

**EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (BOATMASTERS' QUALIFICATIONS, CREW AND
HOURS OF WORK) REGULATIONS 2015**

2015 No. 410

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations re-enact the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006 ("the 2006 Regulations") and the Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006 ("the Crew Regulations") which concern—

- the qualifications required by masters of vessels, including non-United Kingdom ships, of Classes IV, V, VI, VI(A), IX(A) and IX(A)(T) (see paragraph 2.2) engaged on voyages in waters of category A, B, C and D and on some limited coastal voyages (see paragraph 2.3);
- the qualifications required by members of the crew of local passenger vessels (that is, broadly, UK ships which carry more than 12 passengers and operate only in the above waters); and
- the regulation of the hours of work of self-employed masters of UK passenger vessels of Classes IV, V, VI and VI(A) and hovercraft operating in the same waters.

2.2 Vessels to which the Regulations apply

Passenger Ships

Class IV	Vessels engaged only on voyages in waters of category A, B, C or D.
Class V	Vessels engaged only on voyages in waters of category A, B or C
Class VI	Vessels carrying not more than 250 passengers engaged in voyages to sea or in waters of category A, B, C or D, in favourable weather and during restricted period, in the course of which the vessels are at no time more than 15 miles (exclusive of waters of category A, B, C or D) from their point of departure or more than 3 miles from land.
Class VI(A)	Vessels carrying not more than 50 passengers engaged on voyages over a distance of not more than 6 miles to or from

	isolated communities on the islands or coasts of the United Kingdom and in the course of which they are never more than 3 miles from land.
--	--

Vessels which are not Passenger Ships

Class IX(A)	Vessels other than passenger ships and tankers which do not proceed to sea.
Class IX(A)(T)	Tankers which do not proceed to sea.

2.3 Categories of Water

Category A	Narrow rivers and canals where the depth of water is generally less than 1.5 metres.
Category B	Wider rivers and canals where the depth of water is generally 1.5 metres or more and where the significant wave height could not be expected to exceed 0.6 metres at any time.
Category C	Tidal rivers, estuaries and large, deep lakes and lochs where the significant wave height could not be expected to exceed 1.2 metres at any time.
Category D	Tidal rivers and estuaries where the significant wave height could not be expected to exceed 2 metres at any time.
Inland Waterways	Waters of Category A, B, C and D.
Limited Coastal Area	No more than 5 miles from land and no more than 15 miles from point of arrival or departure (excluding waters of category A, B, C or D).

2.4 The Regulations—

- introduce a new category of boatmaster's licence (a Tier 2 Level 2 licence) for tidal waters;
- make minor changes to the endorsements required to authorise a master of a vessel to carry out certain vessel operations;
- make minor changes to the qualifying service and qualifications required before a licence or endorsement can be issued or revalidated;
- impose a new duty requiring boatmasters to be medically fit to perform normal duties and create an offence where a boatmaster engages on a voyage when not so fit; and
- make provision for the Regulations to be reviewed.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The 2006 Regulations contained a significant amount of material of a technical nature, relating to, for example, the content of course syllabuses, the hours of qualifying service required for particular endorsements and in particular areas and the areas for which local knowledge endorsements were required. In response to comments from industry, to enable greater flexibility to amend these technical requirements in line with the changing requirements of industry, the opportunity has been taken not to replicate them in the Regulations but to include these matters in the linked Merchant Shipping Notice, MSN 1853 relying on, in particular the power in section 47(4A) and (4B) of the Merchant Shipping Act 1995.

4. Legislative Context

4.1 The Regulations re-enact the 2006 Regulations and the Crew Regulations.

4.2 The 2006 Regulations were the result of a project which had been initiated in response to:

- Lord Justice Clarke's Interim Report to the Thames Safety Inquiry on the Marchioness disaster presented to Parliament in December 1999; and
- transposed Council Directive 96/50/EC of 23 July 1996 on the harmonization of the conditions for obtaining national boatmasters' certificates for the carriage of goods and passengers by inland waterway in the Community.

