EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (TRAINING AND CERTIFICATION) (AMENDMENT) REGULATIONS

2008 No. 2851

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 The Merchant Shipping (Training and Certification) (Amendment) Regulations 2008 (the "Regulations") amend the Merchant Shipping (Training and Certification) Regulations 1997 (S.I. 1997/348) (the "Training and Certification Regulations")

2.2 The amendments to the Training and Certification Regulations:

allow for the automatic recognition of seafarers' certificates issued by Member States;

include the requirement under the International Maritime Organization Convention on Standards of Training, Certification and Watching Keeping for Seafarers 1978, as amended (the "STCW Convention") 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;

provide for a right of appeal for applicants whose applications are refused or deemed to have been refused because no response is given within 28 days of making the application; and

correct two specific drafting errors in and make a consequential change and an adjustment of technical detail to the Training and Certification Regulations to ensure that the Training and Certification Regulations more accurately reflect Directive 2001/25/EC .

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

3.1 None.

4. Legislative Context

4.1 The Regulations are made under section 2(2) of the European Communities Act 1972 and sections 47(1) and (3) and 85(1), (3) and (5) of the Merchant Shipping Act 1995.

4.2 The Regulations give effect to Council Directive 2005/45/EC amending Directive 2001/25/EC on the minimum level of training for seafarers.

4.3 A transposition note is annexed to this Explanatory Memorandum.

4.4 The date for implementing Directive 2005/45/EC was 20 October 2007.

5. Territorial Extent and Application

5.1 The Training and Certification Regulations apply to masters and seamen employed in sea-going ships registered in the United Kingdom, except fishing vessels and pleasure craft.

5.2 The Regulations do not alter the extent of the Training and Certification 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 amend the Training and Certification Regulations to give effect to Council Directive 2005/45/EC, the main purpose of which is to amend Directive 2001/25/EC on the minimum level of training for seafarers to provide for the automatic recognition by Member States of certificates issued by other Member States. The intention behind this is to foster the professional mobility of seafarers within the European Union whilst ensuring compliance with the STCW Convention.

7.2 Directive 2001/25/EC already allows for the mutual recognition in Member States of seafarers' certificates which are issued by other Member States, whether or not the certificate holders are 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. Those Directives do not however provide for the automatic recognition of formal qualifications of seafarers. Directive 2005/45/EC removes the link to Directives 89/48/EEC and 92/51/EEC and thus any bar to automatic recognition of certificates issued by Member States.

7.3 Directive 2005/45/EC also amends Directive 2001/25/EC to include the requirement that Member States 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 provide for penalties that are effective, proportionate and dissuasive. The MCA is committed to preventing and detecting unlawful practices in relation to seafarers' certificates. Assessment is from time to time carried out to inform decisions about measures to put in place. Measures taken to date include the provision of guidance to industry on the checking of documentation when recruiting, guidance to Nautical Colleges, Training Providers and Companies who issue training certificates and sea service testimonials, the development of a web-based facility for the verification of UK Certificates of Competency and Certificates of Equivalent Competency and training of staff in fraudulent document detection. A confidential phone line for reporting suspected fraud is currently in development and we also ensure that certificates contain an effective range of over 30 security features. Penalties for fraud can include imprisonment, fines, disqualification from UK certification, cancellation or suspension of UK certificates and the imposition of additional sea time requirements.

7.4 Directive 2005/45/EC also amends Directive 2001/25/EC by introducing into Community law the STCW 1978 requirement, as defined in Sections A-II/1, A-III/1, A-IV/2 and A-II/4 of the STCW Code, 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. Regulation 2005/45/EC also introduces the provision that management level applicants who present certificates for recognition have an appropriate knowledge of Maritime legislation of that Member State relevant to the functions they are permitted to perform.

7.5 Finally, Directive 2005/45/EC amends Directive 2001/25/EC to provide for a right of appeal for applicants for certificates of equivalent competency where the application is refused or the applicant does not receive a response within 28 days of making the application.

