

ANTIGUA AND BARBUDA

STATUTORY INSTRUMENT

2004, No. 23

Maritime Security Regulations, made by the Minister under section 333 of the Antigua and Barbuda Shipping Act Cap. 28.

1. These Regulations may be cited as the Maritime Security Regulations, 2004. Short title

2. (1) In these Regulations Interpretation.

“Designated Authority” means the organisation or administration within the Government which is identified by the Minister as responsible for ensuring the implementation of the provisions of these Regulations pertaining to port facility security and ship/port interface from the point of view of port facility;

“ISPS Code” means the International Code for the Security of Ships and of Port Facilities consisting of Part A (the provisions of which shall be treated as mandatory) and part B (the provisions of which shall be treated as recommendatory), as adopted, on 12 December 2002, by resolution 2 of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974, as amended from time to time;

“IMO” means the International Maritime Organization.

“Minister” means Minister responsible for merchant shipping and shipping registration.

“port facility operator” means any person operating a port facility or such other person as may be designated for the purposes of this Part as port facility operator for one or more port facilities by the Designated Authority;

“port facility security officer” means the person designated by the Minister as responsible for the development, implementation, revision and maintenance of the port facility security plan and for liaison with the ship security officers and company security officers;

“recognised security organisation” means an organisation with appropriate expertise in security matters and with appropriate knowledge of ship and port operations authorised to carry out an assessment, or a verification, or an approval or a certification activity, required by the Regulation or by Part A of the ISPS Code;

“restricted zone” means a zone to which access is restricted for security reasons pursuant to these Regulations.

“Solas Convention” means the International Convention for the Safety of Life at Sea, 1974 as amended by the Maritime Safety Committee of the International Maritime organization.

(2) For the purposes of these Regulations, a person is permitted to have access to a restricted zone of a port facility if he is permitted to enter that zone or if arrangements exist for permitting any of his employees or agents to enter that zone.

(3) Words used in these Regulations have the same meaning as they have in, or for the purpose of Chapter X 1-2 of the Solas Convention.

3. (1) Subject to subregulation (5), these Regulations apply to — Application.

(a) the following ships engaged on international voyages:

- (i) passenger ships, including high-speed passenger craft;
- (ii) cargo ships, including high-speed craft, of 500 tons or more; and
- (iii) mobile offshore drilling units; and

(b) port facilities serving such ships engaged on international voyages.

(2) These Regulations shall also apply to any port facility specified in a Notice issued by the Minister which, although used primarily by ships not engaged on international voyages, is required, occasionally, to serve ships arriving or departing on international voyages.

(3) A Notice referred to in subregulation (2) shall not be issued without a port facility security assessment for that port facility having been done in accordance with the ISPS Code. The Notice shall specify the extent of application of these Regulations and the relevant sections of Part A of the ISPS Code to the facility.

(4) Any Notice under subregulation (2) shall not compromise the level of security intended to be provided by these Regulations and by the ISPS Code.

(5) These Regulations do not apply to —

- (a) warships;
- (b) naval auxiliaries; or
- (c) other ships owned or operated by parties to the SOLAS Convention and use only on Government non-commercial service.

4. (1) Companies shall comply with the relevant requirements of these Regulations with the ISPS Code. In particular, and without **prejudice** to any other duties the Company shall ensure that:

Requirements for companies.

- (a) a company security officer is appointed, and is properly trained and qualified in his duties and responsibilities;
- (b) a ship security officer is appointed for each of its ships and is properly trained and qualified in his duties and responsibilities;
- (c) each ship has a ship security plan;
- (d) the master has available on board, at all times, information through which officers duly authorised by any State can establish:
 - (i) who is responsible for appointing the members of the crew or other persons currently employed or engaged on board the ship in any capacity on the business of that ship;
 - (ii) who is responsible for deciding the employment of the ship; and

- (iii) in cases where the ship is employed under the terms of charter party or parties, who are the parties to such charter party or parties.

(2) Any Company which fails to comply with this regulation commits an offence, punishable on conviction by a fine not exceeding one thousand dollars.

5. (1) (a) Every ship security plan and amendment thereto shall be submitted to the Director, or to a recognised security organisation he authorises on his behalf, for approval in accordance with the ISPS Code. Ship security plans.