5. Territorial Extent and Application

5.1 The Regulations extend to all of the United Kingdom (UK).

5.2 Part 2 of the Regulations apply to persons serving as masters on UK and non-UK:

- Passenger Ships of Class IV, V, VI and VI(A) including Passenger Ships Operating Solely in UK Categorized Waters and High Speed Craft including Hovercraft, but excluding pleasure vessels ; and
- Non-Passenger Ships of Class IX(A) and IX(A)(T) operating in categorised waters and limited coastal waters.

5.3 Part 3 applies to UK passenger ships of Class IV, V, VI and VI(A).

5.4 Part 4 applies to persons serving as master of either a UK passenger ship of Class IV, V, VI or VI(A) or a hovercraft carrying more than 12 passengers.

6. European Convention on Human Rights

The Right Honourable John Hayes MP, Minister of State for Transport, has made the following statement regarding Human Rights:

“In my view the provisions of the Merchant Shipping (Boatmasters’ Qualifications, Crew and Hours of Work) Regulations 2015 are compatible with the Convention rights.”

7. Policy background

- What is being done and why

7.1 The principal purpose of the Regulations is to set out the training and certification requirements for the operators and masters of passenger and non-passenger ships in the UK. Vessels within the scope of the Regulations include those operating on inland waterways and the limited coastal areas but not pleasure vessels or passenger vessels which proceed to sea. The Regulations stipulate the minimum competency requirements for licence holders and seek to facilitate the safe transit of labour and goods on those waters described in the Regulations. To ensure the industry remains accessible to those individuals holding alternative certification they also provide for recognition of alternative qualifications in lieu of an MCA issued licence or endorsement.

7.2 The certification structure, qualifying requirements and application process for licences and specialist endorsements are contained in the Regulations and the accompanying Merchant Shipping Notice, MSN 1853. The revised licencing framework will consist of the existing tiers of national and local licences and levels corresponding to tidal and non-tidal operations. This enables a boatmaster to apply for licences appropriate to the operation they carry out. Certain operations and areas of complex navigation require a boatmaster with a national licence to hold an endorsement to demonstrate that they have attained the knowledge and skills to perform that operation or have sufficient local knowledge to operate safely in a specific area.

7.3 The Regulations follow a review of the training and qualification requirements for masters of vessels operating on UK inland waterways and in limited coastal areas. They specifically address concerns raised by industry at excessive regulation in the 2006 Regulations, remedy safety issues not provided for in the existing regulations and amend and simplify the existing regulations for public accessibility.

7.4 Under the current licensing system, the only licence which allows Boatmasters to operate on tidal waters is the Tier 1 Level 2 which is an intentionally stringent licence because it enables the holder to operate anywhere within UK categorised waters to facilitate movement of labour. In practice the industry to which this instrument applies, is predominantly comprised of small to medium enterprises (SMEs) that operate exclusively in one local area and therefore do not require a national licence, simply a local one that is fit for purpose.

7.5 Due to the onerous qualification requirements, many SMEs had reported difficulties in recruiting qualified masters impacting on their ability to run financially viable businesses. This sector will therefore directly benefit from the introduction of a

restricted local licence for tidal waters, a Tier 2 Level 2 licence, the main change in the Regulations.

7.6 The Regulations will also extend the scope of qualification under the Boatmaster licensing system by recognising alternative qualifications that demonstrate an equivalent or superior level of training to that required by the current licensing system. This will facilitate the transfer of appropriately qualified personnel into the inland waterways sector from other maritime sectors such as the merchant navy.

7.7 Additional training will be introduced for masters undertaking certain specialist operations, along with periodic checks at revalidation to ensure masters remain competent. Both new requirements address the safety gaps in the 2006 Boatmaster Regulations.