8. Consultation outcome

8.1 A full 12-week consultation has taken place. There were 258 recipients of the consultation papers including maritime colleges; shipping companies; other government departments, agencies and administrations; associations, unions, authorities and other organisations.

8.2 Three responses were received. The only consequential change is to page 2 of the Impact Assessment where the geographic coverage has been changed from 'GB' to 'UK'.

9. Guidance

9.1 Marine Information Note (MIN) 340 (M + F) will be issued at the same time as the Regulations come into force. The MIN provides the details of the UK authorities that are competent to detect and combat fraud and to exchange information with other member states and third countries (the police and the Maritime and Coastguard Agency). It will also include information about the new right of appeal for applicants whose applications are refused or deemed to have been refused because no response has been given within 28 days of making the application. Other changes involve internal processes only for which external guidance is unnecessary.

10. Impact

10.1 There is a zero impact in cost terms on business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal because the regulations either modify existing procedures and involve no new costs or formalize existing practices and do not introduce additional burdens.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

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

12. Monitoring and review

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

13. Contact

13.1 Stephen Horton at the Maritime and Coastguard Agency Tel: 023 8032 9128 or e-mail: stephen.horton@mcga.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options		
Department /Agency: Maritime and Coastguard Agency	**Title:** Impact Assessment of transposition of Directive 2005/45/EC	
Stage: Final	**Version:** 1	**Date:** 23 October 2008
Related Publications:		

Available to view or download at:

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

Contact for enquiries: stephen.horton@mcga.gov.uk **Telephone:** 023 8032 9128

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 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:

Jim Fitzpatrick

Date: 4th November 2008

Summary: Analysis & Evidence	
Policy Option: 1	**Description:**

COSTS

ANNUAL COSTS	Description and scale of **key monetised costs** 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
One-off **Yrs**	
£ 0	
Average Annual Cost (excluding one-off)	
£ 0	**Total Cost** (PV) **£ 0**

Other **key non-monetised costs** by 'main affected groups'

BENEFITS

ANNUAL BENEFITS	Description and scale of **key monetised benefits** by 'main affected groups' The measures do not introduce additional burdens. They formalize existing practices and ensure consistency of approach across all Member States.
One-off **Yrs**	
£ 0	
Average Annual Benefit (excluding one-off)	
£ 0	**Total Benefit** (PV) **£ 0**

Other **key non-monetised benefits** 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

Price Base Year 0	Time Period Years	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate)

What is the geographic coverage of the policy/option?				UK	
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?	Yes/No	Yes/No	N/A	N/A	

Impact on Admin Burdens Baseline (2005 Prices) (Increase -

Increase of £ 0 Decrease £ 0 **Net Impact** **£** 0

Key: **Annual costs and benefits:** **(Net) Present**

[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 must 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 provide 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 that a management-level applicant for a certificate of equivalent competency must 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 1978, as amended) and to submit an evaluation report to the European Parliament no later than 20 October 2010.

Rationale for government intervention

Only by making Regulations will the UK implement the Directive 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 majority of 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(6) 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; and

regulation 2(5)(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.

The UK already meets the remaining requirement in the Directive to provide effective, proportionate and dissuasive penalties for fraud and other unlawful practices involving certification though the general criminal law and section 47(1) of the Merchant Shipping Act 1995. Marine Information Note 340 (M + F) will complete the UK's implementation by providing the details of the authorities competent to detect and combat fraud (the MCA and the police) and to exchange information on the certification process with the authorities of other Member States and third countries.

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.

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.

CONSULTATION

A full 12-week consultation has taken place. There were 258 recipients of the consultation papers including maritime colleges, shipping companies, other government departments, agencies and administrations, associations, unions, authorities and other organisations.

Three responses were received. The only consequential change is to page 2 of the Impact Assessment where the geographic coverage has been changed from ‘GB’ to ‘UK’.