- (b) A recognised security organisation authorised under paragraph (a) shall not have been involved in the preparation of the ship security plan or the amendment in question.

(2) The Director shall determine which changes to an approved ship security plan or to any security equipment specified in an approved plan shall not be implemented unless the relevant amendments to the plan are approved by the Director or the relevant recognised security organisation. Any such changes shall be at least as effective as those measures prescribed in Chapter XI-2 of the SOLAS Convention and in the ISPS Code.

(3) Any company which does not comply with subsection (1), or otherwise fails to comply with the ISPS Code, commits an offence, punishable by a fine not exceeding ten thousand dollars.

6. (1) The company security officer shall perform the responsibilities and duties specified and in the ISPS Code. Company security officer.

(2) Any contravention of this regulation by the company security officer shall be an offence, punishable on conviction by a fine not exceeding five thousand dollars.

7. (1) The ship security officer shall perform the responsibilities and duties specified and in the ISPS Code. Ship security Officer.

(2) Any contravention of this regulation by the ship security officer shall be an offence, punishable on conviction by a fine not exceeding five thousand dollars.

8. (1) Ships shall comply with the relevant requirements and of the ISPS Code. Requirements for ships.

(2) Prior to entering a port or whilst in a port within the territory of any other State, a ship shall comply with the requirements for the security level set by that State, if such security level is higher than the security level set by the Director for that ship.

(3) Ships shall respond without undue delay to any change to a higher security level.

(4) Where a ship is not in compliance with the requirements of the ISPS Code, or cannot comply with the requirements of the security level set by the Director or by another contracting government and applicable to that ship, then the ship shall notify the appropriate competent authority prior to conducting any ship/port interface or prior to entry into port, whichever occurs earlier.

9. (1) Ships shall be provided with a ship security alert system in accordance with Chapter XI-2 of the SOLAS Convention. Ship Security alert system.

(2) The ships security alert system shall comply with Chapter XI-2 of the SOLAS Convention.

(3) The ship security alert system shall:

(a) be capable of being activated from the navigation bridge and in at least one other location; and

(b) conform to performance standards not inferior to those adopted by IMO.

(4) The ship security alert system points shall be designed so as to prevent the inadvertent initiation of the ship security alert.

(5) The requirement for a ship security alert system may be complied with by using the radio installation fitted for compliance with the requirements of Chapter IV of the SOLAS Convention, provided all requirements of this section are complied with.

(6) Any contravention of subregulations (1) to (4) is an offence by the company and the master, punishable by a fine not exceeding one thousand dollars.

10. (1) (a) The master of an Antigua and Barbuda ship shall not be constrained by the Company, the charterer or any other person from taking or executing any Master's discretion for safety ship and security.

decision which, in the professional judgment of the master, is necessary to maintain the safety and security of the ship.

- (b) This includes denial of access to persons (except those identified as duly authorised by a Contracting Government) or their effects and refusal to load cargo, including containers or other closed cargo transport units.
- (2) (a) Where, in the professional judgment of the master, a conflict between any safety and security requirements applicable to the ship arises during its operations, the master shall give effect to those requirements necessary to maintain the safety of the ship.
- (b) In such cases, the master may implement temporary security measures and shall forthwith inform the Director and, if appropriate, the Contracting Government in whose port the ship is operating or intends to enter.
 - (c) Any such temporary security measures under this regulation shall, to the highest possible degree, be commensurate with the prevailing security level. When such cases are identified, the director shall ensure that such conflicts are resolved and that the possibility of recurrence is minimised.

11. (1) All Antigua and Barbuda ships to which these Regulations apply shall be subject to initial, renewal and intermediate verifications in accordance with the ISPS Code. Verification for ships.

(2) The verification of ships shall be carried out by an officer authorised by the Director, or, if he entrusts it, by a recognised security organisation.

(3) The security system and any associated security equipment of the ship after verification shall be maintained to conform with the provisions of regulations 8 and 9 and the ISPS Code and of the approved ship security plan. After any verification under subregulation (1), no changes shall be made in the security system and in any associated security equipment or the approved ship security plan without the sanction of the Director.

