

**2021 No. 1401**

**MERCHANT SHIPPING**

**The Merchant Shipping (Polar Code) (Safety) Regulations 2021**

*Made* - - - - *13th December 2021*

*Laid before Parliament* *15th December 2021*

*Coming into force* *6th January 2022*

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The Secretary of State is satisfied, for the purposes of section 47(2) of the Merchant Shipping Act 1995(a), that it is necessary or expedient, in the interests of safety, to make Regulations in so far as they require ships to carry qualified seamen.

The Secretary of State, after consulting the persons referred to in section 86(4) of the Merchant Shipping Act 1995(b), and in exercise of the powers conferred by sections 47(1), (3), (4), (4A) and (4B), 85(1), (3)(a), (c), (d), (e), (f), (g), (h), (j), (k), (l), (n), (o), (p) and (q), and (5) to (7), 86(1)(a), (b), (c) and (d), 128(5) and (6), 302(1), 306A and 307(1) of that Act, and article 2 of the Merchant Shipping (Control of Pollution) (SOLAS) Order 1998(c), and with the consent of the Treasury, makes the following Regulations.

### PART 1

#### Preliminary

##### **Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Merchant Shipping (Polar Code) (Safety) Regulations 2021 and come into force on 6th January 2022.

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

##### **Interpretation**

2. In these Regulations—

“the 2015 Regulations” means the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015(d);

“approved training provider” means a person approved by the Secretary of State under regulation 9(2) or 9(4);

“certificate of proficiency” means a certificate issued to a seafarer stating that the relevant requirements of training, competencies or seagoing service under the STCW Convention have been met;

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(a) 1995 c. 21. For amendments, see footnote (b) below. There are other amending instruments but none is relevant.

(b) Sections 47A and 47B were inserted by the Marine Navigation Act 2013 (c. 23), section 10. Sections 85 and 86 were amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), sections 8 and 29(2) and Schedule 7. Section 85 was amended by the British Overseas Territories Act 2002 (c. 8), section 2(3). Section 306A was inserted by the Deregulation Act 2015 (c. 20), section 106. There are other amendments but none is relevant.

(c) S.I. 1998/1500.

(d) S.I. 2015/782, amended by S.I. 2018/68 and S.I. 2019/630.

“Certifying Authority” has the meaning given to it in regulation 4 of the Merchant Shipping (Survey and Certification) Regulations 2015(a);

“Chapter I” means Chapter I in the Annex to the Convention (general provisions)(b);

“Chapter XIV” means Chapter XIV in the Annex to the Convention (safety measures for ships operating in polar waters)(c);

“chief mate” means the officer next in rank to the master and upon whom the command of the ship will fall in the event of the incapacity of the master;

“Convention” means the International Convention for the Safety of Life at Sea, 1974(d);

“Convention country” means a country or territory which is either—

- (a) a country the Government of which is party to the Convention; or
- (b) a territory to which the Convention extends whether or not it is subject to the amendments to, or reservations in respect of, the Convention;

“non-United Kingdom ship” means any ship other than a United Kingdom ship;

“Polar Code”(e) has the meaning given to it in regulation 1 of Chapter XIV;

“Polar Ship Certificate” means a certificate prescribed by paragraph 1.3 of chapter 1 of part I-A of the Polar Code (certificate and survey) and issued in respect of—

- (a) a United Kingdom ship pursuant to regulation 18(1) (issue of Polar Ship Certificate); or
- (b) a ship flying the flag of a Convention country, by that country;

“polar waters”(f) has the meaning given to it in regulation 1 of Chapter XIV;

“Polar Water Operational Manual” means a manual containing information regarding the ship’s operational capabilities and limitations, and procedures to be followed in polar waters, in accordance with chapter 2 of part I-A of the Polar Code;

“prescribed fee” means the fee prescribed by the Secretary of State under section 302 of the Merchant Shipping Act 1995 (fees)(g);

“seafarer” means any person, including a master, who is employed or engaged or works in any capacity on board a ship and whose normal place of work is on that ship;

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(a) S.I. 2015/508, amended by S.I. 2018/53 and S.I. 2018/1221.

(b) Chapter I has not been amended.

(c) Chapter XIV was inserted into the Convention by IMO Resolution MSC.386(94), which is available from the IMO of 4 Albert Embankment, London SE1 7SR, or found on the Foreign, Commonwealth and Development Office treaties database (<https://treaties.fco.gov.uk/responsive/app/consolidatedSearch>).

(d) Cmnd 7874. The Convention may be obtained in copy from the International Maritime Organization of 4 Albert Embankment, London SE1 7SR or found on the Foreign, Commonwealth and Development Office (FCDO) treaties database (<https://treaties.fco.gov.uk/awweb/pdfopener?md=1&did=79786>). The Convention was modified by its Protocol of 1978 (Cmnd. 8277) (<https://treaties.fco.gov.uk/awweb/pdfopener?md=1&did=68013>), which was replaced and abrogated by the Protocol of 1988 (Cm 5044) (<https://treaties.fco.gov.uk/awweb/pdfopener?md=1&did=69573>) with respect to the parties to the 1988 Protocol. The amendments to the Convention are available from the International Maritime Organization of 4 Albert Embankment, London SE1 7SR or found on the FCDO treaties database (<https://treaties.fco.gov.uk/responsive/app/consolidatedSearch>). Hard copies of the Command Papers are available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW. The Parliamentary Archives catalogue numbers for the Command Papers are HL/PO/JO/10/11/2031/2878 (Cmnd 7874), HL/PO/JO/10/11/1959/2032 (Cmnd 8277) and HL/PO/JO/10/11/3156/2280 (Cm 5044).

(e) The International Code for Ships Operating in Polar Waters, known as the “Polar Code”, was adopted by IMO Resolutions MSC.385(94) and MEPC.264(68) and took effect on 1st January 2017 upon entry into force of new Chapter XIV of the Convention, in which it is referenced, and amendments to Annexes I, II, IV and V of the International Convention for the Prevention of Pollution from Ships 1973 (MARPOL). IMO Resolution MSC.386(94) amended the Convention to incorporate Chapter XIV and the safety related provisions of the Polar Code, and MEPC.265(68) amended Annexes I, II, IV and V of MARPOL to incorporate the environment related provisions. MARPOL was published in Cmnd 5748 and was amended by the Protocols of 1978 (Cmnd 7347) and 1997 (Cm 4427). The Polar Code is available from the IMO of 4 Albert Embankment, London SE1 7SR, and on the IMO website at <https://wwwcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/POLAR%20CODE%20TEXT%20AS%20ADOPTED.pdf>. Hard copies of the Command Papers are available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW. MARPOL and the IMO Resolutions are also available from the IMO or found on the Foreign, Commonwealth and Development Office treaties database (<https://treaties.fco.gov.uk/responsive/app/consolidatedSearch>).