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	***Results in Evidence Base?***	***Results annexed?***
Competition Assessment	No	No
Small Firms Impact Test	No	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**
Year Totals	**689**	**1319**	**1559**	**1623**	**1986**	**7176**

The figures are from 1 January to 31 December

ANNEX B

Code of Practice on Consultation

The full Code of Practice on Consultation can be found at:

http://www.berr.gov.uk/files/file47158.pdf

The 7 consultation criteria are:

When to consult
Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Duration of consultation exercises
Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Clarity of scope and impact
Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Accessibility of consultation exercises
Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

The burden of consultation
Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Responsiveness of consultation exercises
Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Capacity to consult
Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

ANNEX C

List of Those Consulted

Maritime Colleges

1. Banff & Buchan College of Further Education
2. Blackpool & Fylde College
3. Glasgow College of Nautical Science
4. Lairdside Maritime Centre
5. Liverpool John Moore's University
6. Lowestoft College
7. Maritime Training (Plymouth)
8. North Atlantic Fisheries College
9. Orkney College
10. University of Plymouth
11. South Tyneside College
12. The National Sea Training Centre
13. Warsash Maritime Academy

Associations, unions, authorities and other organisations

1. Association of Sea Training Organisations
2. Associated British Ports
3. British Ports Association
4. British Marine Aggregates Producers Association
5. British Marine Federation
6. British Tugowners Association
7. Chamber of Shipping
8. Harbour Masters' Association of the United Kingdom the Channel Islands and the Isle of Man (The)
9. Honourable Company of Master Mariners (The)
10. IMarEST
11. Institute of Chartered Shipbrokers
12. International Association of Classification Societies
13. International Association of Independent Tanker Owners
14. International Association of Maritime Institutions (IAMI)
15. International Group of P&I Clubs
16. Lloyds Register
17. Marine Accident Investigation Branch (MAIB)
18. Merchant Navy Training Board (MNTB)
19. National Federation of Charter Skippers
20. National Federation of Sea Schools
21. National Union of Rail, Maritime and Transport Workers (RMT)
22. National Workboat Association
23. Nautical Institute (The)
24. Nautilus UK
25. Offshore Contractors Association
26. Oil and Gas UK
27. Ports and Terminals Group
28. Royal Fleet Auxiliary (RFA)
29. Royal Institute of Navigation
30. RNLI

31. Royal Yachting Association (RYA)
32. Sail Training Association
33. Sea Safety Group
34. Standby Ship Operators Association Ltd
35. Transport and General Workers Union (TGWU)
36. UK Pilots Association (Marine)
37. United Kingdom Independent Ports Association
38. United Kingdom Major Ports Group Ltd (The)
39. United Kingdom Marine Pilots Association
40. Yacht Charter Association

Other Government Dept/ Agencies and Administrations

1. British Chambers of Commerce
2. Cabinet Office
3. DfT Marine Legal Group
4. DfT Press Office
5. DfT Shipping Policy
6. Federation of Small Businesses
7. Health & Safety Executive (London)
8. House of Commons Library
9. OFCOM
10. Small Business Service
11. Transport Select Committee
12. Anguilla Registrar of Ships
13. Bermuda Government Department of Maritime Administration
14. British Virgin Islands Shipping Registry
15. Maritime Authority of the Cayman Islands
16. Falkland Islands Government, Fisheries Department
17. Gibraltar Maritime Administration
18. States of Guernsey Harbour Authority
19. Isle of Man Ship Register
20. Jersey Harbours
21. Montserrat Customs & Excise Department
22. St Helena Legal, Lands & Planning Department
23. Turks and Caicos Islands Superintendent
24. Northern Ireland Office
25. Scottish Executive
26. Welsh Assembly Government

Companies

1. Acomarin (Odessa) Ltd
2. Agenzia Marittima De Felice Srl
3. Agmor Seafarers Agency
4. Alloceans Limited
5. Alpha Navigation
6. Anglo Eastern
7. Argos Ltd
8. ASP Ship Management Limited
9. Baltic Group International
10. Barber Ship Management AS
11. Barber Smith Bell Manning Inc
12. Bernard Schulte Ship Management
13. Bibby International Ltd
14. Blue Manila Inc

