

2019 No. 630

EXITING THE EUROPEAN UNION

MERCHANT SHIPPING

The Merchant Shipping (Standards of Training, Certification and Watchkeeping) (Amendment) (EU Exit) Regulations 2019

Made - - - - *21st March 2019*

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018(a).

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Standards of Training, Certification and Watchkeeping) (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

Amendment of the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015

2.—(1) The Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015(b) are amended as follows.

(2) In regulation 3—

- (a) in the definition of “certificate of competency”, after “means” insert “, except in regulation 33A,”; and
- (b) in the definition of “certificate of equivalent competency”, for “regulation 32 or 33” substitute “regulation 32, 33 or 33A”.

(3) In regulation 6—

- (a) in paragraph (5)(c), after “regulation 33” insert “or regulation 33A”; and
- (b) for paragraph (6) substitute—

“(6) The Secretary of State may issue an alternative certificate in accordance with STCW Regulation VII.”.

(4) In regulation 32—

(a) 2018 c. 16.

(b) S.I. 2015/782, to which there are amendments not relevant to these Regulations.

- (a) in paragraphs (1), (2) and (6) for “must” substitute “may”; and
 - (b) in paragraph (8), before the definition of “management level functions”, insert—
 - ““EEA state” means a state which is an EEA state immediately before exit day;”.
- (5) In regulation 33—
- (a) in the heading, for “another STCW State” substitute “a third party State”;
 - (b) in paragraph (1), after “the authority of a third party State” insert “recognised immediately before exit day in accordance with paragraph (2)”;
 - (c) for paragraph (2) substitute—
 - “(2) The Secretary of State may recognise such a certificate if—
 - (a) it is issued by a third party State which was recognised by an EEA State as at 14th June 2005 and such recognition had not, before exit day, been withdrawn by the Commission in accordance with Article 20 of the Directive; or
 - (b) it is issued by a third party State recognised by the Commission before exit day in accordance with Article 19 of the Directive and such recognition had not, before exit day, been withdrawn in accordance with Article 20 of the Directive.”; and
 - (d) omit paragraphs (6) and (7).
- (6) After regulation 33 insert—

“Recognition of a party to the STCW on or after exit day

33A.—(1) This regulation applies where the Secretary of State proposes, on or after exit day, to make a decision to recognise a party to the STCW Convention to which regulation 32 or 33 does not apply in order to facilitate the recognition of certificates described in paragraph (5) issued by or under the authority of that party.

(2) Before making a decision described in paragraph (1) the Secretary of State must—

- (a) collect all relevant information in order to carry out an assessment of the training and certification systems in the country to which the decision would apply in order to verify whether that party—
 - (i) meets all the requirements of the STCW Convention regarding standards of competence, training and certification and quality standards; and
 - (ii) has taken appropriate measures to prevent fraud involving certificates; and
- (b) set in process the agreement of an undertaking with the country to which the decision would apply to ensure that prompt notification is given to the Secretary of State of any significant change in the arrangements for training and certification provided in accordance with the STCW Convention.

(3) The assessment described in paragraph (2)(a) may include an inspection of facilities and procedures.

(4) Where the Secretary of State is satisfied that the requirements of paragraph (2) have been met, the Secretary of State may—

- (a) make a decision to recognise that party; and
- (b) recognise the certificates described in paragraph (5) issued by or under the authority of that party.

(5) The certificates are—

- (a) a certificate of competency issued to a master or an officer;
- (b) a certificate of competency issued to a GMDSS radio operator; or
- (c) a certificate of proficiency in training for tanker cargo operations issued to a master or an officer.

(6) Subject to paragraph (7), where the Secretary of State recognises a certificate described in paragraph (5), the Secretary of State may, on application of the holder of the certificate, issue a certificate of equivalent competency attesting to its recognition.

(7) The Secretary of State must not issue a certificate of equivalent competency to an applicant unless the 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.

(8) Where, pursuant to paragraph (4)(b), the Secretary of State recognises the standard of competence or proficiency required for the issue of a certificate by a party to the STCW as satisfying only in part the standard required for officers qualified for the purpose of this Part, the Secretary of State may specify additional standards which are to be attained, and the means by which such standards may be demonstrated, for the issue of a certificate of equivalent competency.

(9) For the purposes of this regulation “certificate of competency” means a certificate issued and endorsed for masters, officers and GDMSS radio operators in accordance with the provisions of chapters II, III, IV or VII in Attachment I to the Final Act of the 2010 Manila Conference of Parties to the STCW Convention.

Withdrawal of recognition

33B.—(1) The Secretary of State may, in the circumstances described in paragraph (2) and subject to paragraph (3), withdraw recognition of a party to the STCW Convention which issued a certificate described in regulation 32, 33 or 33A.

(2) The circumstances are that, following an evaluation of the party which issued the certificate (which may include an inspection of facilities and procedures) the Secretary of State is no longer satisfied that the requirements of the STCW Convention regarding standards of competence, training and certification and quality standards are fully complied with.

(3) Where there are indications that a party may no longer comply with the requirements described in paragraph (2), the Secretary of State must notify the party that recognition of that party’s certificates will be withdrawn six months after such notification is given unless adequate measures are taken to ensure compliance with all relevant requirements of the STCW Convention.

(4) Where the Secretary of State withdraws recognition of a State in accordance with paragraph (1)—

- (a) certificates of equivalent competency issued on the basis of that recognition before the date of the decision to withdraw recognition remain valid; and
- (b) an officer holding a certificate of equivalent competency may not be issued with a certificate of equivalent competency of a higher grade based on a certificate issued by that State except where an officer qualifies for a certificate solely on the basis of additional sea service.”.

(7) In regulation 40, omit paragraph (5).

(8) In regulation 41(3)(b) for “the European Commission” substitute “the Secretary-General of the International Maritime Organization”.

(9) In regulation 57(2) for “the Directive and the STCW Convention are implemented in other members States of the EU” substitute “the obligations of the STCW Convention are implemented in other countries which are subject to the obligations”.

Signed by authority of the Secretary of State for Transport

21st March 2019

Nusrat Ghani
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs (c) and (d) of section 8(2)) arising from the withdrawal of the United Kingdom from the European Union.

These Regulations amend the Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2015 (S.I. 2015/782) which gave effect to requirements of the International Maritime Organization's Convention on Standards of Training, Certification and Watchkeeping for Seafarers and implemented, in part, Directive 2012/35/EU (amending Directive 2008/106/EU) on the minimum level of training for seafarers. The effect of the amendments is to enable continued recognition of certificates issued both by EEA States and other states that are a party to the STCW Convention where those states were so recognised before exit day. The amendments create a mechanism for the future recognition of parties to the STCW Convention by the Secretary of State, and a power for the Secretary of State to withdraw recognition in certain circumstances.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen. An Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.

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