

Exemptions

The issuing of exemptions is a task that usually lies with marine administrations, although it can be, and sometimes is, delegated to an RO. It is also a topic that causes some confusion and some issues for administrations. Owners regularly tend to call up for “an exemption” as soon as they need a problem fixed without realising the limitations that apply to exemptions.

The issuing of exemptions is a traditional task for administrations and one that is faced on a regular basis. The ship management business is used to the idea that an exemption is what they need and usually the first thought for an owner or manager when something breaks down on board and spares are not immediately available is to request an exemption. But, although common, this is often not the correct approach.

When an exemption is to be issued the work flow usually follows a logic that looks like:

1. find a legal power to exempt,
2. assess the risks of exempting,
3. Determine some mitigating factors,
4. Issue an exemption certificate.

The problem with exemptions immediately comes with the first point, finding a legal power to do it. The SOLAS Convention is actually very precise. Chapter 1 regulation 4 is titled exemptions and is often used, and exemptions issued quoting Regulation 4 are still regularly seen. But if that regulation is examined closely it is clear that it only covers two use cases - a vessel that is not normally engaged on international voyages but is required to make a single one in exceptional circumstances, and a ship that embodies features of a novel kind. Such a novel vessel can be exempted from the main parts of SOLAS but not from Chapter V - navigational equipment. So, regulation 4 is actually of little help in dealing with exemptions in the normal day to day business.

There are small numbers of vessels making one-off international voyages and, in reality, very few vessels embody features of a novel kind justifying an exemption. The “novel kind” exemptions are most often seen in things like the positioning of stern lights on offshore supply vessels and similar situations. The key here is that the reason is something that is unlikely to change through the life of the ship.

Each of the other Chapters in the SOLAS convention starts with a provision for exemptions and they are all broadly similar. Chapter III, for example, says that an administration may exempt ships from the requirements for that Chapter if it considers that the sheltered nature of the voyage makes the requirements unnecessary for ships that do not proceed more than 20 miles from land. There is no mention of exemptions for ships venturing further. Certainly, not for trans-ocean voyages. Again the wording suggests that the basis for exemption is more or less permanent, not a temporary situation.

So how should an administration assist an owner whose rescue boat engine has failed and who cannot obtain spares for a week or so and who is facing a port state control officer who refuses to allow the ship to sail unless, as he says “You get an exemption from your flag state”.

The vessel’s next voyage will take her more than 20 miles from land, and given that the Convention requires a rescue boat, and the vessel used to have a working one, the administration clearly does not consider the provision unreasonable and could not make that argument. In other words, regulation 2 of Chapter III is of no assistance, neither is regulation 4 of Chapter 1, the vessel does not embody features of a novel type. In fact, there is no assistance in SOLAS for this situation, yet it occurs regularly. SOLAS simply does not allow for an exemption in this situation.

Chapter V (Safety of Navigation) is slightly different and allows a slightly wider scope. It allows that an administration may grant individual exemptions in cases where the length of the voyage, distance from shore, absence of navigational hazards, and other conditions are such that the full application of the Chapter is unreasonable. But it still limits the degree to which exemptions can be issued.

In practice, the port state control officer often expects an “exemption” or some other document that he agrees with in order to allow the ship to sail and the owner expects an “exemption” so that he can meet his commercial obligations while he gets the necessary spares. This type of situation is commonplace and yet the convention provides no direct answers to dealing with it.

A look at the IMO’s SL.14 Circulars shows that short term and single voyage exemptions issued under the exemption powers in the various Chapters are quite common. The Circulars also include annual reports of exemptions issued under Chapter 1 Regulation 4(b) for large numbers of ships with the exemptions being for periods ranging from one to several months. It is hard to see that all these ships with short term exemptions actually embody features of a novel kind. The Circulars also show some states reporting the issue of exemptions for extending the service period of life rafts. Ch. III regulation 20.8 allows administrations to extend the period up to 5 months but does not mention an exemption and the general exemption power in Chapter III only applies to voyages not more than 20 miles from land.

Clearly administrations are adopting varying strategies for dealing with these reasonable short term unexpected requirements and the number of lists in the SL.14 circulars suggests that many are issuing SOLAS exemptions, often using the Ch. 1 regulation 4 powers. Yet as already argued, this power is not really correct for this purpose.

In some countries, the national laws that give effect to SOLAS and other conventions also contain a power to exempt on such conditions as the Government sees fit and this power can be used. But when the power does not exist in SOLAS it is questionable if the national power is actually legal, given that the national laws are to give effect to the convention, not to create lesser requirements. and this approach is less frequently seen now.

Is there another answer? Clearly owners and managers need some way of continuing to trade when there has been a minor fault that cannot be repaired immediately, but which, alone, is not necessarily safety-threatening. Without some formal recognition of the fact, there is a risk of port state intervention, which, if the ship is allowed to proceed by port state control will only be allowed to do so with some form of consent from the flag state.

One approach that is adopted by a number of administrations is to formally acknowledge the notification of the problem, and formally agree to the ship proceeding subject to sensible conditions predicated to mitigate the risks. This sort of approach is actually implied in the convention. Regulation 20 of Chapter III says the administration may “extend the service interval for liferafts”.

It can't exempt a liferaft from servicing, but it can extend the interval. The value of this approach is that it avoids the issue of SOLAS exemptions that may not strictly be allowed in the convention and it provides a formal type document that can be readily accepted.

A typical example is a permission letter that states:

1. That the administration has been informed of the fault. This satisfies Chapter 1 regulation 11 on maintenance of conditions after survey, and
2. That the administration has given consideration to the circumstances and the risks associated with the defect. This is a risk management approach aligned with current approaches in the ISM Code and in the ISO:9001 standard, and others, and
3. That the administration agrees that the ship may sail for a short period subject to a set of conditions designed to mitigate any risks pending rectification of the defect.

Such a permission letter satisfies the administration's responsibility to be informed and to make decisions on safety and it allows a ship to continue trading in cases where there is a minor fault. This approach also fits well with the ISO:9001/2015 standard in terms of risk assessment.

Requests for permissions of this nature tend to arrive regularly in most administrations and it is a part of the administration's job to assess them and deal with them. But the data inherent in why they are issued, and what items of equipment are tending to fail for example, is extremely useful. As is the link between numbers of requests and particular ISM managers, and particular ships. An analysis of this data can provide valuable insights into the performance of particular equipment, the levels of maintenance being provided by particular ISM managers and other related issues.

This type of analysis is only available with a comprehensive integrated electronic system. But once such a system is in place, and populated with data it can pay real dividends in terms of demonstrating to an auditor that the III Code is being fully complied with, and to an ISO auditor that the correct sort of statistics and data are being used to inform management review meetings.

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