15. Blue Star Ship Management
16. BP Maritime Services (Isle of Man) Ltd
17. British Marine
18. Brostrom Ship Management AB
19. C. F. Sharp Shipping Group
20. Campbell Maritime Ltd
21. Carisbrooke Shipping Limited
22. Carmet Tug Company Limited
23. Carnival UK
24. Charles M Willie (Shipping) Ltd
25. Chiltern Maritime Ltd
26. Clipper Marine Services
27. Clyde Marine Training Limited
28. CMA Ships
29. C-Mar Ltd
30. Coastal Bulk Shipping
31. Columbia Shipmanagement Ltd
32. Condor Ferries Ltd
33. Continental Marine Services
34. CP Marine UK
35. Crossworld Marine Services Inc
36. De Felice Agency
37. Deeside Crewing Services Limited
38. Doehle
39. DOF (UK) Ltd
40. Ebony Ship Management
41. EMS Ship Management
42. Euroceanica (UK) Ltd
43. Eurosailor
44. Everard & Sons Ltd
45. Evergreen Marine
46. Faversham Ships Ltd
47. Fleet Management Services Phils Inc
48. Fraser Yachts (Monaco)
49. G.P.S Marine Contractors
50. Gardline Surveys Ltd
51. Gewin Maritime Limited
52. Globtik Express Agency
53. Golar
54. Golden Touza
55. GPS Marine Contractors
56. Green Management
57. Green Reefers
58. Gulf Offshore
59. Gute Bucher fur Alle EV
60. Hapag-LLoyd
61. Hays Ships Ltd
62. Heyn Engineering (NI) Ltd
63. Holyhead Towing co Ltd
64. IMA International D.O.O
65. INC Interorient Navigation Hamburg
66. Inter Marine Poland
67. Interorient Navigation Co. Ltd

68. Intrada / Scotline
69. Isles of Scilly Shipping Company Limited
70. J J Prior (Transport) Limited
71. James Fisher & Sons
72. Jay Management Corporation
73. Jo Tankers
74. Jubilee Sailing Trust Limited
75. King's Lynn Conservancy Board
76. Klyne Tugs
77. Knutsen OAS (UK) Ltd.
78. Lafonia
79. Lapa Ltd
80. Lauritzen Fleet Management
81. Lomar Shipping
82. Maersk
83. Malayan Towage
84. Marine Co UK Ltd
85. Maritime Craft Services
86. Marlow Navigation
87. Merchant Navy Resources
88. Merchant Navy Training Provider
89. Meridian Marine Management Ltd
90. Mersey Docks and Harbour Company (The)
91. Millwood Shipping Inc
92. Nigel Burgess
93. Nomis Shipping
94. Norbulk Shipping
95. North Star Shipping
96. Northern Marine Management Ltd
97. Nuwave
98. Ocean Bulk Carriers Ltd India
99. Offshore Marine Services Pty Ltd
100. Orkney Ferries Limited
101. Orkney Towage Co Ltd
102. OSM
103. P&O Nedlloyd
104. PD Teesport Ltd
105. Pentland Ferries Limited
106. Pil (UK) Ltd
107. Port of Boston
108. Port of London Authority
109. Rampesca
110. Red Funnel
111. Reederei Karl Schluter GmbH & Co,KG
112. RIX Shipping Co. Ltd
113. Safmarine
114. Saga Shipping Co Ltd.
115. Salvtug
116. Scanmar Maritime Services Inc.
117. Schluter Crewing Serivces
118. Sea Containers
119. SEA Personnel Services
120. Sealion UK
121. Serco Denholm Ltd Clyde
122. Seven Seas Shipping

