

# Shipping (Safety of Navigation) (Jersey) Order 2009

**THE MINISTER FOR ECONOMIC DEVELOPMENT**, in pursuance of Articles 49 and 196 of the Shipping (Jersey) Law 2002 and Regulation 2 of the Shipping (SOLAS) (Jersey) Regulations 2004, orders as follows –

## **1 Interpretation**

(1) In this Order, unless the context otherwise requires –

“Contracting Government” means the Government of a State that has agreed to be bound by the SOLAS Convention;

“IMO” means the International Maritime Organization;

“international voyage” means –

(a) a voyage from a country to which the SOLAS Convention applies to a port outside that country; or

(b) a voyage to a country to which the SOLAS Convention applies from a port outside that country;

“Jersey ship” has the same meaning as it has in Article 49(3) of the Law;

“Law” means the Shipping (Jersey) Law 2002;

“passenger”, in respect of a passenger ship, means a person who is not –

(a) the master, a member of the crew or any other person employed or engaged in any capacity on board the ship on the business of the ship;

(b) a child under one year of age; or

(c) a person who is on board the ship by reason of force majeure or in consequence of the obligation of the master to carry shipwrecked or other persons;

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

“pleasure vessel” means a ship that is described in Schedule 1;

“ship” has the same meaning as it has in Article 49(3A) of the Law;

“SOLAS Convention” means the International Convention for the Safety of Life at Sea, 1974, as amended in accordance with –

(a) its Protocol of 1988; and

(b) all other amendments adopted by the Maritime Safety Committee of the IMO before the making of this Order;

“SOLAS regulation” means a regulation in Chapter V of the SOLAS Convention.

(2) The provisions set out in Schedule 2 apply in the construction of Chapter V of the SOLAS Convention for the purposes of this Order.

## **2 Ships to which this Order applies**

(1) This Order applies to all Jersey ships, whether they are within the outer limits of Jersey waters or elsewhere.

(2) This Order also applies to all other ships while they are within the outer limits of Jersey waters.

(3) However, this Article is subject to Article 3.

## **3 Ships to which this Order does not apply**

This Order does not apply to any of the following ships –

(a) a warship or naval auxiliary;

(b) a ship that is owned and operated by a Contracting Government and is used only

on government non-commercial business; or

(c) a Jersey ship that navigates solely in the Great Lakes of North America, that is to say, within the area covered by those lakes and their connecting and tributary waters as far east as the lower exit of the St. Lambert Lock at Montreal in the Province of Quebec in Canada.

#### **4 Compliance with Chapter V of the SOLAS Convention**

(1) A ship to which this Order applies must be constructed, manned and operated in accordance with Chapter V of the SOLAS Convention.

(2) A ship to which this Order applies must also comply with such of the requirements described in paragraph (4) that –

(a) apply in relation to a ship of its description; and

(b) are additional to the requirements to which paragraph (1) refers.

(3) A ship to which this Order applies may, instead of complying with a requirement to which either of paragraphs (1) and (2) refers, comply with a requirement described in paragraph (4) that –

(a) applies in relation to a ship of its description; and

(b) is an alternative requirement to one to which either of paragraphs (1) and (2) refers.

(4) This Article refers to a requirement –

(a) that, after this Order comes into force, is imposed by way of an amendment to the SOLAS Convention (either as an additional requirement to an existing requirement of Chapter V of the SOLAS Convention or as a permitted alternative to an existing requirement of that Chapter) in relation to a ship of the description concerned; and

(b) that is published by the Registrar in such a way as the Registrar considers will best bring the requirement to the attention of those required to comply with the requirement.

(5) This Article is subject to Article 5.

#### **5 Ships to which particular provisions of the SOLAS Convention do not apply**

(1) A ship of a category described in Column 2 of Schedule 3 need not comply with the provisions of the SOLAS Convention specified in Column 3 of that Schedule in respect of ships of that category.

(2) A provision in any of SOLAS regulations 24, 25 and 26 does not apply to the use of an automatic pilot to the extent that the provision is inconsistent with a rule that is made by a person or body empowered by law to make special rules for –

(a) a roadstead;

(b) a harbour;

(c) a river that is connected with the high seas and is navigable by seagoing ships; or

(d) an inland waterway that is connected with the high seas and is navigable by seagoing ships.

