

Title: PIR of the Merchant Shipping (International Safety Management (ISM) Code) Regulations 2014 PIR No: : DfTPIR0039 Original IA/RPC No: Lead department or agency: MCA Other departments or agencies: Contact for enquiries: Prasad Panicker	Post Implementation Review
	Date: 30/11/2021
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 18/07/2014
	Recommendation: Keep
	RPC Opinion: Not Applicable

1. What were the policy objectives of the measure?

The International Safety Management (ISM) Code was made mandatory by the 1994 International Maritime Organization's (IMO) amendments to the International Convention for the Safety of Life at Sea (SOLAS), 1974, by the introduction of a new chapter IX to the Convention. It entered into force on 1 July 1998 and applies to certain vessels (as specified in the regulations), including cargo vessels and mobile offshore drilling units of 500GT and upwards, which make international voyages. Since that date several amendments have been adopted.

The purpose of the ISM Code is to provide an international standard for the safe management and operation of ships and for pollution prevention. It does so by recognising that no two companies or ship owners are the same and founding general principles and objectives that are applicable to everyone concerned. For example, by recognising the need for commitment from the top, competence, positive attitudes and motivation of individuals at all levels to ensure that the key fundamentals of the Code are adhered to such as: the need for continuous improvement; internal and external audits; emergency preparedness and maintenance of ship and equipment etc. It requires that safeguards be established against the safety and pollution risks involved in shipboard operations, while giving the flexibility to develop and tailor a safety system to an owner's/ship manager's specific operation. Thus, implementation and adherence to the ISM Code aids in maintaining the high standards of safety at sea for ships which operate in international and domestic waters by the establishment, implementation and proper maintenance of the shipboard and shore-based safety management systems.

The purpose of the Merchant Shipping (International Safety Management (ISM) Code) Regulations 2014¹ ('2014 Regulations') which implement the ISM Code into domestic law and that form the object of this review was twofold:

- Consolidate and restate, in one single SI, with the removal of duties now provided for by Regulation (EC) 336/2006 and revoke earlier UK legislation as appropriate.
- Supplement and provide for the enforcement of the rights and entitlements set out in Regulation (EC) 336/2006 which still exists in domestic law as retained direct principal EU legislation².

See Annex 2 for more detail.

¹ [Merchant Shipping \(International Safety Management \(ISM\) Code\) Regulations 2014](#)

² [REGULATION \(EC\) No 336/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 February 2006 on the implementation of the International Safety Management Code within the Community and repealing Council Regulation \(EC\) No 3051/95](#)

The original purpose of Regulation (EC) 336/2006 in 2006 was to enhance the safety management and safe operation of ships as well as the prevention of pollution from ships by ensuring that companies operating those ships comply with the ISM Code via shipboard and shore-based safety management systems and the control thereof by flag and port State administrations.

Therefore, the policy objectives and intended effects could be summarised as:

- Consolidate domestic legislation on the ISM Code into a single SI
- Assure the UK's role in a harmonised approach to international safety standards
- Provide clarity for business thus enabling competitiveness on an international market
- Comply with the UK's duties as an EU Member State

2. What evidence has informed the PIR?

In order to inform the 2014 Impact Assessment ('2014 IA')³ a consultation was conducted by the MCA between 16 October and 26 November 2012. The consultation made clear that at that time compliance with Regulation (EC) 336/2006 was not optional (due to its direct applicability as an EC Regulation)⁴ and therefore its substance was not the focus of the consultation. Instead, the focus for comment was the approach of the MCA in relation to the enforcement regime for vessels covered by the draft 2014 Regulations (including those covered by Regulation (EC) 336/2006) and the proposed penalties for non-compliance. The consultation targeted all the main industry representative bodies, for example the Chamber of Shipping, the Passenger Boat Association, the Port of London Authority and the main seafarers' unions. No comments were received to the consultation.

Furthermore, at that time the MCA conducted surveys on all ships newly covered by Regulation (EC) 336/2006 and found them all to have the correct ISM systems in place.

The MCA believe due to the low potential costs, given that the correct systems were in place and industry giving no indication of any foreseeable problems arising from compliance with the 2014 Regulations that it is proportionate to undertake a low level of evidence gathering and produce a light touch PIR.

