

L.N. 135 of 2016

**Merchant Shipping (Seafarers) (Engine Room Watch
Ratings) (Amendment) Regulation 2016**

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Merchant Shipping (Seafarers) (Engine Room Watch Ratings) (Amendment) Regulation 2016

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

1. Commencement

This Regulation comes into operation on 1 December 2016.

2. Merchant Shipping (Seafarers) (Engine Room Watch Ratings) Regulation amended

The Merchant Shipping (Seafarers) (Engine Room Watch Ratings) Regulation (Cap. 478 sub. leg. V) is amended as set out in sections 3 to 15.

3. Title amended

The title, after “**RATINGS**”—

Add

“**AND ELECTRO-TECHNICAL RATINGS**”.

4. Section 2 amended (interpretation)

(1) Section 2—

Repeal the definition of *Convention*

Substitute

“***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;”.

- (2) Section 2, definition of *qualified engine room watch rating*—

Repeal

“holds a valid qualifying document”

Substitute

“is the holder of a certificate of proficiency for engine room watch ratings or a certificate recognized under section 4C as equivalent to that certificate of proficiency”.

- (3) Section 2, definition of *qualified engineer officer*—

Repeal

everything after “means an”

Substitute

“engineer officer who is qualified for the purposes of the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J);”.

- (4) Section 2—

- (a) definition of *employer*;
- (b) definition of *Engine Room Watch Rating Certificate*;
- (c) definition of *qualifying document*;
- (d) definition of *registered power*;
- (e) definition of *sea service*;
- (f) definition of *seagoing*—

Repeal the definitions.

- (5) Section 2—

Add in alphabetical order

“*certificate of proficiency* (培訓合格證書) means any of the following certificates of proficiency issued under this Regulation—

- (a) certificate of proficiency for engine room watch ratings;
- (b) certificate of proficiency for electro-technical ratings;

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

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

qualified able seafarer engine (符合資格的機房高級海員) has the meaning given by section 2 of the Merchant Shipping (Seafarers) (Certificates of Proficiency for Able Seafarers) Regulation;

qualified electro-technical officer (符合資格的電子技術高級船員) means an electro-technical officer who is qualified for the purposes of the Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478 sub. leg. J);

qualified electro-technical rating (符合資格的電子技術普通船員) means a rating who is the holder of a certificate of proficiency for electro-technical ratings or a certificate recognized under section 4C as equivalent to that certificate of proficiency;

registered person (註冊人士) means a person whose name is entered in the register kept pursuant to section 7 of the Ordinance;

seagoing ship (海船) means a ship that is powered by a main propulsion machinery of 750 kilowatts propulsion power or more, other than one which

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navigates exclusively in one or more of the following areas—

- (a) inland waters;
- (b) waters within, or closely adjacent to, sheltered waters;
- (c) areas where port regulations apply;

STCW Code (《培訓規則》) means the Seafarers' Training, Certification and Watchkeeping Code published by the International Maritime Organization, as from time to time revised or amended by any revision or amendment to any provision of such Code that applies to Hong Kong.”.

5. Section 3 amended (application)

Section 3—

Repeal subsection (1)

Substitute

- “(1) Subject to subsection (1A), this Regulation applies to—
- (a) all seagoing ships that are Hong Kong ships; and
 - (b) all seagoing ships that—
 - (i) are not Hong Kong ships;
 - (ii) are within the waters of Hong Kong; and
 - (iii) have entered those waters in the normal course of business or for operational reasons.

(1A) This Regulation does not apply to—

- (a) ships owned or operated by a government and engaged only on governmental non-commercial service;
- (b) fishing vessels;
- (c) pleasure yachts not engaged in trade; or
- (d) wooden ships of primitive build.”.

6. Section 4 amended (obligation on employer, master and chief engineer officer)

- (1) Section 4, heading—

Repeal

“**employer**”

Substitute

“**company**”.

- (2) Section 4—

Repeal subsection (1).

- (3) Section 4(2), after “Neither the”—

Add

“company, the”.