(f) Polar waters are illustrated in figure 1 and figure 2 in the Introduction to the Polar Code.

(g) The prescribed fee is found in the Merchant Shipping (Fees) Regulations 2018 (S.I. 2018/1104), which were made under section 302 of the Merchant Shipping Act 1995 and the Hovercraft (General) Order 1974 (S.I. 1974/674).

“seagoing service” means service on board a ship relevant to the issue or revalidation of a certificate of proficiency;

“STCW Code” means the Seafarers’ Training, Certification and Watchkeeping Code(a);

“STCW Convention” means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978(b);

“STCW Regulation” means a Regulation contained in the Annex to the STCW Convention and any reference to a requirement in an STCW Regulation also constitutes a reference to the corresponding section of Part A of the STCW Code;

“surveyor” means a surveyor of ships, or any other person appointed by a Certifying Authority other than the Secretary of State to be a surveyor;

“valid” means in force and “validity” is to be construed accordingly.

## Application

3.—(1) Subject to paragraph (3), these Regulations apply to—

- (a) United Kingdom ships which are operating, or which intend to operate, in polar waters and are certified in accordance with the Merchant Shipping (Survey and Certification) Regulations 2015; and
- (b) non-United Kingdom ships certified as described in paragraph (2) which—
  - (i) commence a voyage from a port in the United Kingdom or end a voyage in a port in the United Kingdom; and
  - (ii) as part of that voyage operate, or intend to operate, in polar waters.

(2) For the purposes of paragraph (1), a non-United Kingdom ship is certified if—

- (a) in the case of a ship flying the flag of a Convention country, it is certified in accordance with Chapter I; and
- (b) in the case of a ship flying the flag of a non-Convention country, it is certified in accordance with the requirements of that country which demonstrate compliance with Chapter I.

(3) These Regulations do not apply to—

- (a) ships of war and naval auxiliary ships;
- (b) ships owned or operated by a State and engaged only on governmental non-commercial service;
- (c) cargo ships of less than 500 gross tons;
- (d) ships not propelled by mechanical means;
- (e) wooden ships of primitive build;
- (f) pleasure vessels;
- (g) fishing vessels;

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- (a) The Seafarers’ Training, Certification and Watchkeeping Code (STCW Code) is part of the STCW Convention. It contains mandatory provisions in Part A of the Code and guidance in Part B. The Code was replaced in full in 2010 following a conference of the parties to the STCW Convention held in Manila, The Philippines (“the Manila Conference”). The Code has since been amended by IMO Resolutions MSC.397(95) and MSC.417(97). The STCW Code and the amendments to it are available from the International Maritime Organization of 4 Albert Embankment, London SE1 7SR or found on the Foreign, Commonwealth and Development Office treaties database (<https://treaties.fco.gov.uk/responsive/app/consolidatedSearch>). Hard copies of the Command Papers are available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW.
  - (b) Cmnd 7543. The Annex to the STCW Convention was replaced in full in 2010 following the Manila Conference. The Convention has since been amended by IMO Resolutions MSC.396(95) and MSC.416(97). The STCW Convention and the amendments to it are available from the International Maritime Organization of 4 Albert Embankment, London SE1 7SR or found on the Foreign, Commonwealth and Development Office treaties database (<https://treaties.fco.gov.uk/responsive/app/consolidatedSearch>). Hard copies of the Command Papers are available for inspection free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW.

- (h) ships solely navigating the Great Lakes of North America and the River St Lawrence as far east as a straight line drawn from Cap des Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63rd meridian.

(4) A non-United Kingdom ship flying the flag of a State which is a non-Convention country is not subject to these Regulations if it would not have been in a United Kingdom port but for stress of weather or any other circumstances which the master, owner or charterer could not have prevented.

(5) Where persons are on board a ship as a consequence of—

- (a) the circumstances described in paragraph (4); or
- (b) an obligation laid upon the master to carry shipwrecked or other persons<sup>(a)</sup>,

those persons are not to be taken into account for the purpose of determining the application to that ship of any provision of these Regulations.

(6) For the purposes of paragraph (3)—

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

“fishing vessel” means a ship used for catching fish, whales, seals, walrus or other living resources of the sea;

“gross tons” means gross tonnage determined in accordance with regulation 6 or 12(1) of the Merchant Shipping (Tonnage) Regulations 1997<sup>(b)</sup>;

“passenger” is a person other than—

- (a) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; or
- (b) a child under 1 year of age;

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

“pleasure vessel” means—

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

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

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(a) Regulation 33 in Chapter V of the Convention (safety of navigation) places an obligation on the master to provide assistance to persons in distress at sea and this obligation is implemented in the Merchant Shipping (Safety of Navigation) Regulations 2020 (S.I. 2020/673).

(b) S.I. 1997/1510, amended by S.I. 2020/362. There are other amendments but none is relevant to these Regulations.

### **Ambulatory reference**

**4.—(1)** In these Regulations, any reference to Chapter I, Chapter XIV, the Polar Code, an STCW Regulation, the STCW Convention or the STCW Code is to be construed—

- (a) as a reference to Chapter I, Chapter XIV, the Polar Code, an STCW Regulation, the STCW Convention or the STCW Code as modified from time to time; and
- (b) as, if Chapter I, Chapter XIV, the Polar Code, an STCW Regulation, the STCW Convention or the STCW Code is replaced, a reference to the replacement.

(2) For the purposes of paragraph (1)—

- (a) Chapter I, Chapter XIV or the Polar Code are modified or replaced if the modification or replacement takes effect in accordance with Article VIII of the Convention; and
- (b) an STCW Regulation, the STCW Convention or the STCW Code is modified or replaced if the modification or replacement takes effect in accordance with Article XII of the STCW Convention.

(3) A modification or replacement of Chapter I, Chapter XIV or the Polar Code has effect at the time such modification or replacement comes into force in accordance with Article VIII of the Convention.

(4) A modification or replacement of an STCW Regulation, the STCW Convention or the STCW Code has effect at the time such modification or replacement comes into force in accordance with Article XII of the STCW Convention.