123. Sharp Shipping Services Ltd
124. Shell Ship Management Ltd
125. Ship Safe Training Group Limited
126. Sirius Ship Management
127. SMIT International (Scotland) Limited
128. Southern Crewing Services
129. Speedferries Limited
130. Stena Drilling
131. Stolt Tankers BV
132. Targe Towing Limited
133. Thames & Medway Towage (Services) Ltd
134. Toll NZ Interislander
135. Torbulk Limited
136. UK Dredging
137. Unicorn Shipping
138. Uni-Tankers
139. Uniteam Marine Limited
140. V Ships
141. Viking Recruitment Ltd
142. Wappen Reederei GmBh & KO.KG
143. Waverley Excursions Limited
144. Wightlink (Guernsey) Limited
145. Zodiac Maritime Agencies Ltd
146. Zorovic Maritime Ltd

Plus internal consultees within the Maritime and Coastguard Agency.

Transposition Note for Directive 2005/45/EC amending Directive 2001/25/EC on the minimum level of training for seafarers, transposed by the Merchant Shipping (Training and Certification)(Amendment) Regulations 2008

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	Scope	No implementing legislation needed.	
2	Definitions	No implementing legislation needed.	
3(1)	Sets out the requirements for recognition of certificates.	Amendment to regulation 5(1) of the Merchant Shipping (Training and Certification) Regulations 1997 to require automatic recognition of appropriate certificates. (Medical Certificates already covered by the Merchant Shipping (Medical Examination) Regulations 2002.)	The Secretary of State by amendment to the Training and Certification Regulations 1997.
3(2)	Recognition of appropriate certificates to be limited to capacities, functions and levels of competency and accompanied by an endorsement to that end.	No implementing legislation required	
3(3)	Right of appeal if CEC refused or in absence.	Amendment to regulation 18 of the Merchant Shipping (Training and Certification) Regulations 1997 to disapply paragraph (1), and to include deeming provision that if no response to application for CECs in respect of holders of COCs issued by Member States within 28 days the application is deemed refused and therefore can appeal.	The Secretary of State by amendment to the Training and Certification Regulations 1997.
3(4)	Member States can impose further limits on capacities, functions and levels of competence for near-coastal voyages	No implementing legislation required	
3(5)	Management level certificates only to be recognised where applicants have appropriate knowledge of maritime legislation relevant to the functions they are permitted to perform	Amendment to scope of regulation 5(2) of the Merchant Shipping (Training and Certification) Regulations 1997 so that it only applies only to those at management level. Amendment to regulation 5(3) to remove administrative procedures requirement in 5(3)(b) and to require only appropriate knowledge of maritime legislation as is relevant to management level functions.	The Secretary of State by amendment to the Training and Certification Regulations 1997.

Article	Objective	Implementation	Responsibility
4(1)	Amends definition of 'certificate' in Article 4 of Directive 2001/25/EC.	No change needed.	
4(2)	Inserts Article 7a into Directive 2001/25/EC which requires:		
	that appropriate measures shall be taken to prevent fraud;	Section 47(5) of the Merchant Shipping Act 1995 and the Scottish common law offences of 'fraud' and 'uttering as genuine' already partly cover this. The general criminal law can be used for the rest of new article 7a paragraph 1. A schedule of offences and penalties is appended to this Transposition Note.	The Secretary of State
	the designation of national authorities competent to detect and combat fraud, exchange information with other authorities of other member states and inform the Commission; and	The issue of Marine Information Note 340 (M + F) (to be followed in due course by a Marine Guidance Note or Merchant Shipping Notice).	The Secretary of State
	written confirmation or denial shall be provided to Member States of the authenticity of certificates.	Implementation will be achieved through an existing administrative system.	The Secretary of State
4(3)	Deletes Articles 18(1) and (2) of Directive 2001/25/EC to remove the references to Directives 89/48/EEC and 92/51/EEC.	The deletion of regulation 21 of the Merchant Shipping (Training and Certification) Regulations 1997 to remove the link to Directives 89/48/EC and 92/51/EC. Replacement of "article 18" with "article 18(3)"in regulation 5A(2)(a) and (c).	The Secretary of State by amendment to the Training and Certification Regulations 1997.

