation.

2. In these Regulations, unless the context otherwise requires,

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

“company” means the owner of the ship or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code;

“Contracting Government”, in relation to the implementation of the provisions of Chapters XI-1 and XI-2 of the SOLAS Convention and the ISPS Code in the Virgin Islands, means the Government of the United Kingdom;

“Convention Country” means the Government of a State which has consented to be bound by the SOLAS Convention;

“Company Security Officer” means the person designated by the Company for ensuring that a ship security assessment is carried out, that a ship security plan is developed, submitted for approval and thereafter implemented and maintained, and for liaison with Port Facility Security Officers and the Ship Security Officer;

“Department” means the Department of the Ministry of Communications and Works responsible for maritime services and administration;

“gross tonnage” means gross tons measured in accordance with the International Convention on Tonnage Measurement of ships 1969 and stated on a ship’s International Tonnage Certificate issued in accordance with that Convention;

“High-Speed Craft Code” means the International Code of Safety for High-Speed Craft adopted by the Maritime Safety Committee of the International Maritime Organisation by resolution MSC.36(63) and any amendments thereto;

“ISPS Code” means the International Code for the Security of Ships and of Port Facilities adopted by the International Maritime Organization at the Diplomatic Conference on Maritime Security on December 12, 2002, and any amendments thereto;

“International Safety Management Code” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the International Maritime Organization by resolution A.741 (18), and any amendments thereto;

“international voyage” means a voyage between

- (a) a port in the Territory and a port outside the Territory; or
- (b) a port in a Convention Country and a port in any other country or territory, whether a Convention Country or not, which is outside the Territory;

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

“port facility” is a location, as determined by the Contracting Government or by an authority designated by the Contracting Government, where the ship/port interface takes place and includes areas such as anchorages, waiting berths and approaches from seaward, as appropriate;

“Port Facility Security Officer” means the person designated as responsible for the development, implementation, revision and maintenance of the

Port Facility Security Plan and for liaison with the Ship Security Officers;

“Port Facility Security Plan” means a plan developed to ensure the application of measures designed to protect the port facility and ships, persons, cargo, cargo transport units and ship’s stores within the port facility from the risks of a security incident;

“security incident” means any suspicious act or circumstance threatening the security of a ship, including a mobile offshore drilling unit and a high speed craft, or of a port facility or of any ship/port interface or any ship-to-ship activity;

“security level” means the qualification of degree of risk that a security incident will be attempted or will occur;

“ship/port interface” means the interactions that occur when a ship is directly and immediately affected by action involving the movement of persons, goods or the provisions of port services to or from the ship;

“Ship Security Plan” means a plan developed to ensure the application of measures on board the ship that are designed to protect persons on board, cargo, cargo transport units, ship’s stores or the ship from the risk of a security incident;

“Ship Security Officer” means the person on board the ship accountable to the Master and designated by the Company as responsible for the security of the ship, including the implementation and maintenance of the Ship Security Plan, and for liaison with the Company Security Officer and Port Facility Security Officer;

“ship-to-ship activity” means any activity not related to a port facility that involves the transfer of goods or persons from one ship to another;

“SOLAS Convention” means the International Convention for the Safety of Life at Sea 1974 and any amendments thereto;

“the 1989 MODU Code” means the International Code of Safety for Mobile Offshore Drilling Units adopted by the Maritime Safety Committee of the International Maritime Organization by resolution A.649(16) on October 19, 1989 and any amendments thereto.

3. (1) Subject to the provisions of regulations in Chapters XI-1 and XI-2 of the SOLAS Convention and Parts A and B of the ISPS Code, these Regulations apply to Application.