### **Exemptions**

**5.—(1)** The Secretary of State may, in exceptional circumstances, exempt a ship or class of ship from any provision of—

- (a) these Regulations, other than regulations 13 and 14 (training requirements for seafarers on a ship operating in polar waters); or
- (b) the Polar Code, other than chapter 12 of part 1-A (manning and training),

if satisfied that compliance with such provision is either impracticable or unreasonable in the case of that ship or class of ship.

(2) An exemption under paragraph (1) may be granted subject to such safety requirements as the Secretary of State thinks fit to ensure the overall safety of the ship.

(3) An exemption granted under paragraph (1) may, on the giving of reasonable notice, be altered or cancelled.

(4) Where an exemption under paragraph (1) is granted subject to safety requirements under paragraph (2), the exemption ceases to have effect if those requirements are not complied with.

(5) An exemption granted under paragraph (1), or an alteration or cancellation under paragraph (3), must—

- (a) be in writing;
- (b) specify the date on which it takes effect; and
- (c) specify the terms, if any, on which it is given.

(6) The requirement that an exemption granted under paragraph (1), or an alteration or cancellation under paragraph (3), be in writing is satisfied where the text of the exemption, alteration or cancellation is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.

(7) The period of validity of an exemption granted under paragraph (1), or an alteration under paragraph (3), must not be longer than the period of validity of the Polar Ship Certificate issued in respect of that ship.

## **Equivalentents**

**6.—**(1) Where these Regulations, except for regulations 13 and 14 (training for seafarers on a ship operating in polar waters), or the Polar Code require that—

- (a) a particular fitting, material, appliance or apparatus, or a type of fitting, material, appliance or apparatus be fitted on, or carried in, a ship;
- (b) a particular arrangement be made on, or in relation to, a ship; or
- (c) any particular provision be made in relation to a ship,

the Secretary of State may approve any other fitting, material, appliance or apparatus, arrangement or other provision if satisfied that it is at least as effective as that required by these Regulations or the Polar Code, as the case may be.

(2) In order to meet the requirements for seafarer training in regulations 13 and 14, the Secretary of State may approve alternative training arrangements, including those involving seagoing service and shipboard organisation especially adapted to technical developments and to special types of ships and trades, if the Secretary of State is satisfied that the arrangements comply with the conditions in paragraph (3).

(3) The conditions are that the levels of seagoing service and knowledge and efficiency with regard to the navigational and technical handling of a ship and its cargo, result in a degree of safety at sea and preventive effect with regard to pollution which is at least equivalent to the requirements of the STCW Convention.

(4) An approval given under paragraph (1) or (2) may, on the giving of reasonable notice, be continued, altered or cancelled.

(5) Any approval given under paragraph (1) or (2), or a continuation, alteration or cancellation under paragraph (4), must—

- (a) be in writing;
- (b) specify the date on which it takes effect; and
- (c) specify the terms, if any, on which it is given.

(6) The requirement that the approval referred to in paragraph (1) or (2), or a continuation, alteration or cancellation under paragraph (4), be in writing is satisfied where the text of the approval, continuation, alteration or cancellation is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.

## **Alternative design and arrangements**

**7.—**(1) Structural arrangements, machinery and electrical installations, fire safety design and arrangement measures, and life-saving appliances and arrangements for ships to which these Regulations apply, may deviate from the requirements of chapters 3, 6, 7 and 8 of part 1-A of the Polar Code (“the relevant chapters”), provided that any alternative design or arrangement—

- (a) meets the intent of the goal and functional requirements of the relevant chapters; and
- (b) provides an equivalent level of safety to the requirements in those chapters.

(2) In relation to a ship to which paragraph (1) applies—

- (a) an alternative design or arrangement must be subjected to an engineering analysis in accordance with regulation 4 of Chapter XIV (alternative design and arrangement); and
- (b) a copy of the engineering analysis must be provided by the owner to the Secretary of State.

(3) In relation to the alternative design or arrangement and the engineering analysis mentioned in paragraph (2), the Secretary of State—

- (a) must evaluate and, if satisfied that the requirements of regulation 4 of Chapter XIV are met, approve the engineering analysis; and
  - (b) if satisfied that the alternative design or arrangement is at least as effective as that required by the relevant chapters, must approve the alternative design or arrangement.
- (4) Where there are changes to the assumptions and operational restrictions stipulated in the alternative design or arrangement approved in accordance with paragraph (3)—
- (a) a further engineering analysis must be carried out which takes into account the changed assumptions and operational restrictions; and
  - (b) where the alternative design or arrangement requires amendment, this must be evaluated and, if satisfied that such alternative design or arrangement is at least as effective as that required by the relevant chapters, approved by the Secretary of State.
- (5) An approval given under paragraph (3) or (4) may, on the giving of reasonable notice, be continued, altered or cancelled.
- (6) An approval given under paragraph (3) or (4), or a continuation, alteration or cancellation under paragraph (5), must—
- (a) be in writing;
  - (b) specify the date on which it takes effect; and
  - (c) specify the terms, if any, on which it is given.
- (7) The requirement that the approval referred to in paragraph (3) or (4), or a continuation, alteration or cancellation under paragraph (5), be in writing is satisfied where the text of the approval, continuation, alteration or cancellation is—
- (a) transmitted by electronic means;
  - (b) received in legible form; and
  - (c) capable of being used for subsequent reference.
- (8) Any alternative design or arrangement deviating from the requirements of the relevant chapters, together with the technical and operational measures and conditions for the approved deviation, must be recorded in the ship's Polar Ship Certificate and the ship's Polar Water Operational Manual.

## Approvals

**8.—**(1) The Secretary of State, or any person authorised by the Secretary of State, may give an approval in relation to a United Kingdom ship for anything in part 1-A of the Polar Code requiring to be—

- (a) approved by the Administration of the State whose flag the ship is entitled to fly;
- (b) done to the satisfaction of such Administration; or
- (c) acceptable to that Administration<sup>(a)</sup>.

(2) Where these Regulations require a person to meet a requirement of an STCW Regulation or the STCW Code and that requirement includes a requirement for seagoing service, the Secretary of State must approve that seagoing service in accordance with section A-I/2, paragraph 5 of the STCW Code.

(3) An approval given under paragraph (1) or (2) may, on the giving of reasonable notice, be continued, altered or cancelled.

(4) Any approval given under paragraph (1) or (2), or a continuation, alteration or cancellation under paragraph (3), must—

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(a) Guidance in relation to the matters requiring the approval of the Secretary of State in the Polar Code is set out in Marine Guidance Note (MGN) 637(M). MGN 637(M) is available from the Maritime and Coastguard Agency (MCA) of Spring Place, 105 Commercial Road, Southampton SO15 1EG (telephone 020 3817 2000) and email [infoline@mca.gov.uk](mailto:infoline@mca.gov.uk) and on <https://www.gov.uk>.



