



## FALKLAND ISLANDS

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### Maritime (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 2019

(No. 21 OF 2019)

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### **Maritime (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 2019**

*(made: 18 September 2019)*  
*(published: 25 September 2019)*  
*(coming into force: on publication)*

I make these regulations under sections 131, 132, 303, 308 and 308A of the Maritime Ordinance 2017 and on the advice of Executive Council —

#### **PART 1 - GENERAL**

##### **1. Title**

These regulations are the Maritime (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 2019.

##### **2. Commencement**

These regulations come into force on publication in the *Gazette*.

##### **3. Objects of regulations**

These regulations give effect in the law of the Falkland Islands to, and make associated provision for —

- (a) the OPRC Convention; and
- (b) Article 8, Protocol I and Regulation 37 of Annex I of MARPOL.

##### **4. Interpretation**

In these regulations —

“**Annex I of MARPOL**” means MARPOL, Annex I (Regulations for the prevention of pollution by oil);

“**Annex II of MARPOL**” means MARPOL, Annex II (Regulations for the control of pollution by noxious liquid substances in bulk);

“**authority**” has the same meaning as given by section 3 of the Harbours and Ports Ordinance 2017;

“**competent authority**” means —

- (a) in relation to the Falkland Islands, the authority; and
- (b) in relation to any other state, any body designated as such by the state in relation to the relevant function or, if none, the state in question;

“**Falkland Islands contingency plan**” means any plan that may be prepared and maintained by the Governor, setting out arrangements for responding to incidents which cause or may cause marine pollution, with a view to preventing such pollution or reducing or minimising its effects;

“**Falkland Islands controlled waters**” means —

- (a) the area within —
  - (i) Falkland Islands waters; and
  - (ii) the definition of designated areas under sections 2(a) and (b) of the Falkland Islands (Continental Shelf) Proclamation 1991 (No. 1 of 1991); and
- (b) any area designated from time to time by further Proclamation under section 2(c) of Proclamation No. 1 of 1991;

“**Falkland Islands registered ship**” has the same meaning as given by section 2(1) of the Maritime Ordinance 2017;

“**GT**” means gross registered tonnage; and the gross registered tonnage of a ship having alternative gross registered tonnage shall be taken to be the larger of those tonnages;

“**harbour**” means a harbour designated in accordance with section 14 of the Harbours and Ports Ordinance 2017;

“**IMO**” means the International Maritime Organisation;

“**MARPOL**” means the International Convention for the Prevention of Pollution from Ships, 1973;

“**naval port**” has the same meaning as given by section 2 of the Naval Ports Ordinance 1987;

“**offshore installation**” means a fixed or floating platform including a drilling rig, floating production, storage and offloading facility used for the offshore production and storage of oil or noxious liquid substances, and a floating storage unit used for the offshore storage of produced oil;

“**oil**” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products;

“**oil handling facility**” means a facility which presents a risk of an oil pollution incident and includes an oil terminal, pipeline and any other facility handling oil but does not include an offshore installation or its connected infrastructure;

“**oil pollution emergency plan**” means a contingency plan (other than the Falkland Islands contingency plan) which sets out arrangements for responding to oil pollution incidents, with a view to preventing such pollution or reducing or minimising its effects;

“**oil pollution incident**” means an occurrence or series of occurrences having the same origin which results or may result in a discharge of oil and which poses or may pose a threat to the marine environment, or to the coastline or related interests of the Falkland Islands or another state or territory, and which requires emergency action or other immediate response;

“**oil tanker**” has the same meaning as given by regulation 1 of Annex I of MARPOL;

“**operator**” means, in relation to a harbour, port or oil handling facility, a person having responsibility for the operation and management of such harbour, port or facility in the Falkland Islands; and in relation to a naval port, means the Queen’s Harbour Master;

“**OPRC Convention**” means the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990, concluded at London on 30 November 1990;

“**port**” means a port declared in accordance with section 6 of the Harbours and Ports Ordinance 2017;

“**Queen’s Harbour Master**” has the same meaning as given by section 2 of the Naval Ports Ordinance 1987;

“**ship**” means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles and floating craft of any type; and

“**standard reporting requirements**” means the reporting requirements prescribed by the IMO, based on the guidelines and general principles adopted by that organisation from time to time.