- (a) the following Virgin Islands ships engaged in international voyages:
 - (i) passenger ships, including those subject to the High-Speed Craft Code;
 - (ii) cargo ships, including those subject to the High-Speed Craft Code, of five hundred gross tonnage and upwards;
 - (iii) commercial yachts of five hundred gross tonnage and upwards; and
 - (iv) mobile offshore drilling units as defined in the 1989 MODU Code;
- (b) non-Virgin Islands passenger ships, and cargo ships of five hundred gross tonnage and upwards, when in Virgin Islands waters; and
- (c) port facilities serving ships referred to in paragraphs (a) and (b) that are engaged on international voyages.

(2) Subject to the provisions of regulations in Chapters XI-1 and XI-2 of the SOLAS Convention and Parts A and B of the ISPS Code, these regulations apply to a company which has assumed the responsibility for the operation of any Virgin Islands ship to which these regulations apply.

(3) References to “the Administration” in Chapters XI-1 and XI-2 of the SOLAS Convention and Parts A and B of the ISPS Code shall be read as a reference to the Department.

(4) These regulations do not apply to:

- (a) war ships, naval auxiliaries or other ships owned or operated by a Government that is a party to the SOLAS Convention and used only on Government non-commercial service;
- (b) cargo ships of less than five hundred gross tonnage, ships not propelled by mechanical

Application of provisions of SOLAS Convention and ISPS Code.

means, wooden ships, pleasure vessels not engaged in trade and fishing vessels.

4. (1) Any company which is responsible for the operation of any Virgin Islands ship to which these Regulations apply shall comply with the relevant requirements of

- (a) regulation 5 of Chapter XI-1 of the SOLAS Convention;
- (b) Chapter XI-2 of the SOLAS Convention; and
- (c) Part A of the ISPS Code, taking into account the guidelines given in Part B of the ISPS Code.

(2) Any ship to which these Regulations apply shall comply with the relevant requirements of

- (a) regulation 5 of Chapter XI-1 of the SOLAS Convention;
- (b) Chapter XI-2 of the SOLAS Convention; and
- (c) Part A of the ISPS Code, taking into account the guidance given in Part B of the ISPS Code.

(3) Any port facility to which these regulations apply shall comply with the relevant requirements of

- (a) Chapter XI-1 of the SOLAS Convention as applicable,
- (b) Chapter XI-2 of the SOLAS Convention; and
- (c) Part A of the ISPS Code, taking into account the guidelines given in Part B of the ISPS Code.

(4) The verification and certification for ships as required under section 19 of Part A of the ISPS Code, shall be carried out by the Department, the UK Department of Transport or the UK Maritime and Coastguard Agency.

(5) No changes to an approved Ship Security Plan shall be implemented unless the relevant amendments have been approved by the Department.

(6) A Port Facility Security Plan shall be approved by the UK Department of Transport.

(7) No changes to an approved Port Facility Security Plan shall be implemented unless the relevant amendments to the plan have been approved by the UK Department of Transport.

(8) The Minister shall have the general superintendence of all matters relating to the implementation of the provisions of the ISPS Code on ships and at port facilities in the Virgin Islands.

5. (1) The Minister shall set security levels for ships entitled to fly the Virgin Islands flag and ensure the provision of security level information to those ships and when a change in security level occurs, security level information shall be updated as the circumstances dictates.

Obligations of Government with respect to security levels.

(2) The Governor shall, in accordance with directions from the Contracting Government, set security levels for port facilities within the Virgin Islands and ships prior to entering a port or whilst in a port within the Virgin Islands and shall, through the Minister, ensure the provision of security level information to those port facilities and ships, and when a change in security level occurs, security level information shall be updated as the circumstances dictate.

(3) The security levels that may be set under this regulations shall be as follows:

- (a) Security Level 1, that is to say, the level for which minimum appropriate protective security measures shall be maintained at all times;
- (b) Security Level 2, that is to say, the level for which appropriate additional protective security measures shall be maintained for period of time as a result of heightened risk of a security incident; and
- (c) Security Level 3, that is to say, the level for which further specific protective security measures shall be maintained for a limited period of time when a security incident is probable or imminent, even though it may not be possible to identify the specific target.