Article	Objective	Implementation	Responsibility
4(4)	Inserts Articles 21a and 21b into Directive 2001/25/EC laying down the requirements that the Commission shall: verify at least every 5 years that Member States comply with the minimum requirements in the Directive; and submit an evaluation report to the European Parliament and the Council.	Implemented by administrative action. Implemented by administrative action.	European Commission. European Commission.
4(5)	Amends Annex I, Chapter I of Directive 2001/25/EC to place a requirement on Member States to ensure that seafarers possess adequate language proficiency.	Substitutes new regulation 5(3) for regulation 5(3)(a) of the Merchant Shipping (Training and Certification) Regulations 1997 to require the standard of language proficiency as set out in sections A-II/1, AIII/1, A-IV/2 or A-II/4 STCW Code.	The Secretary of State by amendment to the Training and Certification Regulations 1997.

Appendix

Issue	Offence	**Penalty**
Using a false certificate of competency (COC) to obtain a UK Certificate of equivalent competency (CEC)	Section 47(5) of the Merchant Shipping Act 1995 (MSA) Making a statement which he knows to be false or recklessly makes a statement which is false …for the purpose of obtaining for himself or another person a certificate…which may be issued under section 47	On summary conviction - a fine not exceeding level 5 on the standard scale (£5000) Regulation 17(5) of the Merchant Shipping (Training and Certification) Regulations 1997 provides for the cancellation of the CEC where a person is convicted of an offence under s47(5) MSA.
Making a false COC in the UK	Section 1 FCA provides person is guilty of forgery if he makes a false instrument, with the intention that he or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice.	On summary conviction of an office under the FCA a person guilty of shall be liable— (a) to a fine not exceeding the statutory maximum; or (b) to imprisonment for a term not exceeding six months; or (c) to both or in the case of on conviction on indictment to imprisonment for a term not exceeding ten years.
Fraudulent practice by a UK training centre where certificates are issued without the applicant reaching the minimum required standard	Section 47(5) MSA 1995 Making a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for …another person a certificate…which may be issued under this section	On summary conviction - a fine not exceeding level 5 on the standard scale (£5000) Regulation 17(5) of the Merchant Shipping (Training and Certification) Regulations 1997 provides for the cancellation of the CEC where a person is convicted of an offence under s47(5) MSA or where a certificate or

		endorsement is issued and the conditions for its issue have not been complied.
Using a genuine COC that belongs to someone else	Section 2 of the Fraud Act 2006 (fraud by false representation). A person is in breach of this section if he— (a) dishonestly makes a false representation, and (b) intends, by making the representation— (i) to make a gain for himself or another, or (ii) to cause loss to another or to expose another to a risk of loss.	A person who is guilty of fraud is liable— (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both); (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both).
Person based in the UK applies for a CEC or COC from the authorities of another state using either a false UK COC or by using other false documentation.	Section 3 Forgery and Counterfeiting Act 1981 (FCA) makes it an offence for a person to use an instrument which is, and which he knows or believes to be, false, with the intention of inducing somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice. Alternatively, this would be dealt with under the law of the state to which the application is made.	On summary conviction of an office under the FCA a person guilty of shall be liable— (a) to a fine not exceeding the statutory maximum; or (b) to imprisonment for a term not exceeding six months; or (c) to both or in the case of on conviction on indictment to imprisonment for a term not exceeding ten years.

Administrative measures taken by the MCA to prevent and detect fraud and other unlawful practices:

- provision of guidance to industry on the checking of documentation when recruiting
- guidance to Nautical Colleges, Training Providers and Companies who issue training certificates and sea service testimonials
- the development of a web-based facility for the verification of UK Certificates of Competency and Certificates of Equivalent Competency and training of staff in fraudulent document detection
- a confidential phone line for reporting suspected fraud is currently in development
- certificates contain an effective range of over 30 security features.