(4) Any contravention of subregulation (1) or (3) is an offence by both the Company and master, punishable on conviction by a fine not exceeding one thousand dollars.

12. (1) When an initial or renewal verification is satisfactorily completed pursuant to regulation 11, the Director or a recognised security organisation acting on his behalf shall issue or, as the case may be, endorse an International Ship Security Certificate. Issue, endorsement, duration and validity of certificate.

(2) The International Ship Security Certificate shall be drawn up in a form corresponding to the model given in the ISPS Code.

(3) The duration and validity of an International Ship Security Certificate shall be in accordance with the ISPS Code.

13. (1) After July 1, 2004 for the purposes of — Interim certificates.

- (a) a ship without a Certificate, on delivery or prior to its entry or re-entry into service;
- (b) transfer of a ship from the flag of another Government to the Antigua and Barbuda register;
- (c) a Company assuming the responsibility for the operation of a ship not previously operated by that Company;

until the Certificate referred to in regulation 12 (1) is issued, the Director may cause an Interim International Ship Security Certificate to be issued, in a form corresponding to the model given in the ISPS Code.

(2) An Interim International Ship Security Certificate shall only be issued if the Director or a recognised security organisation on his behalf is satisfied that the conditions specified in the ISPS Code are met.

(3) An Interim International Ship Security Certificate may be issued by the Director or by a recognised security organisation authorised to act on his behalf.

(4) An Interim International Ship Security Certificate shall be valid for 6 months, or until the Certificate required by regulation 12 is issued, whichever comes first, and may not be extended.

(5) No subsequent, consecutive Interim International Ship Security Certificate shall be issued to a ship if, in the judgment of the Director or the recognised security organisation, one of the purposes of the ship or a Company in requesting such certificate is to avoid full compliance with these Regulations beyond the period of the initial Interim Certificate as specified in subregulation (1).

(6) For the purposes of sections 15, 16 and 17 the Minister may, prior to accepting an Interim International Ship Security Certificate as a valid Certificate, ensure that the relevant requirements of the ISPS Code have been met.

14. (1) No Antigua and Barbuda ship required to be verified under these Regulations shall proceed, or attempt to proceed to sea unless there is in force a valid International Ship Security Certificate or an Interim International Ship Security Certificate. Prohibition or proceeding to sea without an appropriate certificate.

(2) Where a ship proceeds, or attempts to proceed to sea in contravention of subsection (1) the company and the master commit an offence, punishable on conviction by a fine not exceeding one thousand dollars.

Control and compliance measures

15. (1) (a) For the purpose of these Regulations, every ship to which this Part applies is subject to control when in a port in Antigua and Barbuda by officers duly authorised by the Minister. Control of ships in port.

(b) Such control shall be limited to verifying that there is on board a Certificate, which, if valid, shall be accepted, unless there are clear grounds for believing that the ship is not in compliance with the requirements of the ISPS Code.

(2) When there are such clear grounds, or where no valid certificate is produced when required, the duly authorised officers shall impose any one or more control measures in relation to that ship as provided in subregulation (3). Any such measures imposed must be proportionate.

(3) (a) Such control measures are as follows:

(i) inspection of the ship,

- (ii) delaying the ship,
 - (iii) detention of the ship,
 - (iv) restriction of operations including movement within the port, or
 - (v) expulsion of the ship from port.
- (b) Such control measures may additionally or alternatively include other lesser administrative or corrective measures.

16. (1) The Designated Authority may require that ships intending to enter ports in Antigua and Barbuda provide the following information to duly authorised officers to ensure compliance with these Regulations prior to entry into port with the aim of avoiding the need to impose control measures or steps:

Ships intending to enter a port.

- (a) that the ship possesses a valid Certificate and the name of its issuing authority;
- (b) the security level at which the ship is currently operating;
- (c) the security level at which the ship operated in any previous port where it has conducted a ship/port interface within the timeframe specified in subregulation (3);
- (d) any special or additional security measures that were taken by the ship in any previous port where it has conducted a ship/port interface within the timeframe specified in subregulation (3);
- (e) that the appropriate ship security procedures were maintained during any ship-to-ship activity within the timeframe specified in subregulation (3); or
- (f) other practical security related information (but not details of the ship security plan), taking into account the guidance given by the ISPS Code.

