

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (TRAINING AND CERTIFICATION AND
MINIMUM STANDARDS OF SAFETY COMMUNICATIONS) (AMENDMENT)
REGULATIONS

2006 No. 89

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 The Merchant Shipping (Training and Certification and Minimum Standards of Safety Communications) (Amendment) Regulations 2005 (the “Regulations”) amend the Merchant Shipping (Training and Certification) Regulations 1997 (S.I. 1997/348) (the “Training and Certification Regulations”) and the Merchant Shipping (Minimum Standards of Safety Communications) Regulations 1997 (S.I. 1997/529) (the “Minimum Standards of Safety Communications Regulations”).
 - 2.2 The amendments to the Training and Certification Regulations make it a condition of recognition by the Secretary of State of certificates of competency issued to seafarers (“certificates”) issued by third countries that those certificates are recognised by the Commission. Such third countries must be a party to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978, as amended in 1995 (the “STCW Convention”). The final decision on whether to recognise certificates by a third country will remain with the Secretary of State.
 - 2.3 The Regulations permit the holder of a valid certificate issued by a Party, other than an EEA state, to the STCW Convention to serve in an appropriate capacity for a maximum period of 3 months provided that person has made an application for recognition of his certificates to the Secretary of State.
 - 2.3 The amendments to the Minimum Standards of Communications Regulations make it the duty of the master and the company operating the ship to ensure that English is used as the language of communication in ship to ship and ship to shore communications and in communications with the pilot, except where those directly involved in the communication speak a common language other than English.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.

4. Legislative Background

- 4.1 The Regulations are made under sections 47(1), (3) and (4) and 85(1), (3) and (5) of the Merchant Shipping Act 1995.
- 4.2 The Regulations give effect to Council Directive 2003/103/EC (the “Directive”) amending Directive 2001/25/EC on the minimum level of training for seafarers.
- 4.3 The Regulations amend the Training and Certification and the Minimum Standards of Safety Communications Regulations.
- 4.4 A transposition note is annexed to this Explanatory Memorandum.
- 4.5 The date for implementing the Directive was 14 May 2005. In view of this, and as the primary change introduced by the regulations affects an internal procedure only, the consultation period was shortened from the normal twelve weeks to eight weeks. No requests were received for a general extension of the consultation period and the MCA only received one response after the consultation period finished on 14 October 2005 (on 21 November 2005). That response was fully considered.

5. Extent

- 5.1 The Training and Certification Regulations apply to masters and seamen employed in sea-going ships registered in the United Kingdom, except for fishing vessels and pleasure craft.
- 5.2 The Minimum Standards of Safety Communications Regulations apply to United Kingdom ships, Government ships, hovercraft registered in the United Kingdom and other passenger ships, and seagoing hovercraft carrying more than 12 passengers, which start or finish a voyage in the United Kingdom. They do not apply to warships, fishing vessels or pleasure vessels.
- 5.3 The Regulations do not alter the extent of either the Training and Certification Regulations or the Minimum Standards of Safety Communications Regulations.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The Regulations give effect to Council Directive 2003/103/EC which amends Directive 2001/25/EC on the minimum level of training for seafarers to simplify the monitoring and reporting obligations imposed on Member States when recognition of certificates of competency issued by non-European countries is being considered, and allows for the Commission (assisted by the European Maritime Safety Agency) to undertake the assessment role on behalf of the whole Community.
- 7.2 Up to now Member States have carried out their own assessments of third countries but the amendment will mean that:
- Member States will submit requests to the Commission for recognition of the certificates issued by third countries;
 - the Commission, assisted by the European Maritime Safety Agency, will carry out a full evaluation of the third country's maritime training and certification systems;
 - the Commission will decide whether recognition is appropriate within 3 months of the Member State's request.
- 7.3 Member States are not required to automatically recognise certificates from a third country which has successfully undergone the assessment process, but if the Commission recommends recognition of a third country's certificates, recognition of that third country would then be permissible for any Member State for 5 years. Member States wishing to recognise certificates from that third country will be able to do so without further recourse to the Commission. A Member State or the Commission may also instigate a process whereby recognition may be removed from third countries whose compliance with STCW deteriorates during the 5-year period.
- 7.4 The Directive also requires the use of English for safety communications between a ship and the land-based authorities, unless those directly involved both share a common language which is not English (in compliance with the Safety of Life at Sea Convention Chapter V Reg. 14) (Article 17 (e)).
- 7.5 In addition the regulations permit the holder of a valid certificate issued by a Party, other than an EEA state, to the STCW Convention to serve in an appropriate capacity for a maximum period of 3 months provided that person has made an application for the recognition of his certificate.