## **5. Ambulatory references**

(1) Any reference in these regulations to a specific provision in MARPOL or the OPRC Convention is to be construed as —

- (a) a reference to the provision in that instrument as modified from time to time; and
- (b) if the instrument is replaced by another instrument, a reference to the provision in that other instrument.

(2) For the purposes of sub-regulation (1)(a) —

- (a) MARPOL is modified if omissions, additions or other alterations to the text take effect in accordance with article 16 of that Convention; and

(b) the OPRC Convention is modified if omissions, additions or other alterations to the text take effect in accordance with article 14(2) of that Convention.

(3) A modification to, or replacement of —

(a) MARPOL by virtue of sub-regulation (2)(a) has effect at the time that such modification or replacement comes into force in accordance with Article 16(8) of that Convention; and

(b) the OPRC Convention by virtue of sub-regulation (2)(b) has effect at the time that such modification or replacement comes into force in accordance with Article 14(2)(g) of that Convention.

## **6. Application**

(1) Unless expressly provided otherwise —

(a) Parts 1, 2 and 5 apply to —

(i) a Falkland Islands registered ship wherever it may be; and

(ii) another ship while it is within Falkland Islands controlled waters; and

(b) Parts 1, 3 and 5 apply to —

(i) the operator of a harbour;

(ii) the operator of a port;

(iii) the Queen's Harbour Master in respect of a naval port, where the Governor has given written notice to the Queen's Harbour Master that these regulations apply to that port; and

(iv) the operator of an oil handling facility in the Falkland Islands.

(2) These regulations do not apply to a warship, naval auxiliary or other ship owned or operated by a state and used, for the time being, only on government non-commercial service.

(3) Notice under sub-regulation (1)(b)(iii) may not be given unless the Governor has first consulted with the Queen's Harbour Master on the proposed application of these regulations to the relevant naval port.

## **PART 2 - SHIPS**

### **7. Oil pollution emergency plan: ships**

(1) This regulation applies to —

(a) an oil tanker of 150GT and above; and

(b) a ship (not being an oil tanker) of 400GT and above.

(2) The owner and master of a ship to which this regulation applies must ensure that an approved shipboard oil pollution emergency plan is carried on board the ship.

(3) An approved shipboard oil pollution emergency plan must be prepared in accordance with the IMO guidelines for the development of shipboard oil pollution emergency plans.

(4) The approved shipboard oil pollution emergency plan must include —

(a) the procedure to be followed by the master or other persons having charge of the ship to report an oil pollution incident in accordance with regulations 9 to 13;

(b) the list of persons or authorities to be contacted in the event of an oil pollution incident;

(c) a detailed description of the action to be taken immediately by persons on board to reduce or control the discharge of oil following an oil pollution incident; and

(d) the procedures and point of contact on the ship for co-ordinating shipboard action with national and local authorities in combating the pollution following an oil pollution incident.

(5) In the case of an NLS ship, such a plan may be combined with the shipboard marine pollution emergency plan for noxious liquid substances required under regulation 17 of Annex II of MARPOL.

(6) Where sub-regulation (5) applies, the title of the combined plan must be the “Shipboard Marine Pollution Emergency Plan”.

(7) In this regulation —

“**approved**” means —

(a) in the case of a Falkland Islands registered ship, approved by the authority; and

(b) in any other case, approved by the competent authority of the state in which the ship is registered;

“**IMO guidelines for the development of shipboard oil pollution emergency plans**” means the guidelines for the development of shipboard oil pollution emergency plans adopted by the Marine Environment Protection Committee of the IMO and includes any amendment to those guidelines from time to time which is considered by the authority to be relevant and is specified in a Merchant Shipping Notice;

“**NLS ship**” means a ship of 150 GT and above certified to carry noxious liquid substances in bulk; and

“**noxious liquid substance**” has the meaning given in regulation 1 of Annex II of MARPOL.

## **8. Access to shore-based programmes**

- (1) This regulation applies to an oil tanker of 5,000 tonnes deadweight or above.
- (2) The owner and master of an oil tanker to which this regulation applies must ensure that —
  - (a) the master; and
  - (b) in the event of an oil discharge, the authority,

has prompt access to computerised shore-based damage stability and residual structural strength calculation programmes.

