

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Maritime and Coastguard Agency</b>	<b>Title:</b> <b>Impact Assessment of transposition of Directive 2005/45/EC</b>	
<b>Stage:</b> Consultation	<b>Version:</b> 1	<b>Date:</b> 11 June 2008
<b>Related Publications:</b>		

### Available to view or download at:

<http://www.mcga.gov.uk/c4mca/mcga-guidance-regulation/mcga-consultations.ht>

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### What is the problem under consideration? Why is government intervention necessary?

Amendments to regulations 5 and 5A of the Merchant Shipping (Training and Certification) Regulations 1997 (SI 1997 No.348) are necessary to make the recognition of Member States' certificates of competency consistent with the requirements in Directive 2005/45/EC. Specifically it is necessary to make such recognition of relevant certificates automatic. The deletion of regulation 21 is also necessary to remove the link to Directives 89/48/EEC and 92/51/EEC.

### What are the policy objectives and the intended effects?

The provisions in Directive 2005/45/EC are intended to foster the professional mobility of seafarers within the European Union by facilitating the mutual recognition of certificates of competency, to ensure effective communication by specifying language requirements and to combat fraudulent practices associated with certificates of competency by requiring Member States to take and enforce measures to prevent and penalise such practices.

### What policy options have been considered? Please justify any preferred option.

Introduce the above amendments to regulations: advice is that only by implementing the Directive in regulations will the UK achieve implementation in accordance with Community Law, otherwise the UK Government would be open to infraction proceedings by the Commission, and any seafarers who did suffer loss as a result of the UK's failure to implement the Directive could claim damages from the Government.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

An evaluation will be made after 3 years of the legislation coming into force.

### **Ministerial Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

.....Date:

## Summary: Analysis & Evidence

<b>Policy Option: 1</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups' The proposal modifies an existing procedure and involves no significant 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. Fraud prevention is already integral to the UK system.		
	<b>One-off</b> (Transition) <span style="float: right;"><b>Yrs</b></span>			
	<b>£ 0</b>			
	<b>Average Annual Cost</b> (excluding one-off)			
	<b>£ 0</b>	<b>Total Cost (PV)</b>	<b>£ 0</b>	
Other <b>key non-monetised costs</b> by 'main affected groups'				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups' The measures do not introduce additional burdens. They formalize existing practices and ensure consistency of approach across all Member States.		
	<b>One-off</b> <span style="float: right;"><b>Yrs</b></span>			
	<b>£ 0</b>			
	<b>Average Annual Benefit</b> (excluding one-off)			
	<b>£ 0</b>	<b>Total Benefit (PV)</b>	<b>£ 0</b>	
Other <b>key non-monetised benefits</b> by 'main affected groups'				

**Key Assumptions/Sensitivities/Risks** The new provisions formalize existing practices. Certificates of Equivalent Competency issued against EU Member States' certificates of competency will continue to be issued as now. No changes are foreseen as a result of the formalization of the language requirement. Anti-fraud measures are already standard practice.

Price Base Year	Time Period Years	<b>Net Benefit Range (NPV)</b> <b>£ 0</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 0</b>
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What is the geographic coverage of the policy/option?	GB			
On what date will the policy be implemented?	30 September 2008			
Which organisation(s) will enforce the policy?	MCA			
What is the total annual cost of enforcement for these organisations?	£ N/A			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro N/A	Small N/A	Medium N/A	Large N/A
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
Increase of    £ 0	Decrease of    £ 0	<b>Net Impact    £ 0</b>

Key:    Annual costs and benefits: Constant Prices    (Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### **Title of proposal**

The Merchant Shipping (Training and Certification) (Amendment) Regulations 2008 (the "Regulations") implementing Directive 2005/45/EC of the European Parliament and of the Council of 7 September 2005 (amending Directive 2001/25/EC on the Minimum Level of Training for Seafarers)

### **Purpose and intended objectives of the measures**

The provisions in Directive 2005/45/EC are intended to foster the professional mobility of seafarers within the European Union by facilitating the mutual recognition of certificates of competency, to ensure effective communication (as well as facilitate the free movement of seafarers within the Community) by specifying language requirements and to combat fraudulent practices associated with certificates of competency by requiring Member States to take and enforce measures to prevent and penalise such practices. The UK already recognises 22 of the other Member States' certificates, applies language requirements and is proactive in fraud prevention.

### **Objective**

The Regulations give effect to Council Directive 2005/45/EC (O.J. L255, 30.9.2005, p.160) 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) and Directive 2003/103/EC (O.J. L326, 13.12.2003, p.28) on the minimum level of training for seafarers.

### **Background**

Directive 2005/45/EC contains the following provisions.