7.8 This instrument will continue to transpose the requirements of Council Directive 96/50/EC (as amended by Regulation (EC) 1882/2003). In line with Article 3(2) of the Directive, the UK established the national Boatmasters' Licence (BML) applicable for masters who wished to operate solely on UK inland waterways.

- Consolidation

7.9 The majority of the Crew Regulations have been revoked by subsequent instruments. In line with the Maritime Red Tape Challenge recommendation, the remaining aspects will be incorporated into the Regulations to consolidate all Boatmasters' issues in one location and allow the Crew Regulations to be revoked in their entirety. The Maritime Red Tape Challenge outcome can be accessed at <http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/maritime/>

8. Consultation outcome

8.1 The problem areas addressed by this instrument were identified through dialogue with key industry partners. Industry has been fully engaged with the process of developing this instrument through two informal consultations conducted over 18 weeks in 2010. Given the extensive consultation and partnership working, the Reducing Regulations Sub-Committee agreed to a six week targeted statutory consultation conducted late 2013. All three consultations were circulated to over 800 stakeholders, with 85, 78 and 40 responses respectively.

8.2 In addition to the public consultations, the MCA has refined the content of this instrument through direct discussions with key trade associations and operators at formal industry safety group meetings. As a result the inland waterway industry fully supports the new policies introduced by this instrument which has been reflected in the responses to the statutory consultation.

8.3 The Maritime Red Tape Challenge especially commended the MCA's work in producing this instrument as an exemplar of how government and industry should

collaborate in reducing regulatory burdens, whilst still maintaining the right outcomes for safety and good order.

8.4 The industry is vital to sustaining local economies and will continue to develop after the Regulations come into force. During the formal consultation five competent harbour authorities indicated to the MCA that they are considering applying to be specified as areas requiring specialised local knowledge. In addition the MCA continues to work with industry to develop a range of qualifications tailored specifically to new and existing boatmasters. For these reasons it is important that the MCA has the flexibility to revise technical information contained in Merchant Shipping Notice 1853.

9. Guidance

9.1 The MCA will publish a Merchant Shipping Notice setting out the matters which the Regulations require or permit the Secretary of State to specify and Marine Guidance Notes to explain the impact of the new regulations.

10. Impact

10.1 This instrument is expected to significantly reduce the regulatory and cost burden on business, charities or voluntary bodies. This is achieved through increasing the scope of qualification under the Boatmasters licensing system and the provision of a licence that is appropriate to the operational needs of those operating exclusively in one local tidal area.

10.2 The primary impact on the public sector is the cost of revising the database used to capture information on BMLs to reflect the changes in the Boatmaster licensing system. The anticipated cost is approximately £35,000. From an administrative perspective, the MCA must revise existing guidance to align with this instrument and there will be some increase in assessments and applications.

10.3 An Impact Assessment will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 This instrument is being introduced because it is recognised that the current Boatmaster licensing system has had a negative impact on small businesses. The policy changes offer a wider scope for compliance which will benefit small companies.

12. Monitoring & review

12.1 The Regulations put in place a system of licensing of boatmasters which is proportionate to the operational needs of industry whilst maintaining the highest level of safety on UK inland waterways.

12.2 Proportionality and safety standards will be monitored through the (a) MCA Focal Point System, which draws in regional operations staff (consultant surveyors who liaise directly with operators on a daily basis) and policy leads from headquarters to discuss technical issues and feedback from industry; and (b) Domestic Passenger Ship Safety Group (DPSSG), which is comprised of industry representatives (operators, ship builders/repairers), MCA (relevant policy leads and consultant surveyors), port authorities, inland waterways navigation authorities and representatives of masters operating under the Boatmaster licensing system. Both groups meet on a regular basis.

12.3 The Regulations contain a review clause which requires the Secretary of State to review their operation and effect, and publish a report, on a five yearly basis.

13. Contact

Michael Gregson at the Maritime & Coastguard Agency Tel: 02380 329280 or email: michael.gregson@mcga.gov.uk can answer any queries regarding the instrument.