Where requested by the Designated Authority, the ship or the Company shall provide confirmation, acceptable to it, of the information required above.

(2) Every Antigua and Barbuda ship to which these Regulations apply intending to enter the port of another Contracting Government shall provide the information described in subregulation (1) on the request of the officers duly authorised by that Government. The master may decline to provide such information on the understanding that failure to do so may result in denial of entry into port.

(3) The ship shall keep records of the information referred to in subregulation (2) for the last 10 calls at port facilities.

(4) (a) Where, after receipt of the information described in subsection (1), officers duly authorised by the Designated Authority have clear grounds for believing that the ship is not in compliance with the requirements of the ISPS Code, such officers shall attempt to establish communication with and between the ship and its Administration in order to rectify the non-compliance.

(b) Where such communication does not result in rectification, or where such officers have clear grounds otherwise for believing that the ship is not in compliance with the requirements of the ISPS Code, such officers may take steps in relation to that ship as provided in subregulation (5). Any such steps taken must be proportionate, taking into account the guidance given in Part B of the ISPS Code.

(5) Such steps are as follows:

- (a) a requirement for the rectification of the non-compliance;
- (b) a requirement that the ship proceed to a location specified in the territorial sea or internal waters of Antigua and Barbuda;
- (c) inspection of the ship, if the ship is in the territorial sea of Antigua and Barbuda; or
- (d) denial of entry into port.

Prior to initiating any such steps, the Designated Authority shall inform the ship of its intentions. Upon receipt of this

17. (1) In the event:

- (a) of the imposition of a control measure, other than a lesser administrative or corrective measure, referred to in regulation 15 (3); or
- (b) any of the steps referred to in regulation 16 (5) are taken, an officer duly authorised by the Designated Authority shall forthwith inform in writing the Administration specifying which control measures have been imposed or steps taken and the reasons thereof. He shall also notify the recognised security organisation which issued the Certificate relating to the ship concerned and IMO when any such control measures have been imposed or steps taken.

(2) When entry into port is denied or the ship is expelled from a port in Antigua and Barbuda, the Designated Authority shall communicate the appropriate facts to the authorities of the State of the next appropriate ports of call, when known, and any other appropriate coastal States, taking into account any guidelines developed by IMO. Confidentiality and security of such notification shall be ensured.

(3) Denial of entry into port, pursuant to regulation 16 (4) and (5), or expulsion from port, pursuant to regulation 15 (1) to (3), shall only be imposed where the duly authorised officers have clear grounds to believe that the ship poses an immediate threat to the security or safety of persons, or of ships or other property and there are no other appropriate means for removing that threat.

(4) The control of measures referred to in regulation 15 (1) and the steps referred to in regulations 16 (5) shall only be imposed, pursuant to regulations 15 and 16, until the non-compliance giving rise to the control measures or steps has been corrected to the satisfaction of the Designated Authority, taking into account actions proposed by the ship or the Administration, if any.

(5) When control is exercised under regulation 15 or steps taken under regulation 16:

- (a) all possible efforts shall be made to avoid a ship being unduly detained or delayed. If a ship is thereby unduly detained, or delayed, it shall be entitled to

compensation for any loss or damage suffered; and

- (b) necessary access to the ship shall not be prevented for emergency or humanitarian reasons and for security purposes.

18. (1) Port facility operators shall ensure that port facilities shall comply with the relevant requirements of these Regulations and the ISPS Code.

Port facilities
duties of port
facility operation.

(2) (a) In particular the port facility operator shall appoint a suitably qualified port facility security officer, and ensure that he receives appropriate training, as specified in the ISPS Code.

- (b) The port facility operator shall provide the port facility security officer with the resources, assistance and support necessary to enable him to carry out his duties.

(3) The port facility operator shall ensure that port facility personnel having specific security duties have appropriate knowledge and receive appropriate training as specified in the ISPS Code.

(4) The port facility operator shall ensure that other port facility personnel have appropriate knowledge as specified in the ISPS Code.

(5) Any contravention of this section is an offence punishable on summary conviction by a fine of ten thousand dollars.

19. (1) A port facility security officer shall carry out the duties and responsibilities placed on him by these Regulations and Part A of the ISPS Code, in particular those listed in the ISPS Code.