## **9. Reporting of oil pollution events: Falkland Islands registered ships**

- (1) This regulation applies to a Falkland Islands registered ship wherever it may be.
- (2) The master of a ship to which this regulation applies must report without delay and to the fullest extent possible in accordance with sub-regulation (3) and regulations 11 and 12 —
  - (a) an oil pollution incident involving the ship; and
  - (b) an observed oil pollution incident at sea.
- (3) A report under sub-regulation (2) must be made —
  - (a) if the ship is in Falkland Islands controlled waters, to the authority; or
  - (b) if the ship is elsewhere, to the competent authority of the nearest coastal state.

## **10. Reporting of oil pollution events: non-Falkland Islands registered ships**

- (1) This regulation applies to a ship not registered in the Falkland Islands which is in Falkland Islands controlled waters.
- (2) The master of a ship to which this regulation applies must report without delay and to the fullest extent possible to the authority in accordance with regulations 11 and 12 —
  - (a) an oil pollution incident involving the ship; and
  - (b) an observed oil pollution incident at sea.

## **11. Form and content of a report**

- (1) A report under regulation 9 or 10 must be made by the fastest telecommunications channels available with the highest possible priority.
- (2) A report under regulation 9 or 10 or, if there is more than one, the initial report, must —
  - (a) comply with the standard reporting requirements; and
  - (b) contain the following information —

- (i) the identity of the ship;
- (ii) the position of the ship;
- (iii) the last port from which the ship departed;
- (iv) the next port of call for the ship;
- (v) the time, type and location of the oil pollution incident;
- (vi) the quantity and type of oil involved;
- (vii) the name of a body or person from whom information regarding the oil may be obtained, together with the necessary information to enable that person or body (as the case may be) to be contacted;
- (viii) the current sea and weather conditions in the vicinity of the ship; and
- (ix) if relevant, details of assistance and salvage measures.

## **12. Supplementary reports**

Any person required under regulation 9 or 10 to make a report must —

- (a) make such a supplementary report, or reports, as may be necessary or appropriate in the circumstances to supplement the information contained in the initial report; and
- (b) comply as fully as possible with any request for additional information made by, or on behalf of, a competent authority or a state whose interests may be affected by the incident.

## **13. Duties of a shipowner**

(1) When the owner of a ship is informed by the master of that ship of an oil pollution incident, the owner must —

- (a) inform the competent authority immediately of the event; and
- (b) give such assistance as may be reasonably required by the competent authority.

(2) In the event of a report from the master of such a ship being incomplete or unobtainable, the owner of the ship must, to the fullest extent practicable, make or complete the report required by regulation 9 or 10.

(3) In this regulation, “**owner**” includes the owner, charterer, manager or operator of the ship or that person’s agent.

## PART 3 - HARBOURS, PORTS AND OIL HANDLING FACILITIES

### 14. Oil pollution emergency plan: harbours, ports and oil handling facilities

(1) Subject to sub-regulation (10), a person to whom this Part applies pursuant to regulation 6(1)(b) must prepare and maintain an oil pollution emergency plan in accordance with this regulation.

(2) A separate plan must be created and maintained for each harbour, port and oil handling facility in the Falkland Islands except that, where the authority agrees, there may be joint plans in respect of harbours, ports and oil handling facilities within an area approved by the authority.

(3) In preparing an oil pollution emergency plan, an operator must take into account any guidance issued by the authority.

(4) Within 15 months of the coming into force of these regulations, an operator to whom this Part applies must submit an oil pollution emergency plan relating to the harbour, port or oil handling facility (as the case may be) for which it is responsible to the authority for approval.

(5) Where, after the coming into force of these regulations, a harbour, port or oil handling facility comes into being, the operator of the harbour, port or oil handling facility (as the case may be) must submit an oil pollution emergency plan to the authority for approval at least two months before the harbour, port or oil handling facility (as the case may be) will commence operation.

(6) A person required to submit an oil pollution emergency plan under this regulation must review its oil pollution emergency plan no later than 5 years after submission of the plan in accordance with sub-regulation (4) or (5) above (as the case may be), and submit a new oil pollution emergency plan within that period.

(7) Where any major change occurs which affects or could affect the validity or effectiveness of an oil pollution emergency plan to a material extent, then the operator must submit a new plan, or amendments to the existing plan, to the authority for approval within 3 months of such change becoming known to the operator.

