

L.N. 15 of 2019

Merchant Shipping (Seafarers) (Ships Using Low-flashpoint Fuels) Regulation

Contents

Section	Page
Part 1	
Preliminary	
1.	CommencementB177
2.	InterpretationB177
3.	ApplicationB179
Part 2	
Requirements for Training and Certificates of Proficiency	
4.	Requirements for training and certificates of proficiencyB183
5.	Exception to section 4B185
Part 3	
Certificates of Proficiency	
6.	Issue and renewal of certificates of proficiencyB189
7.	Authority may specify standards of competency, conditions, etc.B193
8.	Validity period of certificates of proficiencyB193
9.	Recognition of non-local certificates as equivalentsB193

Section Page

Part 4

Miscellaneous

10.	Replacement of certificates of proficiency that are lost etc.	B197
11.	Offence for false pretences and information	B197
12.	Record of certificates of proficiency	B201
13.	Exemption from this Regulation	B201

Merchant Shipping (Seafarers) (Ships Using Low-flashpoint Fuels) Regulation

(Made by the Secretary for Transport and Housing under sections 72, 73, 96 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

Part 1

Preliminary

1. Commencement

This Regulation comes into operation on 31 May 2019.

2. Interpretation

In this Regulation—

advanced certificate (高級證書)—

- (a) means a certificate issued under section 6(4); and
- (b) includes—
 - (i) a certificate mentioned in paragraph (a) as renewed under section 6(5); and
 - (ii) a certificate issued under section 10 to replace a certificate mentioned in subparagraph (i) or paragraph (a);

basic certificate (基本證書)—

- (a) means a certificate issued under section 6(3); and
- (b) includes—
 - (i) a certificate mentioned in paragraph (a) as renewed under section 6(5); and

- (ii) a certificate issued under section 10 to replace a certificate mentioned in subparagraph (i) or paragraph (a);

certificate of proficiency (培訓合格證書) means—

- (a) a basic certificate; or
- (b) an advanced certificate;

company (公司), in relation to a ship, means—

- (a) the registered owner of the ship; or
- (b) a person who—
 - (i) has assumed responsibility for the operation of the ship from the owner; and
 - (ii) on assuming the responsibility, has agreed to take over the obligations imposed on the owner under the Convention;

Convention (《公約》) means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as from time to time revised or amended by any revision or amendment to any provision of such Convention that applies to Hong Kong.

3. Application

This Regulation applies to a ship—

- (a) that is a ship to which the Merchant Shipping (Safety) (Construction and Survey) Regulation (Cap. 369 sub. leg. BD) applies;
- (b) that is not a ship falling within paragraph (a) of the definition of *specified ship* in section 28(3) of that Regulation;
- (c) that is not a ship—

Merchant Shipping (Seafarers) (Ships Using Low-flashpoint Fuels) Regulation

Part 1
Section 3

L.N. 15 of 2019
B181

- (i) falling within paragraph (b) of that definition;
and
 - (ii) engaged only on governmental non-commercial
service; and
 - (d) that uses low-flashpoint fuels as defined by that
section.
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Part 2

Requirements for Training and Certificates of Proficiency

4. Requirements for training and certificates of proficiency

- (1) The company and the master of a ship must ensure that every seafarer on the ship has, before being assigned to undertake any duties on board, received ship and equipment specific familiarization training in relation to the duties in accordance with Regulation I/14, paragraph 1.5 of the Convention.
- (2) The company and the master of a ship must ensure that every seafarer on the ship holds a basic certificate—
 - (a) before being assigned to undertake—
 - (i) any safety duties that are associated with the care or use of fuels on the ship; or
 - (ii) any safety duties in emergency response in relation to the fuels on the ship; and
 - (b) while undertaking those duties on the ship.
- (3) The company and the master of a ship must ensure that—
 - (a) every engineer officer of the ship; and
 - (b) every other seafarer who has the immediate responsibility for the care or use of fuels or fuel systems on the ship,

hold an advanced certificate before being assigned to undertake any duties, and while undertaking those duties, on the ship.
- (4) The master of a ship must hold an advanced certificate.

- (5) The company of a ship must ensure that the master of the ship holds an advanced certificate.
- (6) A company who contravenes subsection (1), (2), (3) or (5) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (7) A master who contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 2 years.
- (8) In this section—
 - (a) a reference to a basic certificate includes a certificate recognized under section 9(1) as being equivalent to a basic certificate; and
 - (b) a reference to an advanced certificate includes a certificate recognized under section 9(2) as being equivalent to an advanced certificate.