(3) A high-speed vessel need not comply with SOLAS regulations 18, 19 and 20 so long as it complies with any High Speed Craft (HSC) Code authorized by the IMO that is applicable to the vessel.

#### **6 Approvals**

(1) Where a SOLAS regulation refers to –

(a) anything requiring the approval of the Administration;

(b) anything that is required to be done to the satisfaction of the Administration; or

(c) anything that is required to be acceptable to the Administration,

the Minister, or a person or body authorized by the Minister, may grant an approval for that thing in respect of a Jersey ship in accordance with the provisions of Chapter V of the SOLAS Convention.

(2) The Minister, or a person or body authorized by the Minister under paragraph (1), may on giving reasonable notice cancel or alter the terms of any approval given under this Article by the Minister or the authorized person or body respectively.

(3) An approval given under paragraph (1), or an alteration or cancellation under paragraph (2) –

(a) must be in writing;

(b) must specify the date on which it takes effect; and

(c) in the case of an approval, must specify the conditions (if any) on which it is given.

## **7 Exemptions**

(1) An exemption or equivalent to which SOLAS regulation 3 refers may be granted by the Minister, or a person or body authorized by the Minister.

(2) An exemption or equivalent granted under SOLAS regulation 3 –

(a) must be in writing; and

(b) must specify the date on which it takes effect.

(3) A ship –

(a) to which Article 2(2) applies; and

(b) that possesses an exemption or equivalent granted by another Administration under SOLAS Regulation 3,

shall retain the benefit of the exemption or equivalent unless the Minister, by notice to the owner or operator of the ship, directs otherwise.

## **8 Offence**

Schedule 4 has effect in respect of offences and penalties.

## **9 Statutory defences**

(1) It is a defence to any charge under this Order to prove that the person charged took all reasonable steps to avoid the commission of the offence.

(2) It is a defence to a charge of contravening paragraph 3 of Schedule 4 to prove –

(a) that there were compelling reasons not to use a particular mandatory ships' routing system; and

(b) that such reasons were recorded in the ship's log-book at the time.

## **10 Powers of detention**

(1) In any case where a ship does not comply with the requirements of this Order, the ship may be detained.

(2) If a ship has become liable under paragraph (1) to be detained, Article 177 of the Law shall have effect in relation to that ship.

## **11 Order to be additional to other requirements**

The requirements of this Order are in addition to those of any other enactments and rules of law, and do not derogate from them.

## **12 Citation and commencement**

(1) This Order may be cited as the Shipping (Safety of Navigation) (Jersey) Order 2009.

(2) It comes into force on 1st July 2009.

*Signed*.....

*Date*.....

*Minister for Economic Development*

## **SCHEDULE 1**

(Article 1(1))

### **SHIPS THAT ARE PLEASURE VESSELS**

1. A ship that –

(a) is wholly owned by an individual or individuals;

(b) is used only for the sport or pleasure of the owner or immediate family or friends of the owner; and

(c) is on a voyage, or excursion, for which the owner does not receive money for or in connection with the operating of the ship or the carrying of any person, other than as a contribution to the direct expenses of the operation of the ship that are incurred during the voyage or excursion,

where no other payment is made by or on behalf of users of the ship by a person who is not the owner.

2. A ship that –

(a) is owned by a body corporate;

(b) is used only for the sport or pleasure of employees or officers of the body corporate, or their immediate families or friends; and

(c) is on a voyage, or excursion, for which the owner does not receive money for or in connection with the operating of the ship or the carrying of any person, other than as a contribution to the direct expenses of the operation of the ship incurred during the voyage or excursion,

where no other payment is made by or on behalf of users of the ship by a person who is not the owner.

3. A ship that –

(a) is wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure; and

(b) at the time when it is being used, is used only for the sport or pleasure of members of that club or their immediate families,

where any charges levied for the use of the ship are paid into club funds and applied for the general use of the club, and no other payment is made by or on behalf of users of the ship by a person who is not the owner.

## **SCHEDULE 2**

(Article 1(2))

### **CONSTRUCTION OF CHAPTER V OF THE SOLAS CONVENTION**

#### **1 References to Administration**

In Chapter V of the SOLAS Convention, references to the Administration shall be construed as references to the Minister.

