
STATUTORY INSTRUMENTS

1997 No. 3022

MERCHANT SHIPPING SAFETY

The Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997

Made - - - - 17th December 1997
22nd December
Laid before Parliament 1997
Coming into force - - 20th January 1998

Whereas the Secretary of State is a Minister designated⁽¹⁾ for the purpose of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to measures relating to the safety of ships and the health and safety of persons on them;

Now, therefore, the Secretary of State for Transport, in exercise of the powers conferred by the said section 2(2) of the European Communities Act 1972, and of all other powers enabling him on that behalf, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997 and shall come into force on 20th January 1998.

Interpretation and application

2.—(1) In these Regulations—

“authorised person” means a person authorised by the Secretary of State to carry out inspections and audits for the purposes of these Regulations, and includes any surveyor of ships appointed under section 256 of the Merchant Shipping Act 1995⁽³⁾;

“Council Regulation” means Council Regulation (EC) No 3051/95⁽⁴⁾ on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries);

“MSA” means the Marine Safety Agency, an executive agency of the Department of the Environment, Transport and the Regions, and any successor.

(1) S.I.1993/595.

(2) 1972 c. 68.

(3) 1995 c. 21.

(4) O.J. No. L 320, 30.12.95.

(2) In these Regulations the following terms have the meaning given by Article 2 of the Council Regulation:

“company”

“document of compliance”

“ISM Code”

“regular service”

“ro-ro ferry”

“safety management certificate”.

(3) The Merchant Shipping (Operations Book) Regulations 1988⁽⁵⁾ shall cease to apply to ships to which these Regulations apply.

(4) These Regulations apply to any company operating at least one ro-ro ferry to or from a port in the United Kingdom on a regular service, and to any ship operating on such a service.

Duty of companies to comply with Article 4.1 of the Council Regulation

3. Any company which fails to comply with Article 4.1 of the Council Regulation shall be guilty of an offence, and liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

Powers of inspection, suspension of service and detention

(a) 4. (1) (a) Any authorised person may inspect any ship (including auditing its safety management system) and may audit the safety management system of any company.

(b) If an authorised person considers that the company, notwithstanding that it holds a document of compliance, cannot operate a ro-ro ferry on a regular service to or from a port in the United Kingdom for reasons of risks of serious danger to safety of life or property, or environment, the operation of such service (which includes all ships operated by the company on that service) may be suspended.

(c) If an authorised person is satisfied, on inspecting a ship that there is a failure to comply in relation to that ship with the requirements of the Council Regulation he may detain the ship. Any notice of detention shall contain the reasons for detention.

(a) (2) (a) In the circumstances set out in paragraph (1)(b) above the authorised person may serve on the company a notice stating that the operation of the service specified in the notice is suspended.

(b) When the authorised person is satisfied that the danger has been removed, or when it has been decided pursuant to sub-paragraph (c) in Article 7 of the Council Regulation that the suspension is not justified, he shall serve on the company a further notice stating the suspension is ended.

(3) Any company which operates a ship on a service when the service is suspended under paragraph (2)(a) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

(4) An authorised person exercising functions under this regulation shall have the powers conferred on an inspector by section 259 of the Merchant Shipping Act 1995.

(5) S.I. 1988/1716.

(5) In any case where a ship is liable to be detained, section 284 of the Merchant Shipping Act 1995(6) (which relates to the detention of the ship) shall have effect in relation to the ship subject to the modification that as if for the words “this Act” wherever they appear, there were substituted “the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997”.

Suspension or cancellation of documents and certificates

5.—(1) The Secretary of State may by notice in writing suspend or cancel a document of compliance or safety management certificate issued by him pursuant to the Council Regulation where he has reason to believe that:

- (a) the certificate or document was issued on false or erroneous information; or
- (b) since any audit required by the ISM Code the management structure of either the company or ship has changed substantively;

(2) The Secretary of State may require that a document of compliance or safety management certificate, issued by him pursuant to the Council Regulation, which has expired or has been suspended or cancelled, be surrendered as directed.

(3) No person shall:

- (a) intentionally alter a document of compliance or safety management certificate;
- (b) in connection with any audit required by the Council Regulation knowingly or recklessly furnish false information;
- (c) with intent to deceive, use, lend or allow to be used by another, a document of compliance or safety management certificate;
- (d) fail to surrender a document of compliance or safety management certificate required to be surrendered under paragraph (2) above; or
- (e) in Scotland forge any document of compliance or safety management certificate.

(4) Any contravention of this regulation shall be an offence, punishable on summary conviction by a fine not exceeding the statutory maximum, or conviction on indictment by imprisonment for a term not exceeding 6 months, or a fine, or both.

Defence

6. It shall be a defence for a person charged with an offence under these Regulations to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Offences

7. The provisions of sections 277 (offences by officers of bodies corporate) and 278 (offences by partners, etc. in Scotland) of the Merchant Shipping Act 1995 shall apply in respect of offences under these Regulations as they apply in respect of offences under that Act.

(6) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), Schedule 1.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Signed by authority of the Secretary of State for Transport

Glenda Jackson
Parliamentary Under-Secretary of State,
Department of the Environment, Transport and
the Regions

17th December 1997

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the enforcement of Council Regulation (EC) No 3051/95 on the safety management of ro-ro passenger ferries (“the Council Regulation”) which implements Chapter IX (Management for the Safe Operation of Ships) of the Safety of Life at Sea Convention 1974, as adopted by Assembly of the International Maritime Organisation in 1994, for all classes of ro-ro passenger ferries on services to and from the United Kingdom.

The Regulations make it an offence for companies which operate regular ro-ro passenger ferry services to or from or within the United Kingdom not to comply with Article 4.1 of the Council Regulation (duty to comply with the International Safety Management Code—“the ISM Code”), and provide enforcement powers under which (under Article 7 of the Council Regulation) the operation of the service may be suspended and ships may be detained.

There are ancillary provisions as to offences concerning documents and certificates issued pursuant to the Council Regulation and a general defence to offences under the Regulations.