Port facility
security officer.

(2) Any contravention of this regulation is an offence punishable on summary conviction by a fine not exceeding one thousand dollars.

20. (1) To ensure the effective implementation of the port facility security plan, drills shall be carried out at appropriate intervals, taking into account the types of operation of the port facility, port facility personnel changes, the type of ship the port facility is serving and other relevant circumstances, taking into account guidance given in Part B of the ISPS Code.

Drills and
exercises.

(2) The port facility security officer shall ensure the effective coordination and implementation of the port facility security plan by participating in exercises at appropriate intervals, taking into account the guidance given in Part B of the ISPS Code.

(3) Any contravention of subregulation (1) is an offence by the port facility operator and the port facility security officer, punishable on conviction by a fine of one thousand dollars.

(4) Any contravention of subregulation (2) is an offence by the port facility security officer, punishable on conviction by a fine of one thousand dollars.

Enforcement

21. (1) Without prejudice to regulation 16, but subject to the relevant provisions of Part A of the ISPS Code (ship security plans not subject to inspection except in limited circumstances) the Designated Authority may, by notice in writing served on any of the following persons —

Requirement to provide information.

- (a) the owner, charterer, manager or master of any ship which is in, or appears to the Designated Authority to be likely to enter, a port facility,
- (b) a port facility operator,
- (c) any person who carries on operations in a port facility, and
- (d) any person who is permitted to have access to a restricted zone of a port facility for the purposes of the activities of a business carried on by him,

require that person to provide the Designated Authority with such information specified in the notice as the Designated Authority may require in connection with the exercise by the Designated Authority of its functions under these Regulations.

(2) A notice under subregulation (1) shall specify a date before which the information required by the Designated Authority is to be furnished to the Designated Authority.

(3) Any such notice may also require the person on whom it is served, after he has furnished to the Designated Authority the

information required by the notice, to inform the Designated Authority if at any time the information previously furnished to the Designated Authority (including any information furnished in pursuance of a requirement imposed by virtue of this subsection) is rendered inaccurate by any change of circumstances (including the taking of any further measures for purposes of these Regulations or the alteration or discontinuance of any measures already being taken).

(4) In so far as such a notice requires further information to be furnished to the Designated Authority in accordance with subregulation (3), it shall require that information to be furnished to it before the end of such period as is specified in the notice for the purposes of this subsection.

(5) A notice served on a person under subregulation (1) may at any time —

- (a) be revoked by a notice in writing served on him by the Designated Authority, or
- (b) be varied by a further notice under subregulation (1).

(6) The Director may in like manner require the owner, charterer, manager or master of any Antigua and Barbuda ship to provide him with information, and subregulations (1) to (5) shall apply as if references to the Designated Authority were references to the Director.

(7) Any person who —

- (a) without reasonable excuse, fails to comply with a requirement imposed on him by a notice under this regulation, or
- (b) in furnishing any information so required, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular,

commits an offence, punishable on conviction by a fine not exceeding one thousand dollars.

22. (1) An authorised person shall have power, on production (if required) of his credentials, to inspect — Powers of inspection.

- (a) any Antigua and Barbuda ship,
- (b) any part of any port facility, or
- (c) any land outside a port facility which is occupied for the purposes of a business by a person who —
 - (i) carries on (or appears to the authorised person to be about to carry on) harbour operations in a port facility for the purposes of that business, or
 - (ii) is permitted (or appears to the authorised person to be about to be permitted) to have access to a restricted zone of a port facility for the purposes of the activities of that business.

(2) An authorised person inspecting a ship or any part of a port facility or any land outside a port facility under subregulation (1) above shall have power —

- (a) to subject any property found by him on the ship or, as the case may be, to subject that part of the port facility or any property found by him there or on that land, to such tests,
- (b) to take such steps —
 - (i) to ascertain what practices or procedures are being followed in relation to security, or
 - (ii) to test the effectiveness of any practice or procedure relating to security, or
- (c) to require the owner, charterer, manager or master of the ship, the port facility operator or the occupier of the land to furnish to him such information,

as the authorised person may consider necessary for the purpose for which the inspection is carried out.