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

Roger Towner at the Maritime and Coastguard Agency Tel: 023 8032 9238 or e-mail: roger.towner@mcga.gov.uk can answer any queries regarding the instrument.

The Department for Transport

18 January 2006

REGULATORY IMPACT ASSESSMENT

1. TITLE OF PROPOSAL

The Merchant Shipping (Training and Certification and Minimum Standards of Communications) (Amendment) Regulations 2005 (the “Regulations”) implementing Directive 2003/103/EC of the European Parliament and of the Council of 17 November 2003 (amending Directive 2001/25/EC on the Minimum Level of Training for Seafarers)

2. PURPOSE AND INTENDED EFFECT

i) Objective

The Regulations give effect to Council Directive 2003/103/EC (O.J. L326, 13.12.2003, p.28) amending Directive 2001/25/EC (O.J. L136 18.05.2001, p.17) as amended by Directive 2002/84/EC (O.J. L324, 29.11.2002, p.53) on the minimum level of training for seafarers.

ii) Background

Directive 2003/103/EC contains two distinct provisions. First, it amends Directive 2001/25/EC to modify the procedure under which Member States may recognise certificates of competency issued by non-European Economic Area countries (“third countries”) who are parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978, as amended in 1995 (the “STCW Convention”) and allows for the Commission (assisted by the European Maritime Safety Agency) to undertake the assessment role on behalf of the whole Community. In practice this will mean that:

- Member States will submit requests to the Commission for recognition of the certificates issued by third countries;
- the Commission, assisted by the European Maritime Safety Agency, will carry out a full evaluation of the third country’s maritime training and certification systems;
- the Commission will decide whether recognition is appropriate within 3 months of the Member State’s request.

Member States are not required to automatically recognise certificates from a third country which has successfully undergone the assessment process, but if the Commission recommends recognition of a third country’s certificates, recognition of that third country would then be possible throughout the EEA for 5 years and Member States wishing to recognise certificates from that third country may do so without further submission to the Commission (Article 18(3)(d)).

A Member State or the Commission may instigate a process whereby recognition may be removed from third countries whose compliance with STCW deteriorates during the 5-year period (Article 18a (1) and (2)).

The second provision in the Directive is a requirement to use English for safety communications between a ship and the shore-based authorities, except where those directly involved both share a common language which is not English (the “language requirements”) (in compliance with the Safety of Life at Sea Convention (“SOLAS”) Chapter V Reg. 14) (Article 17 (e)).

In addition the Directive requires that certificates of competency and any corresponding endorsements should bear an English translation in accordance with STCW (Article 5 (3)).

iii) Rationale for government intervention

An amendment to regulation 5 of the Merchant Shipping (Training and Certification) Regulations 1997 (SI 1997 No.348) is necessary to make the requirements for recognition of third country certificates of competency consistent with the requirements in the amending Directive. Specifically it is necessary to make it a requirement that the Commission has verified that the third country concerned meets all of the requirements of STCW and that appropriate measures have been taken to prevent fraud.

An amendment to regulation 5 of the Merchant Shipping (Minimum Standards of Safety Communications) Regulations 1997 (SI No. 529) is needed to implement the language requirement.

