

2008 No.

MERCHANT SHIPPING

MASTERS AND SEAMEN

**Merchant Shipping (Training and Certification) (Amendment)
Regulations 2008**

<i>Made</i> - - - -	***
<i>Laid before Parliament</i>	***
<i>Coming into force</i> - -	2008

The Secretary of State is a minister designated for the purpose of section 2(2) of the European Communities Act 1972(a) (“the 1972 Act”) in relation to:

- (a) measures concerning the recognition of higher education diplomas or formal qualifications required for the pursuit of professions or other occupations(b); and
- (b) the safety of ships and the health and safety of persons on them(c).

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the 1972 Act and by sections 47(1) and (3) and 85(1), (3) and (5) of the Merchant Shipping Act 1995(d) (“the 1995 Act”).

So far as the following Regulations are made in the exercise of powers conferred by section 47 of the 1995 Act, the Secretary of State has, in pursuance of section 306(4) of that Act, consulted with the organisations referred to in that subsection.

So far as these Regulations are made in exercise of powers conferred by section 85 of the 1995 Act, the Secretary of State has, in pursuance of section 86(4) of that Act, consulted the persons referred to in that subsection.

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Training and Certification) (Amendment) Regulations 2008 and come into force on [xxxx 2008].

(a) 1972 c.68; by virtue of the amendment of section 1(2) of the European Communities Act by section 1 of the European Economic Area Act 1993 (c.51) regulations may be made under section 2(2) of the European Communities Act to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183).

(b) S.I. 1989/1327, amended by S.I. 2002/248 and S.I. 2003/2901.

(c) S.I. 1993/595.

(d) 1995 c.21.

Amendment of the Merchant Shipping (Training and Certification) Regulations 1997

2.—(1) The Merchant Shipping (Training and Certification) Regulations 1997(a) are amended as follows.

- (2) In regulation 5 (recognition of certificates issued by EEA States)(b)—
- (a) in paragraph (1), for “may” substitute “must”;
 - (b) in paragraph (1)(a), for “certificate as to competency” substitute “certificate of competency”;
 - (c) in paragraph (1)(b), for “paragraph (2)” substitute “paragraphs (2) and (3)”;
 - (d) for paragraphs (2) and (3) substitute—

“(2) Subject to paragraphs (4) and (5), the Secretary of State may, before issuing a certificate of equivalent competency to an applicant performing management level functions, require the applicant to demonstrate sufficient knowledge of such United Kingdom maritime legislation as is relevant to the applicant’s management level functions;

(3) The Secretary of State must not issue a certificate of equivalent competency to an applicant unless that applicant can demonstrate possession of adequate language proficiency, in accordance with the requirements in sections A-II/1, A-III/1, A-IV/2 and A-II/4 of the STCW Code.”;
 - (e) in paragraph (4) for “of maritime legislation and administrative procedures” substitute “maritime legislation in accordance with paragraph (2)”;
 - (f) in paragraph (5), delete “and administrative procedures”.
- (3) In regulation 5A (recognition of certificates issued by other states)(c)—
- (a) in paragraph (2)(a)—
 - (i) delete “certificates issued by”, and
 - (ii) for “are” substitute “is”;
 - (b) in paragraph (2)(a) and (c) for “Article 18” substitute “Article 18(3)”;
 - (c) in paragraph (2)(c)—
 - (i) for “paragraph (5)” substitute “paragraph (7)”, and
 - (ii) delete “certificates issued by”;
 - (d) in paragraph (7)(b)—
 - (i) delete “certificates issued by”, and
 - (ii) insert “third” after “that”;
 - (e) in paragraph (8) delete “certificates issued by”;
 - (f) in paragraph (8)(a) for “those certificates” substitute “that recognition”.
- (4) After regulation 5A, insert—

“Prevention of fraud and other unlawful practices

5B. The Secretary of State is entitled to take and enforce appropriate measures to detect and prevent fraud and other unlawful practices involving the certification process or certificates issued, endorsed or recognised by the Secretary of State.

Exchange of information

5C. The Secretary of State is responsible for the exchange with the competent authorities of other European Economic Area States and of third Parties of information involving the

(a) S.I. 1997/348, amended by S.I. 1997/1911 and S.I. 2006/89; there are other amending instruments which are not relevant.
(b) Regulation 5 was substituted by S.I. 2006/89, regulation 3.
(c) Regulation 5A was inserted by S.I. 2006/89, regulation 4.

certification process or certificates issued, endorsed or recognised by the Secretary of State.
”.

(5) In regulation 17(3) (form, validity, record and surrender of certificates) after “affecting any such certificates or endorsements” insert “and any documentary evidence of training”.

(6) In regulation 18 (refusal of certificates, and appeals against refusal)—

(a) in paragraph (1)—

(i) delete “or for a certificate of equivalent competency”;

(ii) for “appropriate certificate” substitute “certificate of competency”;

(b) after paragraph (3) insert—

“(4) If the Secretary of State fails either to issue or revalidate a certificate of equivalent competency or to give notice in writing pursuant to paragraph (2) to an applicant for a certificate of equivalent competency within twenty eight days of the application being made, the Secretary of State shall be deemed to have refused the application and the applicant shall have the right, before expiry of a further twenty eight days, to require the application to be reviewed at an inquiry.”.

(7) Regulation 21 (Designated Authority) is deleted.

Signed by authority of the Secretary of State for Transport

[Date]

Name
Parliamentary Under Secretary
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Merchant Shipping (Training and Certification) Regulations 1997 (“the 1997 Regulations”).

The Regulations give effect to Directive 2005/45/EC (O.J. L255, 30.09.2005, p.160) of the European Parliament and of the Council of 7 September 2005 on the mutual recognition of seafarers’ certificates issued by the Member States and amending Directive 2001/25/EC (O.J. L136 18.05.2001, p17). Directive 2001/25/EC was given effect in the United Kingdom by the 1997 Regulations as previously amended.

The principal effects of these Regulations are as follows.

Regulation 2(2)(a) provides for the automatic recognition of seafarers’ certificates issued by Member States of the European Economic Area.

Regulation 2(2)(d) provides that a management-level applicant for a certificate of equivalent competency is required to possess knowledge of such 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 Secretary of State as the competent national authority to detect and combat fraud for the purposes of Council Directive 2005/45/EC. It also designates the Secretary of State as 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.

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.

Regulations 2(3)(b) and 2(7) remove superseded references to provisions of Directives that have been amended.

In addition, the substitution in *regulation 2(3)(c)(i)* and the insertion in *regulation 2(3)(d)(ii)* correct two specific drafting errors in the 1997 Regulations. The remaining amendments in regulation 2(2) and (3) make consequential changes, and adjustments of technical detail to ensure that the drafting in regulations 5 and 5A of the 1997 Regulations more accurately reflects the conceptual framework of Directive 2001/25/EC.

These Regulations are made under the powers in the Merchant Shipping Act 1995 except in relation to their application to Government ships where the powers are provided by section 2(2) of the European Communities Act 1972.

An Impact Assessment of the effect this instrument will have on the costs of business and the voluntary sector has been prepared and is available from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, SO15 1EG.