(8) Where the authority considers that any plan or amendment submitted under sub-regulations (4) to (7) above is:

- (a) not compatible with the Falkland Islands contingency plan for the time being in force; or
- (b) not appropriate for dealing with oil pollution incidents which may occur,

the authority may, after consultation with the operator, direct that the plan be altered accordingly.

(9) An operator must implement its oil pollution emergency plan approved or altered under this regulation in the event of an oil pollution incident.

(10) The authority may, where it considers it appropriate to do so, exempt a harbour, port or oil handling facility from the requirements of this regulation.

### **15. Reporting of observed incident: harbours, ports or oil handling facilities**

(1) An operator who observes or is made aware of any event involving a discharge of, or probable discharge of, oil or the presence of oil in the sea, shall without delay report the event, probable event or the presence of oil (as the case may be) to the authority.

(2) A report under this regulation must —

- (a) so far as appropriate comply with the standard reporting requirements; and
- (b) be made by the fastest telecommunications channels available with the highest possible priority.

## **PART 4 - FUNCTIONS OF THE GOVERNOR AND THE AUTHORITY**

### **16. Systems for preparedness and response**

The Governor must make arrangements for enabling a prompt and effective response to an oil pollution incident in accordance with article 6 of the OPRC Convention.

### **17. Action on receipt of an oil pollution report**

(1) Where a report is received under regulations 9, 10, 12 or 15, the authority must —

- (a) assess the event to determine whether it is an oil pollution incident;
- (b) assess the nature, extent and possible consequences of the oil pollution incident; and
- (c) promptly report to the Governor any oil pollution incident, details of the authority's assessment of it and any action that the authority has taken, or intends to take, to deal with that incident, and provide such further information in respect of the same as may be appropriate from time to time.

(2) Where an oil pollution incident has been reported to the Governor under sub-regulation (1)(c), the Governor must, without delay, inform all states whose interests are affected or likely to be affected by the incident and, where the severity of the incident so justifies, the IMO, together with —

- (a) details of the authority's assessments of it and any action that the authority has taken, or intends to take, to deal with the incident; and
- (b) further information as appropriate, until the action taken to respond to the incident has been concluded or until joint action has been decided by such states.

## PART 5 - INSPECTION AND OFFENCES

### 18. Power to inspect

(1) A ship to which Part 2 applies pursuant to regulation 6(1)(a) may be subject, in any Falkland Islands' harbour, port or offshore installation, to inspections by persons appointed by the Governor for the purpose of verifying that an approved shipboard oil pollution emergency plan as required by these regulations is carried on the ship.

(2) For the purposes of this regulation, any person appointed as an inspector has the powers of an inspector set out in sections 239 to 242 of the Maritime Ordinance 2017.

### 19. Offences

(1) A person who fails to —

- (a) ensure that an approved shipboard oil pollution emergency plan is carried in accordance with regulation 7(2); or
- (b) grant access to computerised shore-based damage stability and residual structural strength calculation programmes in accordance with regulation 8(2),

commits an offence and is liable on conviction to a fine not exceeding level 6 on the scale set out in Schedule 7 to the Maritime Ordinance 2017.

(2) An operator of an oil handling facility who —

- (a) fails to submit or re-submit an oil pollution emergency plan in accordance with regulations 14(4) to (7);
- (b) does not maintain an oil pollution emergency plan, as approved (including any alterations directed by the authority) under regulations 14(1), (2) or (8); or
- (c) fails to implement its oil pollution emergency plan in accordance with regulation 14(9),

commits an offence and is liable on conviction to a fine not exceeding level 6 on the scale set out in Schedule 7 to the Maritime Ordinance 2017.

(3) A person required to make a report under regulation 9 or 10 who fails to comply with that requirement in all respects commits an offence and is liable on conviction to a fine not exceeding level 6 on the scale set out in Schedule 7 to the Maritime Ordinance 2017.

(4) An operator required to make a report under regulation 15 who fails to comply with that requirement in all respects commits an offence and is liable on conviction to a fine not exceeding level 6 on the scale set out in Schedule 7 to the Maritime Ordinance 2017.

(5) In any proceedings for an offence under these regulations, it is a defence for the person charged to show that that person took all reasonable precautions to ensure compliance with the provision concerned.