3. CONSULTATION

i) Within Government

The Devolved Administrations were included in the consultation.

ii) Public consultation

Shipping industry groups representing ship operators and managers and MPs with an interest in maritime issues were included in the consultation.

4. OPTIONS

The alternatives are:

- Introduce the above amendments to regulations: the Department's view is that only by implementing the Directives in regulations will the UK achieve implementation to the satisfaction of the Commission.
- Do nothing: since the UK's current regulations do not reflect the new procedure contained in the Directive the UK Government would be open to infraction proceedings by the Commission.

5. COSTS AND BENEFITS

i) Sectors and Groups Affected

The businesses affected will be UK ship operators and managers operating ships which are registered in the UK and which are certificated for seagoing service. This includes all sectors of merchant shipping in which seafarers are employed.

ii) Benefits

The proposal is intended to simplify the monitoring and reporting obligations imposed on Member States, to increase the reliability of the system of recognition and to ensure compliance with the STCW Convention. The other measures (language requirements for, respectively, certificates and endorsements and bridge-to-shore safety communications) bring the relevant legislation into line with international requirements but do not introduce additional burdens.

iii) Costs

a. Compliance costs

There are no additional compliance costs for industry or seafarers.

b. Other costs

The proposal modifies an existing procedure and involves no new costs. There is an effect on international competitiveness in that the Regulations will implement a Directive which all EU Member States must bring into force in respect of the vessels on their registers.

c. Costs for a typical business

The proposal involves no cost to business since it merely makes an internal change to an existing procedure.

6. SMALL FIRMS IMPACT TEST

The proposal involves no cost to small businesses since it merely makes an internal change to an existing procedure.

7. COMPETITION ASSESSMENT

A Competition Filter has been completed. We consider that there will not be a negative competition impact on business for the following reasons:

- In the market affected by the new Regulations the largest 3 firms together do not have at least 50% market share;
- The Regulations would not create any additional costs and some firms are not therefore affected substantially more than others;
- The Regulations would not likely to affect the market structure;
- The Regulations would not lead to higher set-up costs for new or potential firms that existing firms do not have to meet;
- The Regulations would not lead to higher ongoing costs for new or potential firms that existing firms do not have to meet;
- The market is not characterised by rapid technological change;
- The Regulations would not restrict the ability of firms to choose the price, quality, range or location of their products.

8. ENFORCEMENT, SANCTIONS AND MONITORING

Compliance with the Regulations will involve the Maritime and Coastguard Agency making a procedural change when recognition action is required in order to comply with the new method of assessment which will be common to all Member States. No additional cost for MCA is envisaged as a result of this.

Compliance with the Regulations' other measures (language requirements for, respectively, certificates and endorsements and bridge-to-shore safety communications) will be considered as part of the overall inspection regime for both UK and non-UK ships. No additional cost for MCA is envisaged as a result of inspection under these regulations.

The Merchant Shipping (Minimum Standards of Safety Communication Regulations) 1997 provide that any contravention of its relevant provisions shall be an offence, punishable on summary conviction by a fine not exceeding the

statutory maximum or on indictment by imprisonment for not more than six months, or a fine, or both.

9. IMPLEMENTATION AND DELIVERY PLAN

The Regulations introduce an internal change to an existing procedure and its implementation will have no impact on industry. To comply with the Regulations the Maritime and Coastguard Agency will in future follow the revised procedure whenever recognition action is required. The procedure will be common to all Member States. No additional resource requirements are envisaged for the MCA as a result of this change.

The Regulations' other measures (language requirements for, respectively, certificates and endorsements and ship-to-shore safety communications) formalise existing practices.

10. POST-IMPLEMENTATION REVIEW

The measures contained in the Directive which are implemented by means of the Regulations will be monitored by the European Commission on an ongoing basis and by the Maritime and Coastguard Agency.