Supplementary provisions.

6. (1) For the purposes of paragraph 4.3 of regulation 5 of Chapter XI-1 of the SOLAS Convention,

- (a) the Master is authorised to amend the Continuous Synopsis Record (herein referred to as "CSR"), and is required on any occasion that a change is made to the ship's particulars as recorded on the CSR to make the amendment immediately;
- (b) the company is required upon any amendment being made to the CSR to notify the Department within seven days of such change in such format the Department may specify.

(2) For the purposes of regulation 6.2.1 of Chapter XI-2 of the SOLAS Convention, a competent authority may be

- (a) the UK Maritime Rescue Co-ordination Centre (herein referred to as "MRCC") at Falmouth;
- (b) the company, provided that it has been issued with a letter of approval from the Department to act in this capacity; or
- (c) any other organisation which is approved by the Department to act as a competent authority.

(3) If the competent authority for a Virgin Islands ship is a company or other organisation approved to act as a competent authority under subregulation (2)(c), the competent authority shall,

- (a) upon receiving a ship-to-shore security alert, in the first instance, immediately notify MRCC
 - (i) of the identity of the ship;
 - (ii) of the location of the ship; and
 - (iii) that the security of the ship is under threat or has been compromised.
- (b) notify the Department of the information specified in paragraph (a) as soon as practicable and, in any case within twenty-four hours.

(4) Notification of any other persons of the information in subregulation (3)(a) shall not delay or hinder in any way the immediate notification of MRCC.

(5) For the purposes of regulation 10.1 of Part A of the ISPS Code, Declaration of Security shall be retained on board by ships and for a minimum period of twelve months or ten port visits, whichever is greater.

(6) In addition to the requirement in subregulation (5), a company shall retain the Declarations of Security for a further two years following the expiry of the twelve month period or ten port visits.

(7) For the purposes of regulation 10.1 of Part A of the ISPS Code, records shall be made in a form acceptable to the Department and shall be retained on board by ships for a minimum period of twelve months or ten port visits, whichever is greater.

(8) In addition to the requirement in subregulation (7), a company shall retain its records for a further two years following the expiry of the twelve month period or ten port visits.

(9) In addition to the requirements in regulation 9.6 of Part B of the ISPS Code, an initial verification visit shall only be carried out by the Department, the UK Department of Transport or the UK Maritime and Coastguard Agency, when

- (a) one complete port visit has been made and recorded; and
- (b) at least thirty days have elapsed following completion of the first Internal Audit of the approved Ship Security Plan, as implemented.

7. (1) Every non-Virgin Islands passenger ship, and cargo ship of five hundred gross tonnage and upwards to which these Regulations apply shall be subject to the control and compliance measures provided for in regulation 9 of Chapter XI-2 of the SOLAS Convention.

Control and compliance measures.

(2) A surveyor of ships appointed under section 414 (1) (b) of the Merchant Shipping Act, 2001, and acting as an inspector under subsection (6) of that section, shall be an Officer duly authorised by the Virgin Islands Government to carry out the relevant control and compliance measures on such ships.

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Equivalent security arrangements.

8. (1) With the consent of the UK Department of Transport, the Minister may allow a particular ship or a group of ships to implement other security measures equivalent to those prescribed in Chapter XI-2 of the SOLAS Convention or in Part A of the ISPS Code, provided such security measures are at least as effective as those prescribed in Chapter XI-2 of the SOLAS Convention or Part A of the ISPS Code;

(2) The Department shall notify the UK Maritime and Coastguard Agency of any equivalent security arrangements allowed under subregulation (1) and request that notice of such arrangements be given to the International Maritime Organization on its behalf.

Enforcement. No. 13 of 2001

9. These Regulations may be enforced in accordance with Part XVI of the Merchant Shipping Act, 2001.

Made by Governor in Council this 15th day of July, 2004.

HADASSAH PERCIVAL,
Clerk of the Executive Council.