The review was carried out by MCA officials using the following evidence:

- Review of evidence base from the 2014 IA
- Compliance data collected by the MCA
- Inspection data
- Number of accidents received from the MAIB.

The 2014 IA indicated that the extended scope of Regulation (EC) 336/2006 would require approximately 30 additional UK ships to comply with the ISM Code. It was determined at the time that these vessels were comprised of 25 passenger and 5 cargo vessels. The vessels were surveyed, and it was ascertained that all 30 vessels were already compliant with the ISM Code before being brought under the new legislation therefore incurring no additional costs as a result of implementing the 2014 Regulations.

The MCA monitors compliance with the ISM Code and is responsible for ensuring the compliance of UK vessels, and non-UK vessels calling at UK ports (whilst European maritime authorities have similar enforcement responsibilities for UK vessels calling at other European ports).

Data has been gathered for inspections of UK ships over 500GT, and foreign flag ships over 500GT calling at UK ports from 2010 to 2018, to see if there was any impact from the 2014 Regulations. For UK ships, the number of ISM deficiencies, and the number deficiencies which the ship was required to rectify before departure were noted. For foreign flag ships, the numbers of inspections resulting in ISM deficiencies was reviewed along with the number of those ships detained.

³ [MS \(international Safety Management \(ISM\) Code\) Regulations 2014 Impact Assessment](#)

⁴ [EU Law - Regulations](#)

3. To what extent have the policy objectives been achieved?

These Regulations make mandatory the application of the ISM Code to all UK ships that trade internationally with the addition of certain domestic ships. Notwithstanding UK domestic law, it is recognised that the penalties and risk of detention on the international scene have a significant deterrent effect (detention of a vessel at a Port State can have a significant financial penalty to the operating company). Being that compliance with the ISM Code is subject to verification during the internationally agreed survey and inspection regime it is not without foundation to say that all UK ships trading internationally can be said to be in compliance. Furthermore, the MCA operates its own domestic survey and inspection regime, records from which show that there were no non-compliant domestic ships surveyed since the implementation of the 2014 Regulations.

Following surveys carried out by the MCA, it can be confirmed that all the additional 30 vessels to which the ISM Code became applicable were already compliant before the 2014 Regulations were made. Consequently, it is fair to say that the policy objectives have been met in so much as the relevant ships are complying with the 2014 Regulations.

Therefore, the MCA intend to continue to apply these regulations as part of a consolidated approach to the continual improvement of safety and the safe management and operation of ships and for pollution prevention at sea.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***Chris Milne – Chief Economist***

Date: 24/04/2020

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?

While there were several costs and benefits identified in the 2014 IA, none of these were monetised due to either difficulty in quantification or evidence collected for the 2014 IA identifying that the potential cost would not occur, these are all discussed below.

There were two potential costs which were identified in the 2014 IA, the cost to the MCA for taking enforcement action and the costs to the additional vessels brought under the ISM Codes. As all additional vessels were in compliance before the Regulations came into force, it was assessed as there being no additional costs imposed on industry in complying with the 2014 Regulations, as previously mentioned. It was considered that there were no additional costs to the MCA because of the introduction of the 2014 Regulations due to the additional vessel's compliance posing no risk to the MCA of having to take action because of this the MCA assumed that all new vessels that fell under the scope of the ISM Code would be fully compliant and not require any enforcement action on the part of the MCA.

Although all additional vessels were already compliant, the regulations requiring compliance from domestic shipping companies meant a potential benefit for seafarers and passengers through the improvement in the safety management systems in these companies and their ships, thereby reducing the risk of accidents and pollution bringing them in line with the rest of the vessels affected by the ISM Code. These benefits were not able to be quantified at the time of the 2014 IA.

It was not expected that there would be any disproportionate impact on any of the industry, specifically small businesses or competition since all additional vessels were already compliant no additional costs would have been faced.

Implementation also ensured that the UK met its EU obligations, thereby avoiding any potential penalty for not doing so. I.e., infraction proceedings that the UK may have been subject to at the time of implementation.