- (a) be in writing;
- (b) specify the date on which it takes effect; and
- (c) specify the terms, if any, on which it is given.

(5) The requirement that the approval referred to in paragraph (1) or (2), or a continuation, alteration or cancellation under paragraph (3), be in writing is satisfied where the text of the approval, continuation, alteration or cancellation is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.

### **Approval of training providers**

**9.—**(1) A person providing training or assessment of seafarers for certification under these Regulations must be approved by the Secretary of State as a provider of training or assessment of seafarers.

(2) The Secretary of State may approve a person as a provider of training or assessment of seafarers if satisfied that that person—

- (a) has the qualifications and experience required under Section A-I/6 of the STCW Code (training and assessment);
- (b) meets each of the requirements in the Annex to Marine Guidance Note 637(M); and
- (c) has paid the prescribed fee.

(3) An approval may be granted under paragraph (2) for a maximum period of 5 years from the date specified in the approval letter.

(4) Subject to payment of the prescribed fee, the Secretary of State may extend an approval given under paragraph (2) for a maximum period of 5 years from the date of the expiry of the approval given under that paragraph if satisfied that the approved training provider continues to meet the requirements in sub-paragraphs (a) and (b) of paragraph (2).

(5) An approval given under paragraph (2) or an extension under paragraph (4) may, on the giving of reasonable notice, be suspended or cancelled.

(6) An approval given under paragraph (2), an extension under paragraph (4) or a suspension or cancellation under paragraph (5) must—

- (a) be in writing;
- (b) specify the date on which it takes effect; and
- (c) specify the terms, if any, on which it is given.

(7) The requirement that an approval given under paragraph (2), an extension under paragraph (4) or a suspension or cancellation under paragraph (5), be in writing is satisfied where the text of the approval, extension, suspension or cancellation is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.

(8) If the Secretary of State intends to refuse to—

- (a) approve a person under paragraph (2); or
- (b) extend a person's approval under paragraph (4),

the Secretary of State must give notice in writing to that person.

(9) A person approved under paragraph (2) or given an extension of an approval under paragraph (4) must continue to comply with the requirements in sub-paragraphs (a) and (b) of paragraph (2) for the duration of the validity of the approval.

(10) The Secretary of State may require an approval letter or approval certificate recording an approval given under paragraph (2) or an extension of an approval under paragraph (4), to be surrendered.

(11) The Secretary of State may monitor and periodically evaluate approved training providers in accordance with STCW Regulation I/8 (quality standards) and the monitoring and evaluation requirements set out in the Annex to Marine Guidance Note 637(M).

(12) No person must—

- (a) offer to provide, or provide, training or assessment of seafarers for certification under this Part without an approval given by the Secretary of State under this regulation;
- (b) with intent to deceive, use, lend, or allow to be used by another an approval given by the Secretary of State under this regulation;
- (c) advertise or otherwise display an approval given by the Secretary of State under this regulation, which has expired, or has not been given to that person under this regulation;
- (d) fail to surrender an approval letter or approval certificate required to be surrendered under paragraph (10).

(13) An approved training provider must issue a certificate of proficiency to every person who successfully completes the training or assessment undertaken to meet the requirements for such certificate in the form specified in Section A-I/2 of the STCW Code (certificates and endorsements).

(14) In this regulation—

- (a) a reference to the Annex to Marine Guidance Note 637(M) means a document issued by the Maritime and Coastguard Agency (an executive agency of the Department for Transport) and includes a reference to any document amending or replacing that Annex which is considered by the Secretary of State to be relevant from time to time;
- (b) “approval letter” and “approval certificate” mean the documents so described in the Annex to Marine Guidance Note 637(M).

### **Appeal against refusal, suspension or cancellation of an approval**

**10.**—(1) A person who—

- (a) is refused an approval pursuant to regulation 9 (approval of training providers) or an extension of an approval under that regulation; or
- (b) is subject to a suspension or cancellation of an approval under regulation 9(5) (suspension or cancellation of an approval),

may, within 21 days of receiving notice of such decision and before the date specified in the notice, request the Secretary of State to hold an inquiry.

(2) If an inquiry is requested by a person in accordance with paragraph (1), the Secretary of State must cause such an inquiry to be held by one or more persons appointed by the Secretary of State.

### **Amendment of the Merchant Shipping (Fees) Regulations 2018**

**11.**—(1) The Merchant Shipping (Fees) Regulations 2018(a) are amended as follows.

(2) In regulation 2 (interpretation), in the definition of “premium service”, at the end insert “, or attending a priority appointment online”.

(3) In regulation 4 (payment for travel, subsistence and other expenses)—

- (a) in paragraph (1), in sub-paragraphs (a) and (b), after “a ship” insert “or a person”;
- (b) in paragraph (2), after “a ship” insert “or a person”.

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(a) S.I. 2018/1104. There are amending instruments which are not relevant.

- (4) In Part 1 of Schedule 1 (fees under the Merchant Shipping Act 1995)—
- (a) in paragraph 2(1) (surveys, inspections and applications for exemption), at the end of paragraph (f), insert—
    - “(g) an inspection for the purposes of an approval under regulation 9(2), or an extension of an approval under regulation 9(4), of the Merchant Shipping (Polar Code) (Safety) Regulations 2021”;
  - (b) in the table in paragraph 5 (fees for inspections, etc.), in Section L (survey and certification), at the end—
    - (i) in the first column, insert “The Merchant Shipping (Polar Code) (Safety) Regulations 2021”;
    - (ii) in the second column, insert “2021/1401”;
    - (iii) in the third column, insert “None”.
- (5) In Part 2 of Schedule 1 (certificates and examinations for officers)—
- (a) in paragraph 1—
    - (i) after sub-paragraph (a), omit “or”;
    - (ii) at the end of sub-paragraph (b), insert—
      - “, or
      - (c) the Merchant Shipping (Polar Code) (Safety) Regulations 2021”;
  - (b) in the Table of fees, for item 7 substitute—
 

“7	A revalidation of a Certificate of Competency	£54
8	The assessment of an application for a Certificate of Proficiency, except under regulations 16 and 17 of the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015	£34
9	A revalidation of a Certificate of Proficiency, except under regulations 16 and 17 of the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015;	£54”
  - (c) after paragraph 2, insert—

**“Premium service**

3. Where a person requests and receives premium service for either item 1 or item 2 in the Table of fees in this Part, a fee of £150 is payable in addition to the sum of the fees paid on the same occasion.”.