#### **2 Other references**

For the purposes of paragraph 7 of SOLAS regulation 11 –

(a) “adopted ship reporting system” means any ship reporting system that has been

established by a Government or Governments after it has been adopted by the IMO as complying with all the requirements of SOLAS regulation 11, and which is set out in Volume 6 of the Admiralty List of Radio Signals and annotated therein as "Mandatory System under SOLAS Regulation V/11-1";

(b) the "appropriate authority" means the authority specified in the adopted ship reporting system.

### 3 Responsible officer

For the purposes of paragraph 3 of SOLAS regulation 24, the responsible officer shall be the officer in charge of the navigational watch or, if there is no such officer, the master.

### 4 Recording paragraph 6 of SOLAS regulation 26 details

For the purposes of paragraph 6 of SOLAS regulation 26, the details specified in that paragraph must be recorded in the ship's official log book, unless they are recorded elsewhere as a part of a Safety Management System. In the latter case, an entry in the official log book must state where the information is recorded.

### 5 Compliance with paragraph 1 and 4 of SOLAS regulation 31 requirements

(1) For the purposes of paragraph 1 of SOLAS regulation 31, the competent authorities are the appropriate National or NAVAREA Coordinators for navigational warnings. (Details of NAVAREAs are given in Vol.1 of the Admiralty list of Radio Signals (ALRS) and reports may be sent via the most appropriate coast radio station.)

(2) For the purposes of paragraph 4 of SOLAS regulation 31, the Radio Regulations with which ships are required to comply are the Radio Regulations annexed to, or regarded as being annexed to, the International Telecommunication Convention 1992; including all amendments now in force and any amendment or replacement that the Registrar considers to be relevant, as specified in a notice published by Registrar in a manner likely to bring it to the attention of those affected by it.

### 6 Compliance with paragraph 1 of SOLAS regulation 33 requirements

(1) For the purposes of paragraph 1 of SOLAS regulation 33, the search and rescue service that the master must inform (in either instance to which it refers) is the search and rescue service for the area within which the persons in distress at sea are located.

(2) Compliance by a master of a ship with the requirements of SOLAS regulation 33 does not affect his or her right, or the right of any other person, to salvage.

## SCHEDULE 3

(Article 5)

### SHIPS to which particular provisions of THE solas convention do not apply

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
	<b>Category of ship</b>	<b>Provisions of Chapter V of the SOLAS Convention that do not apply</b>
1	A ship of less than 150 gross tons (other than a fishing vessel)	SOLAS regulations 15, 16, 18, 20, 21, 22, 24, 25 and 26 and SOLAS regulation 19, paragraph 2.1.6
2	A fishing vessel of less than 150 gross tons	SOLAS regulations 15, 16, 18, 20, 21 and 22 and SOLAS regulation 19, paragraph 2.1.6
3	A ship of less than 500 gross tons that is not engaged on an international voyage	SOLAS regulations 15, 16, 18, 20 and 21

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|---|--|--|
| 4 | A fishing vessel of less than 150 gross tons that is engaged only within the inter-tidal zone of the Island of Jersey<br>A ship –  | SOLAS regulation 19  |
| 5 | <p>(a) of less than 150 gross tons that is a pleasure vessel and where the distance between the foreside of the foremost fixed permanent structure of the ship and the afterside of its aftermost permanent structure is less than 7 metres; or</p> <p>(b) of any length that is licensed under the Boat and Surf-riding (Control) (Jersey) Regulations 1969 or any subsequent replacement legislation to similar effect</p> | SOLAS regulation 19 (other than paragraph 2.1.7) and regulation 27 |
| 6 | A passenger ship of less than 150 gross tons that is not engaged on a voyage that may take the ship more than 3 miles seaward of the baselines from which the breadth of the territorial waters of the island of Jersey is measured  | SOLAS regulation 19, paragraph 2.4                                 |

#### **SCHEDULE 4**

(Article 8)