5. Were there any unintended consequences?

The MCA is not aware of any problems with the requirements of the 2006 EC Regulation or the 2014 Regulations. Indeed, it has not been necessary for the MCA to impose sanctions or take formal enforcement action against any company or vessel. It has not been possible to inform existing assumptions developed in the 2014 IA on costs and benefits with any new or additional evidence because of this. However, due to the small cost burdens these represented and the lack of industry feedback from the consultation carried out in the 2014 IA it is assumed that no unintended burdens have been put on industry.

To check that there have been no unintended consequences from the 2014 Regulation, we have checked the MCA monitoring database for the ISM Code.

Figure 1 shows the total number of UK flagged vessels over 500GT which fall under the ISM Code's remit. From this we can see that the total number of deficiencies found from inspections has been on a downward trend from 2010 through to 2018, the total number of ISM deficiencies has reduced from 2443 in 2014 to 1884 in 2018, and the number of detainable deficiencies also reduced from 492 to 397 in the same period.

After the 2014 Regulations came into force in 2014 there was a slight spike with the number of deficiencies increasing in the following year. The MCA do not have evidence to provide an explanation for this occurrence but could be due to the sample of vessels inspected in that year. From 2016 onwards the trend of deficiencies falling continued which could be due to the Regulations having a positive impact on industry, however, we cannot confirm that the fall in deficiencies over this time can be solely attributed to the 2014 Regulations, as other regulations may have come into force which have impacted this variable.

There are a few uncertainties around the costs and benefits which have arisen from this 2014 Regulations due to them being inherently difficult to quantify or the enforcement power having not needing to have been used, as discussed in section 4. Being directly applicable, all EU Member States are subject to Regulation (EC) 336/2006, so this does not put any disadvantage on UK operators from a European competition standpoint.

6. Has the evidence identified any opportunities for reducing the burden on business?

The MCA has not identified any opportunities for the reduction of burden on businesses because, essentially, the EC Regulation and the 2014 Regulations were complying with a set of pre-existing international standards regarding safety and pollution prevention measures. Due to this being part of an agreed upon international standard there is little scope to change the requirements placed on industry.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?

As a member of the IMO and signatory to the International Convention for the Safety of Life at Sea (SOLAS), 1974 the UK will be obliged under international law to implement the requirements of the Convention into domestic law. It is therefore expected that other nations have implemented the requirements in similar way to the UK.

For example:

The Republic of Ireland regulations can be found here;

<http://www.irishstatutebook.ie/eli/2008/si/60/made/en/print?q=International+Safety+Management>

The Australian Maritime Authority's regulations can be found here;

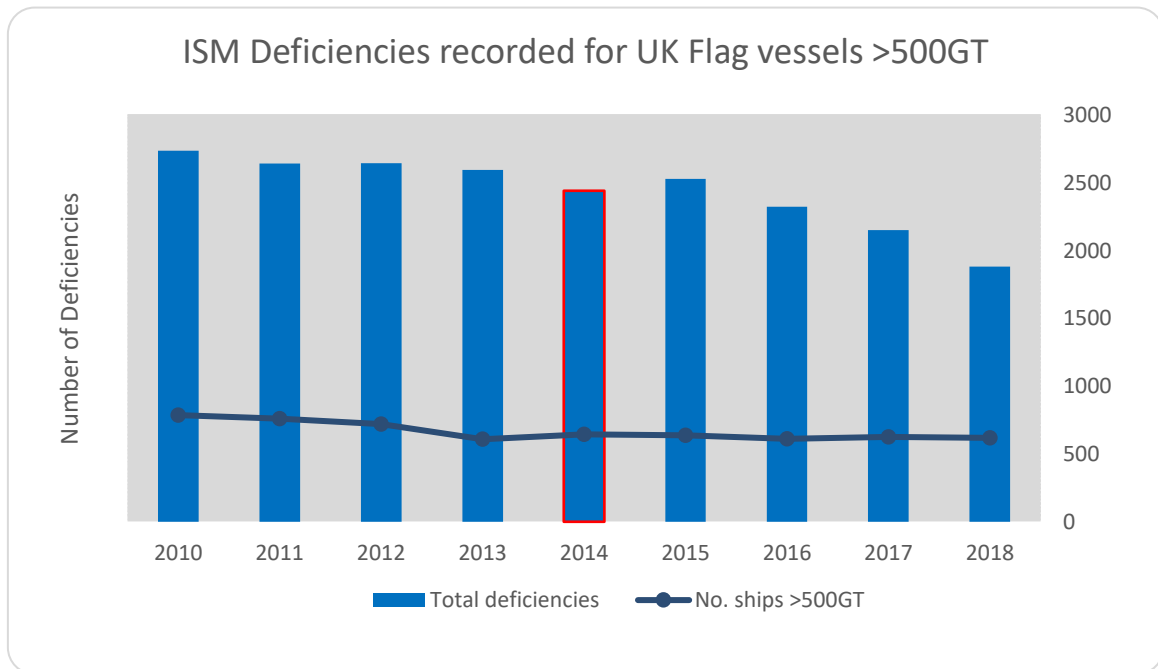
<https://www.amsa.gov.au/ism-code-certification-guidelines-regulated-australian-vessels>