## PART 2

### Ship requirements and certification

#### **Requirements for ships operating in polar waters**

12.—(1) A ship must comply with each requirement referred to in paragraph (2) which is applicable to that ship.

(2) The requirements referred to in paragraph (1) are the following provisions in part 1-A of the Polar Code—

- (a) paragraph 1.4 of chapter 1 (performance standards);
- (b) paragraph 1.5 of chapter 1 (operational assessment); and
- (c) chapters 2 to 11 (safety measures).

(3) A ship must be operated in compliance with its Polar Water Operational Manual.

### **Seafarers on a ship operating in polar waters – basic training**

**13.**—(1) This regulation applies to the following seafarers on ships operating, or intending to operate, in polar waters—

- (a) the master;
- (b) a chief mate;
- (c) an officer in charge of a navigational watch.

(2) A person to whom this regulation applies must hold a certificate of proficiency in basic training for service on ships operating in polar waters when operating, or intending to operate, in the circumstances specified as requiring such qualification in paragraph 12.3.1 of chapter 12 of part 1-A of the Polar Code (manning and training).

(3) The Secretary of State, or an approved training provider, may issue a certificate of proficiency required by paragraph (2) only to a person who meets the criteria specified in STCW Regulation V/4, paragraph 2 (basic training for ships operating in polar waters).

(4) A certificate of proficiency issued under this regulation is not valid for seagoing service unless, at intervals not exceeding 5 years, it is revalidated by—

- (a) the Secretary of State; or
- (b) an approved training provider, provided the certificate to be revalidated was issued by such a person under regulation 9(13) (issue of certificate of proficiency by training provider).

(5) Where a person who holds a certificate of proficiency issued under paragraph (3), or revalidated under paragraph (4), has lost or been deprived of it, a certified copy of the certificate may be issued to the holder by—

- (a) the Secretary of State, where the certificate of proficiency was issued by the Secretary of State or an approved training provider; or
- (b) an approved training provider, where the certificate of proficiency was issued by that approved training provider.

(6) The Secretary of State may—

- (a) recognise a certificate of proficiency in basic training for service on ships operating in polar waters issued by another State which is a party to the STCW Convention;
- (b) withdraw recognition of that certificate in accordance with regulation 33B of the 2015 Regulations (withdrawal of recognition).

### **Seafarers on a ship operating in polar waters – advanced training**

**14.**—(1) A master and a chief mate on a ship operating, or intending to operate, in polar waters must hold a certificate of proficiency in advanced training for service on ships operating in polar waters when operating, or intending to operate, in the circumstances specified as requiring such qualification in paragraph 12.3.1 of chapter 12 of part 1-A of the Polar Code (manning and training).

(2) The Secretary of State, or an approved training provider, may issue a certificate of proficiency required by paragraph (1) only to a person who meets the criteria specified in STCW Regulation V/4, paragraph 4 (advanced training for ships operating in polar waters).

(3) A certificate of proficiency issued under this regulation is not valid for seagoing service unless, at intervals not exceeding 5 years, it is revalidated by—

- (a) the Secretary of State; or
- (b) an approved training provider, provided the certificate to be revalidated was issued by such a person under regulation 9(13) (issue of certificate of proficiency by training provider).

(4) Where a person who holds a certificate of proficiency issued under paragraph (2), or revalidated under paragraph (3), has lost or been deprived of it, a certified copy of the certificate may be issued to the holder by—

- (a) the Secretary of State, where the certificate of proficiency was issued by the Secretary of State or an approved training provider; or
  - (b) an approved training provider, where the certificate of proficiency was issued by that approved training provider.
- (5) The Secretary of State may—
- (a) recognise a certificate of proficiency in advanced training for service on ships operating in polar waters issued by another State which is a party to the STCW Convention;
  - (b) withdraw recognition of that certificate in accordance with regulation 33B of the 2015 Regulations (withdrawal of recognition).

**Application for a certificate of proficiency**

**15.**—(1) An application for a certificate of proficiency required by these Regulations or a revalidation of such a certificate, must be—

- (a) made in a form specified by the Secretary of State;
- (b) accompanied by the prescribed fee; and
- (c) accompanied by evidence of identity, age, relevant service, standards of competence and certificates or qualifications held.

(2) An application made to the Secretary of State for a certified copy of a certificate of proficiency issued under these Regulations, must be—

- (a) made in a form specified by the Secretary of State;
- (b) accompanied by the prescribed fee; and
- (c) where the certificate of proficiency was issued by an approved training provider, accompanied by evidence of the issue of that certificate by the approved training provider.

**Seafarers on a ship operating in polar waters – other training provision**

**16.**—(1) In circumstances where—

- (a) a ship is operating in polar waters; and
- (b) the master, chief mate or an officer in charge of the navigational watch is unable to discharge an obligation required by the Polar Code,

another seafarer may discharge that obligation in place of such a master, chief mate or officer in charge of a navigational watch, provided that each requirement of paragraph 12.3.2 of chapter 12 of part 1-A of the Polar Code (manning and training) is met.

(2) The deployment of a seafarer in the circumstances described in paragraph (1) does not relieve the master, chief mate or officer of the navigational watch from their duties and obligations for the safety of the ship.

(3) Every seafarer on a ship operating in polar waters must be made familiar with the content of the Polar Water Operational Manual relevant to the seafarer’s assigned duties as required by paragraph 12.3.4 of chapter 12 of part 1-A of the Polar Code.

**Refusal to issue or revalidate, suspension or cancellation of a certificate of proficiency**

**17.**—(1) The Secretary of State may suspend or cancel a certificate of proficiency issued under regulation 13 or 14 (requirement to hold a certificate of proficiency) where—

- (a) the holder is convicted of an offence under section 47(5) of the Merchant Shipping Act 1995; or
- (b) the conditions for the issue of the certificate prescribed in these Regulations have not been complied with.

(2) If the Secretary of State or an approved training provider intends to refuse the issue or revalidation of a certificate of proficiency required by regulation 13 or 14, that person must give notice in writing to the applicant or holder of the certificate.

(3) If the Secretary of State intends to suspend or cancel a certificate of proficiency issued under regulation 13 or 14, the Secretary of State must give notice in writing to the holder of the certificate.

(4) The requirement that the notice referred to in paragraphs (2) and (3) be in writing is satisfied where the text of the notice is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.

(5) The applicant or the holder of the certificate may, before a date specified in the notice given under paragraph (2) or (3), request the refusal, suspension or cancellation to be reviewed at an inquiry.