5. Exception to section 4

- (1) A seafarer on a ship who holds a basic certificate but does not hold an advanced certificate as required by section 4(3) may still be assigned to undertake any duties in respect of the bunkering operations on the ship if—
 - (a) the assignment is made for enabling the seafarer to satisfy the requirements mentioned in section 6(4)(a); and
 - (b) the duties are to be undertaken under the supervision of a person holding an advanced certificate.
- (2) In this section—
 - (a) a reference to a basic certificate includes a certificate recognized under section 9(1) as being equivalent to a basic certificate; and

Merchant Shipping (Seafarers) (Ships Using Low-flashpoint Fuels) Regulation

Part 2
Section 5

L.N. 15 of 2019
B187

- (b) a reference to an advanced certificate includes a certificate recognized under section 9(2) as being equivalent to an advanced certificate.
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Part 3

Certificates of Proficiency

6. Issue and renewal of certificates of proficiency

- (1) A person may apply to the Authority for—
 - (a) the issue or renewal of a certificate in basic training for service on ships to which this Regulation applies; or
 - (b) the issue or renewal of a certificate in advanced training for service on ships to which this Regulation applies.
- (2) The application must be accompanied by—
 - (a) evidence establishing that the applicant—
 - (i) for the issue of a certificate—
 - (A) has satisfied the requirements mentioned in subsection (3)(a) or (4)(a) (as the case requires); and
 - (B) has attained the applicable standards of competency, and has satisfied the applicable conditions, specified under section 7(1)(a); or
 - (ii) for the renewal of a certificate—
 - (A) has satisfied the requirements mentioned in subsection (5)(a); and
 - (B) has satisfied the applicable conditions specified under section 7(1)(b); and
 - (b) the prescribed fee.

- (3) The Authority may issue a certificate in basic training for service on ships to which this Regulation applies if satisfied that the applicant—
 - (a) has satisfied the requirements specified in Regulation V/3, paragraph 5 or 6 of the Convention; and
 - (b) has attained the applicable standards of competency, and has satisfied the applicable conditions, specified under section 7(1)(a).
- (4) The Authority may issue a certificate in advanced training for service on ships to which this Regulation applies if satisfied that the applicant—
 - (a) has satisfied the requirements specified in Regulation V/3, paragraph 8 or 9 of the Convention; and
 - (b) has attained the applicable standards of competency, and has satisfied the applicable conditions, specified under section 7(1)(a).
- (5) The Authority may renew a certificate of proficiency if satisfied that the applicant has satisfied—
 - (a) the requirements specified in Regulation V/3, paragraph 12 of the Convention; and
 - (b) the applicable conditions specified under section 7(1)(b).
- (6) If the Authority decides to refuse an application, the Authority must notify the applicant in writing of the refusal and the reasons for the refusal.
- (7) If an applicant is aggrieved by a decision of the Authority to refuse to issue or renew a certificate of proficiency, the applicant may appeal against the decision to the Administrative Appeals Board.

- 7. Authority may specify standards of competency, conditions, etc.**
- (1) The Authority may make determinations in writing specifying—
 - (a) the details of the applicable standards of competency to be attained, or the details of the applicable conditions to be satisfied, by an applicant to qualify for the issue of a certificate of proficiency;
 - (b) the applicable conditions to be satisfied by an applicant to qualify for the renewal of the applicant's certificate of proficiency; and
 - (c) the way in which the attainment of any such standards or the satisfaction of any such conditions is to be established.
 - (2) A person may apply to the Authority for a copy of a determination made under subsection (1) on payment of the prescribed fee.
- 8. Validity period of certificates of proficiency**
- (1) A certificate of proficiency is valid for the period specified in it unless it is cancelled or suspended under section 10(1)(a) or 11(4).
 - (2) The period specified in a certificate of proficiency must not exceed 5 years beginning on the date of issue or renewal (as the case requires) of the certificate.
- 9. Recognition of non-local certificates as equivalents**
- (1) If the Authority is satisfied that a certificate (*non-local basic certificate*)—
 - (a) is issued by, or under the authority of, the government of a state party to the Convention;

(b) is not issued on the basis of recognition by such a government of a certificate issued by another government; and

(c) shows that the holder of the non-local basic certificate has satisfied the requirements mentioned in section 6(3)(a),

the Authority may recognize the non-local basic certificate as being equivalent to a basic certificate for the purposes of this Regulation.