#### **OFFENCES AND PENALTIES**

1. In this Schedule, “owner”, in respect of a ship, includes a person or organization (including a manager or bareboat charterer) who has assumed responsibility for the operation of the ship from the owner.
2. If a ship to which paragraph 3 of SOLAS regulation 7 applies proceeds or attempts to proceed on a voyage or excursion without complying with the requirement in that paragraph to carry on board a plan, the owner of the ship is guilty of an offence and is liable to imprisonment for a term of 2 years and a fine.
3. If paragraph 7 of SOLAS regulation 10 is contravened in respect of a ship, its owner and its master and any other person who is for the time being responsible for the conduct of the ship is each guilty of an offence and is each liable to imprisonment for a term of 2 years and a fine.
4. If paragraph 7 of SOLAS regulation 11 is contravened in respect of a ship, its master is guilty of an offence and is liable to imprisonment for a term of 2 years and a fine.
5. If paragraph 2 or paragraph 3 of SOLAS regulation 17 is contravened in respect of a ship, its owner and its master is each guilty of an offence and is each liable to imprisonment for a term of 2 years and a fine.
6. If a ship to which SOLAS regulation 19 or paragraph 1 of SOLAS regulation 20 applies proceeds or attempts to proceed on a voyage or excursion without complying with a requirement in –
  - (a) SOLAS regulation 19, or paragraph 1 of SOLAS regulation 20, respectively; or
  - (b) any of paragraphs 1, 2, 3, 7 and 8 of SOLAS regulation 18,
 its owner and its master is each guilty of an offence and is each liable to imprisonment for 2 years and a fine.
- 7 Subject to paragraphs 4.1 and 4.2 of SOLAS regulation 19-1, if a ship to which SOLAS regulation 19-1 applies proceeds or attempts to proceed on a voyage or excursion without complying with a requirement in SOLAS regulation 19-1

paragraphs 5, 6 or 7 its owner and its master is each guilty of an offence and is each liable to imprisonment for 2 years and a fine.

8. If a ship to which SOLAS regulation 21 applies proceeds or attempts to proceed on a voyage or excursion without complying with a requirement in that regulation, its owner and its master is each guilty of an offence and is each liable to a fine not exceeding level 4 on the standard scale.

9. If a ship to which paragraph 1 or paragraph 2 of SOLAS regulation 22 applies proceeds or attempts to proceed on a voyage or excursion without complying with that paragraph, its owner and its master is each guilty of an offence and is each liable to a fine not exceeding level 4 on the standard scale.

10. A person who contravenes a requirement in SOLAS regulation 23 with which the person is obliged to ensure compliance in respect of a ship is guilty of an offence and is liable to imprisonment for 2 years and a fine.

11. A person who, having been directed –

(a) under paragraph 4 of SOLAS regulation 24; or

(b) under either of paragraphs 1 and 2 of SOLAS regulation 26,

to carry out a check or test required under that paragraph, fails to do so is guilty of an offence and is liable to imprisonment for 2 years and a fine.

12. If the requirement in paragraph 3.1 of SOLAS regulation 26 is contravened in respect of a ship, its owner is guilty of an offence and is liable to imprisonment for 2 years and a fine.

13. If a requirement in any of SOLAS regulations 24, 25 and 26 (other than a requirement to which paragraph 11 of this Schedule refers) is contravened in respect of a ship, its master is guilty of an offence and is liable to imprisonment for 2 years and a fine.

14. If a ship to which SOLAS regulation 27 applies proceeds or attempts to proceed to sea or on a voyage or excursion without complying with that regulation, its owner and its master is each guilty of an offence and is each liable to a fine of level 4 on the standard scale.

15. If SOLAS regulation 28 is contravened in respect of a ship, its master is guilty of an offence and is liable to a fine of level 4 on the standard scale.

16. If SOLAS regulation 29 contravened in respect of a ship, its owner and its master is each guilty of an offence and is each liable to a fine of level 4 on the standard scale.

17. If SOLAS regulation 30 is contravened in respect of a ship, its owner is guilty of an offence and is liable to imprisonment for 2 years and a fine.

18. If paragraph 1 of SOLAS regulation 31 is contravened in respect of a ship, its master is guilty of an offence and is liable to a fine of level 2 on the standard scale.

19. If paragraph 1 or paragraph 2 of SOLAS regulation 33 is contravened in respect of a ship, its master is guilty of an offence and is liable to imprisonment for 2 years and to a fine.

20. If a ship to which paragraphs 1 and 2 of SOLAS regulation 34 apply proceeds or attempts to proceed to sea in contravention of a requirement in either of those paragraphs, its master is guilty of an offence and is liable to imprisonment for 2 years and to a fine.

21. A person who contravenes SOLAS regulation 34-1 in respect of a ship is guilty of an offence and is liable to imprisonment for 2 years and a fine.