(6) If the applicant has requested an inquiry in accordance with paragraph (5), the Secretary of State must cause such an inquiry to be held by one or more persons appointed by the Secretary of State.

(7) For the purposes of this regulation, “applicant” means the person who has applied for the issue or revalidation of a certificate of proficiency under these Regulations.

### **Certification required to operate in polar waters**

**18.**—(1) Subject to payment of the prescribed fee, a Certifying Authority must issue a Polar Ship Certificate in respect of a United Kingdom ship on being notified by a surveyor that—

- (a) the surveyor has carried out a survey in respect of that ship in accordance with the requirements of paragraph 1.3 of chapter 1 of part 1-A of the Polar Code (certificate and survey); and
- (b) the surveyor is satisfied at the date of the survey that—
  - (i) the ship complies with each requirement of the Polar Code referred to in regulation 12(2) (requirements for ships operating in polar waters) applicable to it; and
  - (ii) the master, chief mate and all officers of the navigational watch hold a certificate of proficiency as required by regulation 13 or 14 (requirements for a certificate of proficiency).

(2) A ship that operates, or intends to operate in, polar waters must be surveyed and certified—

- (a) in the case of a United Kingdom ship, in accordance with paragraph (1);
- (b) in the case of a non-United Kingdom ship flying the flag of a Convention country, in accordance with paragraph 1.3 of chapter 1 of part I-A of the Polar Code and issued with a Polar Ship Certificate; or
- (c) in the case of a non-United Kingdom ship flying the flag of a State which is not a Convention country, in such a way that demonstrates compliance with the requirements of regulation 12(2) and regulations 13 and 14.

(3) The following certificates must be held on board a ship—

- (a) in the case of a United Kingdom ship or a non-United Kingdom ship flying the flag of a Convention country, a valid Polar Ship Certificate;
- (b) in the case of a non-United Kingdom ship flying the flag of a State which is not a Convention country, a certificate that demonstrates compliance with the requirements of regulation 12(2).

(4) A certificate mentioned in paragraph (3)(a) or (b), as the case may be, must be readily available for examination at all times.

### **Duration and validity of Polar Ship Certificate**

**19.**—(1) A Polar Ship Certificate must be issued in respect of a ship for a period of validity which is the same as a certificate or certificates issued in respect of that ship pursuant to regulation 15 of the Merchant Shipping (Survey and Certification) Regulations 2015 (duration and validity of certificates).

(2) Where the validity of a certificate issued under regulation 15 of the Merchant Shipping (Survey and Certification) Regulations 2015 has been extended under regulation 17 of those Regulations (extension etc.), a Polar Ship Certificate may be similarly extended provided that a Certifying Authority is satisfied that the ship continues to comply with the requirements of these Regulations.

### **Responsibilities of owner and master**

**20.**—(1) This regulation applies to—

- (a) United Kingdom ships which have been surveyed and certified pursuant to regulation 18 (certification required to operate in polar waters);
- (b) other ships which have been surveyed and certified pursuant to regulation 24 (request for a survey made by another convention country).

(2) The owner and master of each ship to which this regulation applies must ensure that—

- (a) the ship and its equipment is maintained so that the ship in all respects remains fit to operate in polar waters 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 made in the structural arrangements, machinery, equipment and other items covered by the survey, without the approval of the Certifying Authority, except by direct replacement; 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 required by part 1-A of the Polar Code—
  - (i) it is reported at the earliest opportunity to the Certifying Authority, or a proper officer<sup>(a)</sup>; and
  - (ii) it is, in the case of a United Kingdom ship in a port outside the United Kingdom, also reported to the appropriate authorities of the country in which the port is situated.

(3) If a report is made under paragraph (2)(c)(i), the Certifying Authority or proper officer must determine whether a survey is necessary, and, if so, require one to be carried out.

(4) If the survey referred to in paragraph (3) 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.

### **Procedure to be adopted when the ship is deficient**

**21.**—(1) This regulation applies to United Kingdom ships and to other ships which have been surveyed pursuant to regulation 24 (request for a survey made by another convention country).

(2) Where a surveyor determines that the condition of a ship to which this regulation applies—

- (a) does not correspond substantially with the particulars on the Polar Ship Certificate issued in respect of the ship; or
- (b) is such that the ship is not fit to proceed to enter polar waters without danger to the ship or to persons on board,

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(a) "Proper officer" is defined in section 313(1) of the Merchant Shipping Act 1995 and means, in the United Kingdom, a consular officer.

the surveyor must advise the owner or master of the corrective action which in the surveyor's opinion is required, and must notify the Certifying Authority.

(3) If such corrective action is not taken within such reasonable period as a surveyor may specify, the surveyor, or the Certifying Authority, must notify the Secretary of State in writing who may suspend the validity of the Polar Ship Certificate issued in respect of that ship until the corrective action has been taken.

(4) Where the Secretary of State suspends the validity of a Polar Ship Certificate issued in respect of a ship or reinstates the validity of the certificate, the Secretary of State must give notice in writing of such suspension or reinstatement to both the owner and the surveyor and also to the Certifying Authority who in turn must give notice to the master.

(5) The requirement that each notification under paragraphs (3) and (4) be in writing is satisfied where the text of the notification is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.

### **Cancellation of Polar Ship Certificate**

**22.**—(1) The Secretary of State may cancel a Polar Ship Certificate issued in respect of a United Kingdom ship where there is reason to believe that—

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

(2) The Secretary of State may require a Polar Ship Certificate issued in respect of a United Kingdom ship which has expired, or has been cancelled, to be surrendered.

(3) No person must—

- (a) intentionally alter a Polar Ship Certificate;
- (b) intentionally make a false Polar Ship Certificate;
- (c) in connection with a survey referred to in regulation 18 (certification required to operate in polar waters), knowingly or recklessly furnish false information;
- (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 required to be surrendered under paragraph (2).

### **Issue of Polar Ship Certificate by another Convention country**

**23.** The Secretary of State may request the government of another Convention country—

- (a) to survey a United Kingdom ship for the purpose of issuing a Polar Ship Certificate;
- (b) if satisfied that each requirement of part 1-A of the Polar Code applicable to that ship is complied with, to issue a Polar Ship Certificate in respect of that ship in accordance with the Polar Code; and
- (c) to include a statement in the Polar Ship Certificate that it has been so issued and has the same effect as if it had been issued by the Secretary of State and not by the government of that other Convention country.

### **Request for a survey made by another Convention country**

**24.**—(1) The Secretary of State may, at the request of another Convention country, survey a ship intending to enter polar waters in accordance with paragraph 1.3 of chapter 1 of part I-A of the Polar Code (certificate and survey).