Sweden's Maritime Authority's regulations can be found here;

https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/fartygssakerhetslag-2003364_sfs-2003-364

Annex 1 – Summary of ISM deficiencies (2010 – 2018)

Figure 1 - Total number of ISM deficiencies for UK vessels



Source: MCA database

The graph above shows the total number of deficiencies according to the ISM Codes which were found on UK flagged vessels over 500GT between the period of 2010 – 2018. The total number of deficiencies over this time period has been trending downward since the beginning of the period, seeing a slight increase in the number of deficiencies in 2015 a year on from the implementation of the 2014 regulations (Highlighted in red). However, after 2015 the downward trend in deficiencies continued until the end of the period in 2018.

The total number of vessels over 500GT on this sample also decreased over this time period which may contribute to explaining the decrease in the number of deficiencies and detainable deficiencies, however, this does not show much correlation.

Table 1 – Total number of ISM deficiencies

Year	Total vessels	Total Inspected	Total ISM Deficiencies	Total detainable deficiencies
2010	787	388	2739	548
2011	760	414	2643	448
2012	721	378	2646	467
2013	609	332	2597	464
2014	646	289	2443	492
2015	638	282	2531	400
2016	612	301	2325	459
2017	626	294	2153	419
2018	619	265	1884	397

Source: MCA database

Annex 2 – Summary of Regulatory History

Regulation (EC) 3051/95 imposed a duty on roll-on, roll-off passenger ferries operating to or from European ports, to comply with the ISM Code. Regulation (EC) 336/2006 revoked that Regulation and imposed the duty to comply with the ISM Code on a wider variety of ships including passenger vessels engaged exclusively on domestic voyages (i.e. voyages by sea from a port of a Member State to the same or another port within that Member state), other than in waters of EU Class C or D (as defined by Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships), and cargo ships and mobile offshore drilling units over 500 gross tonnage in domestic waters.

While Regulation (EC) 336/2006 had direct applicability in UK law, it was necessary to (a) make appropriate supplementary provision to support the Regulation, including an enforcement regime with proportionate, effective and dissuasive sanctions; and (b) remove domestic regulation which overlaps with and has been superseded by that Regulation. The 2014 Regulations do this.

Regulation (EC) 336/2006 still exists in domestic law as retained direct principal EU legislation

The Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998 contained a duty applicable to ships specified in those regulations (including passenger ships of Classes I, II and II(A), and tankers and cargo ships which engage in international voyages) to comply with the ISM Code as a matter of domestic law, reflecting the IMO's Safety of Life at Sea (SOLAS) Convention, Chapter IX. As mentioned above, where such duties are now provided for by Regulation (EC) 336/2006, it was necessary to remove the domestic provision which overlaps. Where such duties are not provided for by Regulation (EC) 336/2006, those duties were re-enacted in the 2014 Regulations (neither expanded nor reduced).

Additionally, the Merchant Shipping (ISM Code) (Ro-Ro Passenger Ferries) Regulations 1997 and the Merchant Shipping (International Safety Management (ISM) Code) Regulations 1998 were revoked in their entirety and the surviving domestic law provisions were reinstated alongside the provisions supplementing Regulation (EC) 336/2006. Thus, reducing domestic legislation on the ISM Code to a single instrument.