The automatic mutual recognition of seafarers' certificates issued by Member States. Directive 2001/25/EC already allows for the mutual recognition among Member States of certificates held by seafarers, whether or not nationals of a Member State, but is subject to Directives 89/48/EEC (O.J. L19, 24.1.1989, p.16) and 92/51/EEC (O.J. L209, 24.7.1992, p.25) which set up, respectively, a first and second general system for the recognition of professional education and training. However these Directives do not provide for the automatic recognition of formal qualifications of seafarers. Directive 2005/45/EC therefore deletes Article 18 (1) and (2) of Directive 2001/25/EEC which has the effect of removing the link to Directives 89/48/EEC and 92/51/EEC and thus any bar to automatic mutual recognition of certificates issued by Member States.

Member States should take and enforce appropriate measures to prevent fraud and other unlawful practices involving the certification process or certificates issued and endorsed by their competent authorities, and provides for penalties that are effective, proportionate and dissuasive.

The introduction to Community law of the Seafarers' Training, Certification and Watchkeeping Code (STCW) requirement that seafarers possess adequate language proficiency so as to enable them to perform their specific duties on a vessel flying the flag of a host Member State.

A right of appeal for seafarers whose applications for Certificates of Competency are not approved within 28 days of being lodged with the Secretary of State.

The requirement for a management-level applicant for a certificate of equivalent competency to possess knowledge of appropriate United Kingdom maritime legislation as is relevant to such management-level functions.

Finally, it places a responsibility on the Commission, assisted by the European Maritime Safety Agency, to verify at least every 5 years that Member States comply with the minimum requirements laid down by Directive 2001/25/EC (which incorporates into Community law the international training, certification and watchkeeping standards laid down by the STCW Convention) and to submit an evaluation report to the European Parliament no later than 20 October 2010.

### **Rationale for government intervention**

Only by implementing the Directive in regulations will the UK achieve implementation in accordance with Community Law and avoid action being taken against the UK by the Commission or individual seafarers who suffer loss as a consequence of the UK not implementing the Directive.

The following provisions in the proposed Merchant Shipping (Training and Certification) (Amendment) Regulations 2008 therefore give effect to the requirements of Directive 2005/45/EC:

regulation 2(2)(a) amends regulation 5(1) to provide for the automatic recognition of seafarers' certificates issued by Member States of the European Economic Area and regulation 2(7) removes the link to Directives 89/48/EEC by deleting regulation 21;

regulation 2(2)(d) provides that a management-level applicant for a certificate of equivalent competency shall be required to possess knowledge of appropriate United Kingdom maritime legislation as is relevant to such management level functions and incorporates the language proficiency requirements of the STCW code into the Regulations;

regulation 2(4) appoints the MCA as the competent national authority to detect and combat fraud for the purposes of Council Directive 2005/45/EC. It also designates the MCA responsible for the exchange of information relating to the certification process or certificates issued endorsed or recognised with the competent authorities of other Member States of the European Economic Area and third party states; and

regulation 2(6)(b) provides for an applicant to be able to appeal if no response to an application in respect of a certificate of equivalent competency is received within 28 days.

### **OPTIONS**

Amend the Merchant Shipping (Training & Certification) Regulations 1997 to implement the provisions of Directive 2005/45/EC in order to comply fully with the UK's Community law obligations. The option of not amending existing legislation on the grounds that the UK already recognises most other Member States' certificates, applies language requirements and is proactive in fraud prevention would leave the UK Government open to infraction proceedings which could result in a fine being imposed on the UK by the European Court of Justice for non-

implementation of Community law, and any seafarers who suffered loss as a result of the UK's failure to implement the Directive could claim damages from the Government.

## **COSTS AND BENEFITS**

### **Business Sectors 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 (excluding the fishing industry).

### **Non-implementation**

Non-implementation would involve no cost to business because the status quo would be maintained although there may be an effect on international competitiveness if all other EU Member States bring the provisions of the Directive into force in respect of the vessels on their registers. However the UK Government would be open to infraction proceedings by the Commission, and any seafarers who did suffer loss as a result of the UK's failure to implement the Directive could claim damages from the Government.

### **Option 1: implementation**

#### **Benefits**

The proposals are intended to foster the professional mobility of seafarers within the European Union by facilitating the mutual recognition of certificates of competency and ensure compliance with the requirements of the relevant international Convention. The measures do not introduce additional burdens. The amendments in the Directive will ensure a consistent approach across all Member States and remove any remaining barriers to the employment of seafarers across the EU.

#### **Costs**

##### **Compliance costs**

The proposal modifies an existing procedure and involves no new costs.

##### **Other costs**

There are no additional costs because the measures formalize existing practices and do not introduce additional burdens.