(2) If the Secretary of State is satisfied at the date of the survey that the ship complies with each requirement of the Polar Code applicable to it, the Secretary of State may issue a Polar Ship Certificate in respect of that ship.

(3) A Polar Ship Certificate issued in accordance with a request mentioned in paragraph (1) must contain a statement that it has been so issued and has the same effect as if it had been issued by the government of that other Convention country and not by the Secretary of State.

## **Arbitration**

**25.**—(1) If an applicant is dissatisfied for any reason with the outcome of a survey carried out in respect of a United Kingdom ship, that person may serve a written notice on the responsible person within 21 days of receiving notice 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 paragraphs (3), (4) and (6), an arbitrator referred to in paragraph (1) must be appointed by agreement between the parties.

(3) In default of agreement between the parties, the arbitrator is such person as may be appointed by the President or Vice President of the Chartered Institute of Arbitrators following a request by—

- (a) a party, after giving written notice to the other party; or
- (b) the parties jointly,

but this paragraph does not apply in Scotland.

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

- (a) a person who holds a certificate of competency as a Class 1 Deck Officer or Class 1 Marine Engineer Officer, or a certificate of competency which is equivalent to such a certificate;
- (b) a naval architect;
- (c) a qualified person;
- (d) a person with experience of shipping matters; or
- (e) a Member of the Chartered Institute of Arbitrators.

(5) An arbitrator appointed under this regulation has the powers of an inspector conferred by section 259 of the Merchant Shipping Act 1995.

(6) In the application of this regulation to Scotland—

- (a) any reference to an arbitrator is to be construed as a reference to an arbiter; and
- (b) the reference in paragraph (2) to an arbitrator appointed by agreement between the parties is to be construed as a reference to a single arbiter so appointed or, in default of agreement, appointed by a sheriff.

(7) The rules for arbitration set out in Merchant Shipping Notice M.1613 apply unless alternative arrangements are agreed between the applicant and the Secretary of State before the commencement of arbitration proceedings.

(8) In this regulation—

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

“Merchant Shipping Notice” means a notice described as such and issued by the Maritime and Coastguard Agency (an executive agency of the Department for Transport) and includes a reference to any document amending or replacing that notice which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice;

“the parties” means the applicant and the responsible person, and “party” is to be construed accordingly;

“qualified person” means—

- (a) a person who satisfies the judicial-appointment eligibility condition on a 7-year basis within the meaning of section 50 of the Tribunals, Courts and Enforcement Act 2007<sup>(a)</sup>;
- (b) a person who is an advocate or solicitor in Scotland of at least 7 years’ standing; or
- (c) a person who is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland of at least 7 years’ standing;

“responsible person” means the Certifying Authority responsible for the issue of the Polar Ship Certificate in connection with which a survey required by these Regulations is carried out.

## PART 3

### Control and enforcement

#### Offences and penalties

26.—(1) Any contravention of—

- (a) regulation 7(8) (recording of alternative design and arrangements);
- (b) regulation 12(2)(a) (performance standards);
- (c) regulation 12(2)(b) (operational assessment);
- (d) regulation 12(2)(c) (requirement to comply with chapters 2 to 11 of part 1-A of the Polar Code) in so far as it requires a ship to comply with chapters 2 to 10 of part 1-A of the Polar Code (safety measures);
- (e) regulation 12(3) (compliance with Polar Water Operational Manual);
- (f) regulation 18(2) (requirement for survey and certification before entering polar waters);
- (g) regulation 18(3) (requirement to hold on board a valid Polar Ship Certificate);
- (h) regulation 20(2) (responsibilities of owner and master),

is an offence by the owner and master of the ship in respect of each case of non-compliance.

(2) A person who contravenes regulation 9(12)(a), (b), (c) or (d) is guilty of an offence, punishable—

- (a) on summary conviction—
  - (i) in England and Wales by a fine; or
  - (ii) in Scotland or Northern Ireland by a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment by a fine.

(3) Any contravention of regulation 12(2)(c) (requirement to comply with chapters 2 to 11 of part 1-A of the Polar Code) in so far as it requires a ship to comply with chapter 11 of part 1-A of the Polar Code (voyage planning), is an offence by the master in respect of each case of non-compliance.

(4) An offence under paragraph (1) or (3) is punishable—

- (a) on summary conviction—
  - (i) in England and Wales by a fine; or
  - (ii) in Scotland or Northern Ireland by a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment by imprisonment for a term not exceeding two years, or a fine, or both.

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(a) 2007 c. 15.

(5) Any contravention of regulation 18(4) (failure to have readily available for examination a certificate mentioned in regulation 18(3)) is an offence by the owner and master.

(6) Any contravention of regulation 22(3) (falsification of polar ship certificate etc.) is an offence by the person in question.

(7) An offence under paragraph (5) or (6) is punishable—

(a) on summary conviction—

(i) in England and Wales by a fine; or

(ii) in Scotland or Northern Ireland by a fine not exceeding the statutory maximum; or

(b) on conviction on indictment by imprisonment for a term not exceeding six months, or a fine, or both.

(8) It is a defence for a person charged with an offence under this regulation to prove that the person charged took all reasonable steps to avoid the commission of the offence.

### **Control**

**27.** A surveyor may go on board a non-United Kingdom ship for the purposes of verifying that—

(a) there is a valid Polar Ship Certificate, or an equivalent valid certificate where the ship flies the flag of a country which is not a Convention country;

(b) the condition of the ship and its equipment correspond substantially with the particulars shown on the certificate; and

(c) where applicable, the provisions of regulation 20 (responsibilities of owner and master) are being complied with.

### **Detention**

**28.—**(1) For the purposes of this regulation, any reference to “the Act” is a reference to the Merchant Shipping Act 1995.

(2) Any ship which does not comply with the requirements of these Regulations, Chapter XIV or the Polar Code applicable to that ship, may be detained in the United Kingdom.

(3) Section 284 of the Act (enforcing detention of ship)(a) applies where a ship is liable to be detained under this regulation as if—

(a) references to detention of a ship under the Act were references to detention of the ship in question under this regulation; and

(b) subsection (7) were omitted.

(4) Where a ship is liable to be detained under this regulation, the person detaining the ship must serve on the master a detention notice which—

(a) states the grounds for the detention; and

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

(5) Subject to paragraph (6), section 96 (references of detention notices to arbitration)(b) and section 97 (compensation in connection with invalid detention of a ship) of the Act apply in relation to a detention notice issued pursuant to this regulation as they apply in relation to detention notices issued pursuant to section 95 (power to detain dangerously unsafe ship)(c).