(3) Subject to subregulation (4), an authorised person, for the purpose of exercising any power conferred on him by subregulation (1) or (2) in relation to a ship, in relation to a port facility or in relation to any land outside a port facility, shall have power —

- (a) for the purpose of inspecting a ship, to go on board it and to take all such steps as are necessary to ensure that it is not moved, or
- (b) for the purpose of inspecting any part of a port facility, to enter any building or works in the port facility or enter upon any land in the port facility, or
- (c) for the purpose of inspecting any land outside a port facility, to enter upon the land and to enter any building or works on the land.

(4) The powers conferred by subregulation (3) shall not include power for an authorised person to use force for the purpose of going on board any ship, entering any building or works or entering upon any land.

(5) Any person who —

- (a) without reasonable excuse, fails to comply with a requirement imposed on him under subregulation (2)(c), or
- (b) in furnishing any information so required, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular,

commits an offence, punishable on conviction by a fine not exceeding one thousand dollars.

23. (1) A person commits an offence, punishable on conviction by a fine not exceeding one thousand dollars if, in answer to a question which —

False statements relating to baggage, cargo etc.

- (a) relates to any baggage, cargo or stores (whether belonging to him or to another) that is or are intended for carriage by sea —
 - (i) by an Antigua and Barbuda ship, or
 - (ii) by any other ship to or from Antigua and Barbuda, and
- (b) is put to him for purposes of these Regulations —
 - (i) by any of the persons mentioned in subregulation (2),

- (ii) by any employee or agent of such a person in his capacity as employee or agent, or
- (iii) by a police officer,

he makes a statement which he knows to be false in a material particular, or recklessly make a statement which is false in a material particular.

(2) The persons referred to in subregulation (1)(b) are —

- (a) a port facility operator,
- (b) the owner, charterer or manager of any ship, and
- (c) any person who —
 - (i) is permitted to have access to a restricted zone of a port facility for the purposes of the activities of a business carried on by him, and
 - (ii) has control in that restricted zone over the baggage, cargo or stores to which the question relates.

(3) In this regulation —

“cargo” includes mail;

“ship” does not include a ship used in naval, customs or police service; and

“stores” means any goods intended for sale or use in a ship, including fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

24. (1) A person commits an offence if —

- (a) for the purpose of, or in connection with, an application made by him or another for the issue of an identity document to which this subsection applies, or
- (b) in connection with the continued holding by him or another of any such document which has already been issued,

False statements in connection with identity documents.

he makes to any of the persons specified in subregulation (3), to any employee or agent of such a person or to a police officer, a statement which he knows to be false in a material particular, or recklessly makes to any of those persons, to any such employee or agent or to a police officer, a statement which is false in a material particular.

(2) Subregulation (1) applies to any identity document which is to be or has been issued by any of the persons specified in subregulation (3) for the purposes of a ship security plan or a port facility security plan.

(3) The persons referred to in subregulation (1) are —

- (a) a port facility operator,
- (b) the owner, charterer or manager of any ship, and
- (c) any person who is permitted to have access to a restricted zone of a port facility for the purposes of the activities of a business carried on by him.

25. (1) A person shall not —

- (a) go, with or without a vehicle or ship, onto or into any part of a restricted zone of a port facility except with the permission of the port facility operator or a person acting on behalf of the port facility operator and in accordance with any conditions subject to which that permission is for the time being granted, or
- (b) remain in any part of such a restricted zone after being requested to leave by the port facility operator or a person acting on behalf of the port facility operator.

Unauthorised
presence in
restricted zone.

(2) Subregulation (1)(a) does not apply unless it is proved that, at the material time, notices stating that the area concerned was a restricted zone were posted so as to be readily seen and read by persons entering the restricted zone.

(3) A person who contravenes subregulation (1) commits an offence, punishable on conviction by a fine not exceeding one thousand dollars.

26. A person who —

- (a) intentionally obstructs an authorised person acting in the exercise of a power conferred on him by or under these Regulations, or
- (b) falsely pretends to be an authorised person,

commits an offence, punishable on conviction by a fine not exceeding one thousand dollars.

Made this 17th day of June, 2004.

Harold Lovell.

*Minister responsible
for Merchant Shipping*

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