Automatic recognition: the certificates of 22 EU/EEA countries are already recognised. Since the recognition of certificates has always been considered on the basis of the commercial need of shipping companies, recognition agreements already exist with those Administrations in which shipping companies have expressed an interest and the introduction of recognition of certificates issued in the remaining Member States is unlikely to have any significant impact in the overall number of certificates issued. In 2006 the MCA issued 1,986 Certificates of Equivalent Competency against Certificates of Competency issued by Member States. The number for each individual authority is shown in the table at Annex A together with figures for all years from 2002. For the reasons previously stated only a limited number of additional certificates are expected as a result of the automatic recognition of certificates of all Member States. Inspection costs to the UK of approximately £8k per country would be avoided.

Fraud prevention: this is already an integral part of the UK system and the UK already implements anti-fraud measures which satisfy the Directive. These measures include the

following: a verification check is made with the relevant authority in respect of every certificate of competency against which a certificate of equivalent competency is issued; UK certificates of competency contain over 30 security features; a central record of all such certificates is kept; entry to UK examinations requires photo ID; a check of seafarers' sea service and eligibility to sit examinations is made and procedures are in place to check service records and testimonials. Given that the UK has existing anti-fraud measures in place, no additional cost is therefore anticipated.

European Commission responsibility for verification of Member States' compliance with Directive 2001/25/EC every 5 years is at most likely to result in a negligible amount of MCA administration resource. Approximately 5 days would be needed to prepare for a visit and submit reports as required. This cost would be borne by the MCA and absorbed into its planned use of resources.

Language proficiency: the UK already has legislation in place requiring a common working language on board ship (regulation 5 of the Merchant Shipping (Minimum Standards of Safety Communications) Regulations 1997, inserted by regulation 5 of the Merchant Shipping (Minimum Standards of Safety Communications) (Amendment) Regulations 1999) therefore no additional regulation is required.

Right of appeal: a very small number, if any, of such appeals are anticipated because it is rare for a response to an application to exceed 28 days. This is because the MCA operates a 14 day Service Standard when assessing applications for certificates of equivalent competency. Initial work would involve only the development of an administrative procedure and establishment of a panel to consider appeals on an *ad hoc* basis. Legislation is not required for this. Legal challenge to decisions of this panel will be possible through the normal administrative law procedure of judicial review. Guidance would need to be published at a cost of approximately £100 which would be borne by the MCA and absorbed into its planned use of resources.

### **Costs for a typical business**

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

### **SMALL FIRMS IMPACT TEST**

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

### **COMPETITION ASSESSMENT**

The following questions have been considered.

Would the regulatory proposal:

- directly limit the number or range of suppliers?
- indirectly limit the number or range of suppliers?
- limit the ability of suppliers to compete? or,
- reduce suppliers' incentives to compete vigorously?

The proposal will not have any of the above adverse impacts and instead potentially improves the function of the market by increasing the ability of suppliers to compete by expanding the supply of low-cost labour within the EU.

#### **ENFORCEMENT, SANCTIONS AND MONITORING**

This is covered by existing provisions and practices and no new measures will be required.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

# Annexes

## ANNEX A

### Number of CECs issued 2002 to 2006

Country	2002	2003	2004	2005	2006	Totals
Austria	0	0	0	0	0	0
Belgium	5	5	1	2	1	14
Bulgaria	39	182	200	191	186	798
Cyprus	0	0	0	0	0	0
Czech Republic	0	0	1	0	0	1
Denmark	6	15	20	14	11	66
Estonia	4	42	40	42	42	170
Faroe Islands	0	3	2	3	3	11
Finland	1	4	5	8	7	25
France	6	6	12	12	19	55
Germany	53	101	94	57	66	371
Greece	11	7	6	25	3	52
Hungary	0	0	0	0	0	0
Iceland	0	0	1	0	1	2
Italy	138	122	115	104	115	594
Latvia	45	107	146	176	174	648
Lithuania	2	29	38	46	85	200
Luxembourg	0	0	0	0	0	0
Malta	0	0	0	0	1	1
Netherlands	6	14	10	18	18	66
Norway	32	38	61	52	81	264
Poland	230	334	432	540	740	2276
Portugal	2	3	0	9	4	18
Republic of Ireland	71	80	40	42	69	302
Romania	17	158	272	246	331	1024
Slovakia	0	0	0	0	0	0
Slovenia	0	0	1	3	4	8
Spain	4	19	11	13	8	55
Sweden	17	50	51	20	17	155
<b>Year Totals</b>	<b>689</b>	<b>1319</b>	<b>1559</b>	<b>1623</b>	<b>1986</b>	<b>7176</b>

The figures are from 1 January to 31 December