(6) For the purposes of paragraph (5)—

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(a) Section 284 was amended by Schedule 1 to the Merchant Shipping and Maritime Security Act 1997 (c. 28) and S.I. 2015/664.

(b) Section 96(7) was amended by Part 1 of Schedule 10 to the Tribunals, Courts and Enforcement Act 2007 (c. 15) and by Schedule 11 to the Constitutional Reform Act 2005 (c. 4). Section 96(10) was repealed by Schedule 4 to the Arbitration Act 1996 (c. 23).

(c) Section 95 was amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), Schedule 1, paragraph 2.

- (a) section 96 of the Act applies as if—
  - (i) subsection (3) were omitted;
  - (ii) the words “as a dangerously unsafe ship” in subsection (5) were omitted;
  - (iii) subsection (11) were omitted; and
- (b) sections 96 and 97 of the Act apply as if “the relevant inspector” means a person issuing the detention notice pursuant to this regulation.

(7) Subject to paragraph (8), where a ship other than a United Kingdom ship is detained, the Secretary of State must immediately inform the ship’s flag administration in writing.

(8) If it is not possible to inform the ship’s flag administration in accordance with paragraph (7), the Secretary of State must inform the Consul of the State of the flag administration, or in the absence of a Consul, the nearest diplomatic representative of the State of the flag administration.

(9) For the purposes of paragraphs (7) and (8), “flag administration” in relation to a ship means the administration of the State whose flag the ship is entitled to fly.

### **Review of the Regulations**

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

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 6th January 2027.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015<sup>(a)</sup> requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the obligations under the Convention are implemented in other countries which are subject to the obligations.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Signed by authority of the Secretary of State for Transport

*Robert Courts*  
Parliamentary Under Secretary of State  
Department for Transport

13th December 2021

We consent to the making of these Regulations

*Amanda Solloway*  
*Craig Whittaker*

9th December 2021

Two of the Lords Commissioners of Her Majesty’s Treasury

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(a) 2015 c. 26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12) and Schedule 8 to the European Union (Withdrawal) Act 2018 (c. 16).

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement the requirements of Chapter XIV in the Annex to the International Convention for the Safety of Life at Sea, 1974 (“the Convention”), which incorporates the safety related requirements for ships in the International Code for Ships Operating in Polar Waters (“the Polar Code”). They apply, with certain limited exceptions, to United Kingdom ships certified in accordance with the Merchant Shipping (Survey and Certification) Regulations 2015 (S.I. 2015/508) operating in, or intending to operate in, polar waters (regulation 3). They also apply to non-United Kingdom ships with appropriate certification which commence a voyage from, or end a voyage in, a port in the United Kingdom, and as part of that voyage operate in, or intend to operate in, polar waters. Appropriate certification means the ship has been certified in accordance with Chapter I of the Convention or, in the case of a non-Convention ship, in accordance with the requirements of the State whose flag that ship is entitled to fly and which demonstrates compliance with the requirements of Chapter I.

The Regulations provide for the granting of exemptions (regulation 5), approval of equivalents (regulation 6) and alternative design and arrangements for United Kingdom ships (regulation 7). The Secretary of State may also approve matters contained in the Polar Code requiring the approval of the Administration (regulation 8). Provision is made for the approval of training providers who provide courses for seafarers leading to a Certificate of Proficiency, which is required by chapter 12 of part 1-A of the Polar Code and Regulation V/4 of the International Convention on Standards of Training, Certification and Watchkeeping, 1978 (regulations 9 and 10).

All the safety related provisions of the Polar Code are implemented by these Regulations. The requirements for ships operating in polar waters are contained in regulation 12 and the manning and training requirements in chapter 12 of part 1-A of the Polar Code are contained in regulations 13 to 17. Regulations 18 to 24 contain provisions relating to the survey and certification procedure for a Polar Ship Certificate, including the particular responsibilities of the owner and master (regulation 20). The majority of these requirements are incorporated into the Regulations by direct reference to the requirements in the Polar Code. Future amendments to the referenced Polar Code and other Convention requirements will be automatically incorporated into the Regulations pursuant to the ambulatory reference provision in regulation 4.

Regulation 25 provides for an arbitration procedure where there is a dispute in relation to a survey carried out in respect of a United Kingdom ship. The Regulations also provide for offences and penalties in the event of a contravention of the requirements of the Regulations (regulation 26). Regulation 27 provides a power for a surveyor to inspect a non-United Kingdom ship in order to verify that there is a valid certificate for operation in polar waters. In cases of non-compliance with the Regulations, a ship may also be detained (regulation 28).

Regulation 29 requires the Secretary of State to review the operation and effect of these Regulations and publish a report before 6th January 2027 and at intervals not exceeding 5 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 to be amended or revoked. A further instrument would be needed to amend or revoke the Regulations.

Marine Guidance Note 637(M) also provides guidance on how the Secretary of State will exercise discretion where the Polar Code permits this. Marine Guidance Note 637(M) is available from the Maritime and Coastguard Agency (MCA) of Spring Place, 105 Commercial Road, Southampton SO15 1EG (telephone 020 3817 2000 and email [infoline@mca.gov.uk](mailto:infoline@mca.gov.uk)) <https://www.gov.uk/topic/ships-cargoes/m-notices>. Merchant Shipping Notice M.1613 is also available at the same link and from the MCA.

The Convention and its Protocol of 1988 may be obtained in copy from the International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR and both are available on the

Foreign, Commonwealth and Development Office (FCDO) treaties database (<https://treaties.fco.gov.uk/responsive/app/consolidatedSearch>). The text of the IMO Resolutions amending the Convention and Protocol may be obtained from the IMO or found in Marine Information Note 637(M), or on the FCDO treaties database (<https://treaties.fco.gov.uk/responsive/app/consolidatedSearch>).

Future amendments to the Convention and to the Protocol may be obtained in copy from the IMO and, after coming into force in the United Kingdom, found on the FCDO treaties database (<https://treaties.fco.gov.uk/responsive/app/consolidatedSearch>). Until such publication is made on the FCDO treaties database, an amendment will be available from the MCA and on <https://www.gov.uk>. An amendment will be publicised in advance of its in-force date by means of a Parliamentary Statement to both Houses of Parliament and by way of a Marine Guidance Note, which will be available in copy from the MCA and on <https://www.gov.uk>.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

An Explanatory Memorandum is published alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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