(2) If the Authority is satisfied that a certificate (*non-local advanced certificate*)—

(a) is issued by, or under the authority of, the government of a state party to the Convention;

(b) is not issued on the basis of recognition by such a government of a certificate issued by another government; and

(c) shows that the holder of the non-local advanced certificate has satisfied the requirements mentioned in section 6(4)(a),

the Authority may recognize the non-local advanced certificate as being equivalent to an advanced certificate for the purposes of this Regulation.

Part 4

Miscellaneous

10. Replacement of certificates of proficiency that are lost etc.

- (1) Subject to subsections (3) and (4), if a certificate of proficiency (*original certificate*) issued to a person has been lost, defaced or destroyed, the Authority—
 - (a) may cancel the original certificate; and
 - (b) may issue to the person a certificate of proficiency (*replacement certificate*) in like terms on payment of the prescribed fee.
- (2) A replacement certificate—
 - (a) has the same effect as the original certificate; and
 - (b) unless cancelled or suspended under subsection (1)(a) or section 11(4), is valid until the validity period of the original certificate expires.
- (3) The Authority may issue a replacement certificate only if satisfied that the original certificate has in fact been lost, defaced or destroyed.
- (4) The Authority may waive or reduce the prescribed fee mentioned in subsection (1)(b) if satisfied that the original certificate has been lost, defaced or destroyed without fault on the part of the holder of the certificate.

11. Offence for false pretences and information

- (1) A person who, in connection with an application under this Regulation—
 - (a) makes a false pretence to the Authority; or
 - (b) supplies false information to the Authority,

knowing it to be false, or not having reasonable grounds for believing it to be true, commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

- (2) A person who permits another person to use a certificate of proficiency that is not issued to that other person commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (3) A person who falsely pretends to be the holder of a certificate of proficiency commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
- (4) If a person is convicted of—
 - (a) an offence under subsection (1), (2) or (3);
 - (b) the offence of fraud under section 16A of the Theft Ordinance (Cap. 210) in relation to a certificate of proficiency;
 - (c) the offence of conspiracy to commit an offence mentioned in paragraph (a) or (b); or
 - (d) the offence of conspiracy to defraud in relation to a certificate of proficiency,the Authority may cancel, or suspend for any period, the certificate of proficiency concerned held by the person.
- (5) In this section, a reference to a certificate of proficiency includes—
 - (a) a certificate recognized under section 9(1) as being equivalent to a basic certificate; or
 - (b) a certificate recognized under section 9(2) as being equivalent to an advanced certificate.

12. Record of certificates of proficiency

The Authority must keep a record of—

- (a) all certificates of proficiency;
- (b) the renewal, cancellation or suspension of certificates of proficiency; and
- (c) any other matters affecting certificates of proficiency that the Authority considers appropriate.

13. Exemption from this Regulation

- (1) The Authority may grant exemptions from any of the provisions of this Regulation for any class of cases or individual case on the conditions the Authority considers appropriate.
- (2) The Authority may, subject to giving reasonable notice, alter or cancel any exemption granted under subsection (1).

Frank CHAN Fan
Secretary for Transport and
Housing

13 February 2019

Explanatory Note

The main purpose of this Regulation is to implement the requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) in respect of training requirements for seafarers on board ships—

- (a) to which the Merchant Shipping (Safety) (Construction and Survey) Regulation (Cap. 369 sub. leg. BD) applies;
- (b) that are not specified ships as defined by section 28(3) of that Regulation and are not engaged only on governmental non-commercial service if the ships are owned or operated by a government; and
- (c) that use low-flashpoint fuels as defined by that section.

Part 1—Preliminary

2. Part 1 provides for the commencement, interpretation of certain terms and application of this Regulation.

Part 2—Requirements for Training and Certificates of Proficiency

3. Part 2 provides for—
 - (a) the training or certificates of proficiency (*certificates*) that a seafarer must receive or hold before being assigned to undertake certain duties on a ship to which this Regulation applies; and
 - (b) the certificates that a seafarer must hold while undertaking the duties on the ship.

Part 3—Certificates of Proficiency

4. Part 3 provides for the issue and renewal of, and the validity period of, certificates.
5. Non-local certificates issued by, or under the authority of, the government of a state party to the Convention may be recognized under Part 3 as being equivalent to certificates.

Part 4—Miscellaneous

6. Part 4 provides for miscellaneous matters, such as the loss of certificates, offence for false pretences and information, keeping of a record of certificates and grant of exemptions.