11. SUMMARY AND RECOMMENDATION

The courses of action open to us are:

- introduce the above amendments to regulations: the Department's view is that only by implementing the Directives in regulations will the UK achieve implementation to the satisfaction of the Commission; or,
- do nothing: since the UK's current regulations do not reflect the new procedure contained in the Directive the UK Government would be open to infraction proceedings by the Commission.

The measure is intended to simplify the monitoring and reporting obligations imposed on Member States, to increase the reliability of the system of recognition and to ensure compliance with the STCW Convention. The other measures (language requirements for, respectively, certificates and endorsements and bridge-to-shore safety communications) bring the relevant legislation into line with international requirements but do not introduce additional burdens.

There are no additional compliance costs for industry or seafarers.

The measure modifies an existing procedure and involves no new administrative costs.

Summary Costs and Benefits Table

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: 1. economic, environmental, social 2. policy and administrative
1	<p>By introducing the amendments to regulations the UK achieves implementation of the Directive to the satisfaction of the Commission</p> <p>The amendment will simplify the monitoring and reporting obligations imposed on Member States, increase the reliability of the system of recognition and ensure compliance with the STCW Convention.</p> <p>The other measures (language requirements for, respectively, certificates and endorsements and bridge-to-shore safety communications) will bring the relevant legislation into line with international requirements but do not introduce additional burdens.</p>	<p>1. There are no additional compliance costs for industry or seafarers.</p> <p>2. The measure modifies an existing procedure and involves no new administrative costs.</p>
2	<p>If we do nothing the UK's regulations will not reflect the new procedure contained in the Directive and the UK Government would be open to infraction proceedings by the Commission.</p>	<p>1. There would be no additional compliance costs for industry or seafarers.</p> <p>2. The UK Government would be open to infraction proceedings</p>

		by the Commission
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12. DECLARATION AND PUBLICATION

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the Minister of State for Transport

.....S J Ladyman.....

Date.....18 January 2006.....

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Transposition Note for Directive 2003/103/EC amending Directive 2001/25/EC as amended by Directive 2002/84/EC on the minimum level of training for seafarers, transposed by the Merchant Shipping (Training and Certification and Minimum Standards of Communications)(Amendment) Regulations 2006

These regulations do what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Article	Objective	Implementation	Responsibility
1(1)	To ensure that certificates and endorsements are in the format prescribed by the STCW Convention	Implemented by administrative action	The Secretary of State
1(2)	To ensure that there are adequate means of communication between ship and shore-based authorities.	Merchant Shipping (Training and Certification and Minimum Standards of Communications) (Amendment) Regulations 2006 regulation 6 inserts amended regulation 5(1)(b) and (c) into the Minimum Standards of Safety Communications Regulations 1997.	The Secretary of State by amendment to the Minimum Standards of Safety Communications Regulations 1997.
1(3)	<p>Sets out the procedure to be followed when Member States wish to recognise Certificates of Competency issued by non-Member States (“third Countries”), who must be parties to the STCW Convention¹.</p> <p>A Member State wishing to recognise a certificate issued by a third country must submit a request to the Commission.</p> <p>The Commission will take a decision on whether or not a third country’s certificates should be recognised. A member State may only recognise a certificate if:</p> <ul style="list-style-type: none"> • The Commission decides to recognise that third country’s certificates; • No decision is taken by the Commission on recognition within 3 months; or • certificates issued by the third country were recognised by a member State of the EEA as at 14 June 2005 and such recognition has not been withdrawn. 	Merchant Shipping (Training and Certification and Minimum Standards of Communications) (Amendment) Regulations 2006 regulation 4 inserts regulation 5A in the Training and Certification Regulations 1997	The Secretary of State by amendment to the Training and Certification Regulations 1997.
1(4)	Sets out the procedures to be followed when Member States or	Implemented by administrative action.	The Secretary of State by

¹ International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 - as amended in 1995