- (4) Section 4(2)—

Repeal

“or a qualified engine room watch rating”

Substitute

“, qualified engine room watch rating or qualified able seafarer engine”.

- (5) Section 4(2), proviso—

Repeal

“or qualified engine room watch rating”

Substitute

“, qualified engine room watch rating or qualified able seafarer engine”.

- (6) After section 4(2)—

Add

- “(3) Subject to subsection (4), the company, the master and the chief engineer officer of a ship must not permit a member of the ship’s crew who is not a qualified electro-technical rating to carry out any functions on board as specified in table A-III/7 of the STCW Code.
- (4) Subsection (3) does not apply if—
- (a) the functions are assigned to the member of the ship’s crew for the purpose of enabling the member to meet the requirements referred to in section 4B(2)(c)(i); and
 - (b) the functions are carried out under the supervision of a qualified engineer officer, qualified electro-technical officer or qualified electro-technical rating.
- (5) The company, the master and the chief engineer officer of a ship must ensure that the officer in charge of an engineering watch is a qualified engineer officer.”.

7. Sections 4A, 4B and 4C added

After section 4—

Add

“4A. Application for issue of certificates of proficiency

- (1) A person may apply to the Authority for the issue of a certificate of proficiency.
- (2) The application must be accompanied by—
 - (a) any evidence as may be necessary to establish that the requirements for the issue of the certificate being applied for have been satisfied; and
 - (b) the prescribed fee.
- (3) On receipt of the application, the Authority—
 - (a) if satisfied that the applicant is entitled to the issue of the certificate being applied for, may issue the certificate to the applicant; or
 - (b) if not satisfied that the applicant is so entitled, must inform the applicant in writing that the application is refused, stating the reasons for the refusal.
- (4) If an applicant is aggrieved by a decision of the Authority to refuse to issue a certificate of proficiency, the applicant may appeal against the decision to the Administrative Appeals Board.

4B. Requirements for issue of certificates of proficiency

- (1) The Authority must not issue a certificate of proficiency for engine room watch ratings to an applicant unless—
 - (a) the applicant is a registered person;
 - (b) the applicant is a rating; and

- (c) the applicant has met the requirements specified in Regulation III/4, paragraphs 2.2, 2.3 and 3 of the Convention.
- (2) The Authority must not issue a certificate of proficiency for electro-technical ratings to an applicant unless—
 - (a) the applicant is a registered person;
 - (b) the applicant is a rating; and
 - (c) the applicant—
 - (i) has met the requirements specified in Regulation III/7, paragraph 2 of the Convention; or
 - (ii) has worked in the engine department of a ship as a rating to carry out any functions on board as specified in table A-III/7 of the STCW Code for an aggregate period of not less than 12 months within the specified period.
- (3) In this section—

specified period (指明期間) means the period beginning on 1 December 2011 and ending on 30 November 2016.

4C. Recognition of other certificates as equivalent to certificates of proficiency

If the Authority is satisfied that a certificate—

- (a) is issued by, or under the authority of, the government of a state party to the Convention;
- (b) is issued not on the basis of recognition by such a government of any certificate issued by another government; and

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- (c) shows that the person concerned has met the requirements referred to in subsection (1)(c) or (2)(c) of section 4B for the issue of the certificate of proficiency referred to in that subsection,

the Authority may recognize the certificate as equivalent to that certificate of proficiency.”.

8. Section 5 repealed (power to issue certificates)

Section 5—

Repeal the section.

9. Section 5A amended (power to make determinations)

Section 5A—

Repeal

everything after “specifying”

Substitute

“__

- (a) the standards of competency to be attained and conditions to be satisfied by a person or class of persons to qualify for the issue of a certificate of proficiency; or
- (b) the manner in which the attainment of any such standards or the satisfaction of any such conditions is to be established.”.

10. Section 6 amended (offences by employer, master and chief engineer officer)

(1) Section 6, heading—

Repeal

“employer”

Substitute

“company”.

- (2) Section 6(1)—

Repeal

“An employer who contravenes section 4(1)”

Substitute

“A company who contravenes section 4(2), (3) or (5)”.

- (3) Section 6(2), after “section 4(2)”—

Add

“, (3) or (5)”.

11. Section 6A added

After section 6—

Add

“6A. Loss of certificates of proficiency

- (1) Subject to subsections (3) and (4), if a certificate of proficiency issued to a person has been lost, defaced or destroyed, the Authority may cancel the certificate and issue to the person another certificate in like terms on payment of the prescribed fee.
- (2) A certificate issued under subsection (1) has the same effect as the certificate lost, defaced or destroyed.
- (3) The Authority may only issue a certificate under subsection (1) if the Authority is satisfied that the certificate to be replaced has in fact been lost, defaced or destroyed.

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- (4) The Authority may waive or reduce the prescribed fee referred to in subsection (1) if the Authority is satisfied that the certificate to be replaced has been lost, defaced or destroyed without fault on the part of the person to whom it was issued.”.

12. Section 7 amended (false pretences and supply of false information)

- (1) Section 7, Chinese text, heading—

Repeal

“欺詐行為”

Substitute

“虛假表述”.

- (2) Section 7(1)—

Repeal

everything after “the issue of” and before the dash

Substitute

“a certificate of proficiency”.

- (3) After section 7(1)—

Add

“(1A) A person who—

- (a) permits any other person to use a certificate of proficiency to which that other person is not entitled; or
- (b) falsely pretends to be entitled to 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) Section 7(2), after “under subsection (1)”—

Add

“or (1A)”.

- (5) Section 7(2)—

Repeal

“document referred to in subsection (1), or”

Substitute

“certificate of proficiency, or”.

- (6) Section 7(2)—

Repeal

everything after “defraud in relation to a”

Substitute

“certificate of proficiency, the Authority may cancel or suspend for any period the certificate of proficiency concerned held by such person.”.

13. Section 7A added

After section 7—

Add

“7A. Record of certificates of proficiency

The Authority must keep a record of—

- (a) all certificates of proficiency;
- (b) the cancellation or suspension of the certificates;
and
- (c) any other matters affecting the certificates.”.

14. Section 8 substituted

Section 8—

Repeal the section

Substitute

“8. Transitional provisions

- (1) A certificate is treated as a certificate of proficiency for engine room watch ratings issued under section 4A during the transitional period if the certificate—
 - (a) is issued or deemed to have been issued under the pre-amended Regulation; and
 - (b) is valid immediately before 1 December 2016.
- (2) During the transitional period, a contravention of section 4(3) does not constitute an offence under section 6.
- (3) In this section—

pre-amended Regulation (《修訂前規例》) means the Merchant Shipping (Seafarers) (Engine Room Watch Ratings) Regulation (Cap. 478 sub. leg. V) in force immediately before 1 December 2016;

transitional period (過渡期間) means the period beginning on 1 December 2016 and ending on 31 December 2016.”.

15. Schedules 1 and 2 repealed

Schedules 1 and 2—

Repeal the Schedules.

Merchant Shipping (Seafarers) (Engine Room Watch Ratings) (Amendment)
Regulation 2016

L.N. 135 of 2016
B2791

Anthony B. L. CHEUNG
Secretary for Transport and
Housing

30 September 2016

Explanatory Note

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (*Convention*) sets out a comprehensive set of global standards on the training and certification of seafarers and watchkeeping, in order to promote the safety of life and property at sea and the protection of the marine environment. The latest substantial amendments to the Convention were adopted by the International Conference on Training and Certification of Seafarers in Manila, the Philippines in 2010 (*Manila Amendments*) and are to be implemented by 1 January 2017. The Convention as revised by the Manila Amendments applies to Hong Kong.

2. The main purpose of this Regulation is to amend the Merchant Shipping (Seafarers) (Engine Room Watch Ratings) Regulation (Cap. 478 sub. leg. V) to implement the requirements relating to the certification of engine room watch ratings and electro-technical ratings under the Convention as revised by the Manila Amendments. New provisions are also added to expressly provide for the application and requirements for the issue of certificates of proficiency.