

2003 No. 1230

**MERCHANT SHIPPING
PILOTAGE
PROFESSIONAL QUALIFICATIONS**

**The Pilotage (Recognition of Qualifications and
Experience) Regulations 2003**

<i>Made</i> - - - - -	<i>5th May 2003</i>
<i>Laid before Parliament</i>	<i>7th May 2003</i>
<i>Coming into force</i> - -	<i>30th May 2003</i>

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to recognition of higher education diplomas, formal qualifications, or experience in the occupation required for the pursuit of professions or other occupations, in exercise of the powers conferred upon him by that section, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Pilotage (Recognition of Qualifications and Experience) Regulations 2003 and shall come into force on 30th May 2003.

Amendment of the Pilotage Act 1987

2.—(1) The Pilotage Act 1987(c) shall be amended as follows.

(2) In subsection (1) of section 3 for “subsection” there shall be substituted “subsections (1A) and”.

(3) After subsection (1) of section 3 there shall be inserted the following subsection—

“(1A) In considering whether a person is suitably qualified—

(a) to be authorised under subsection (1) above to act as a pilot—

(i) in inland waters only; or

(ii) in inland waters and other waters; or

(b) to continue to be so authorised,

a competent harbour authority shall act in accordance with Schedule A1 to this Act (which makes provision about persons with qualifications obtained in EEA States other than the United Kingdom).”.

(a) S.I. 2002/248.

(b) 1972 c. 68; by virtue of the amendment of section 1(2) of the European Communities Act by section 1 of the European Economic Area Act 1993 (c. 51), regulations may be made under section 2(2) to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cmd. 2073) as adjusted by the Protocol signed at Brussels on 17th March 1993 (Cmd. 2183).

(c) 1987 c. 21.

(4) After subsection (2) of section 3 there shall be inserted the following subsection—

“(2A) Nothing in any determination made by a competent harbour authority under subsection (2) above shall permit the authority to act in such a way as to contravene Schedule A1 to this Act (which makes provision about persons with qualifications obtained in EEA States other than the United Kingdom).”.

(5) Before Schedule 1 there shall be inserted the following Schedule—

“SCHEDULE A1

Section 3(1A) and (2A)

RECOGNITION OF EEA QUALIFICATIONS AND EXPERIENCE IN RELATION TO PILOTAGE IN INLAND WATERS

Scope of Schedule and interpretation

1.—(1) This Schedule applies where a competent harbour authority receives an application for authorisation, or has authorised a person, under section 3(1) of this Act to act as a pilot—

- (a) in inland waters only; or
- (b) in inland waters and other waters.

(2) In this Schedule—

“adaptation period” means a period during which the applicant acts as a pilot under the supervision of a pilot authorised by the competent harbour authority, with or without undertaking further education and training, with the aim of assessing his ability to act as a pilot in the United Kingdom;

“aptitude test” means a test of the applicant’s professional knowledge conducted by the competent harbour authority with the aim of assessing his ability to act as a pilot in the United Kingdom; and

“EEA State” means any state which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993.

Formal qualifications

2.—(1) This paragraph applies where—

- (a) a competent harbour authority requires particular formal qualifications from persons applying for authorisation; and
- (b) a person applying for authorisation (“the applicant”)—
 - (i) is a national of an EEA State other than the United Kingdom; and
 - (ii) does not hold the required qualifications, but holds formal qualifications obtained in an EEA State other than the United Kingdom.

(2) If the applicant’s formal qualifications show a level of knowledge and skill corresponding to or exceeding the level shown by the formal qualifications required by the authority, the authority shall not refuse the applicant authorisation, or refuse to consider the application, on the basis that he does not hold the required formal qualifications.

(3) If the applicant’s formal qualifications show a level of knowledge and skill which is substantially below the level shown by the formal qualifications required by the authority, the authority shall allow the applicant to undergo an adaptation period or an aptitude test to demonstrate that he has acquired the knowledge and skills which were lacking.

(4) The authority shall make provision for an adaptation period and an aptitude test for this purpose and the applicant shall be permitted to choose to undergo either the adaptation period or the aptitude test.

(5) If, by undergoing the adaptation period or the aptitude test, the applicant demonstrates that he has acquired the knowledge and skills which were lacking, the authority shall not refuse the applicant authorisation, or refuse to consider the application, on the basis that he does not hold the required formal qualifications.

(6) Sub-paragraphs (2) to (5) are subject to paragraph 3.

Person intending to act in a self-employed capacity or as manager of an undertaking

- 3.—(1) This paragraph applies where—
- (a) a competent harbour authority requires persons applying for authorisation to have knowledge of, and to demonstrate that they apply, specific national rules in force; and
 - (b) a person applying for authorisation (“the applicant”)—
 - (i) is a national of an EEA State other than the United Kingdom; and
 - (ii) envisages acting as a pilot in a self-employed capacity or as a manager of an undertaking.
- (2) The competent harbour authority shall not refuse the applicant authorisation on the basis that he does not have knowledge of, or has not demonstrated that he applies, the specific national rules in force unless—
- (a) the authority has allowed the applicant to undergo an adaptation period or an aptitude test to satisfy the authority that he has the required knowledge and does apply those rules; and
 - (b) the authority is not so satisfied.
- (3) The authority shall make provision for an adaptation period and an aptitude test for this purpose and shall endeavour to take into consideration the applicant’s preference as to which one of those alternatives he undergoes.

Consideration of application to which paragraph 2 or 3 applies, and appeals

- 4.—(1) This paragraph applies where a person (“the applicant”) makes an application to a competent harbour authority for authorisation and paragraph 2 or paragraph 3 applies.
- (2) The competent harbour authority shall—
- (a) examine without unreasonable delay the application for authorisation;
 - (b) take its decision on the application within the period of four months beginning with the date on which the application and comprehensive supporting documentation were submitted; and
 - (c) in giving its decision on the application, state the reasons for its decision.
- (3) The applicant may appeal to the Secretary of State in respect of—
- (a) a failure by the authority to take a decision on the application; or
 - (b) an act or omission of the authority on the grounds that the act or omission breaches paragraph 2 or 3 of this Schedule.
- (4) An appeal to which this paragraph applies shall be made in such manner as the Secretary of State may direct.

Professional training and experience

- 5.—(1) This paragraph applies where a competent harbour authority requires general commercial or professional knowledge and ability from persons applying for authorisation.
- (2) The authority shall accept, as sufficient evidence of such knowledge and ability, appropriate experience gained in an EEA State other than the United Kingdom by a person applying for authorisation (“the applicant”).
- (3) For the purposes of this paragraph, “appropriate experience” means any of the following—
- (a) the fact that the applicant has worked in pilotage in either a self employed capacity or as manager of an undertaking, for at least six consecutive years during a period ending not more than ten years before the date on which his application for authorisation is made;
 - (b) where the applicant proves that he has had at least three years’ prior training, the fact that he has worked in pilotage in either a self employed capacity or as manager of an undertaking for at least three consecutive years;
 - (c) where the applicant proves that he has worked in pilotage in an employed capacity, for at least five years during a period ending not more than ten years before the date on which his application for authorisation is made, the fact that he has worked in pilotage in a self employed capacity for three consecutive years during the same period;

- (d) where the applicant proves that he has received at least three years' prior training, the fact that he has worked in pilotage for at least five consecutive years in a managerial capacity, of which at least three years were spent in technical posts with responsibility for one or more departments of the undertaking.

(4) Where an applicant has worked as mentioned in sub-paragraph (3)(b) or (d) and has received at least two years', but less than three years', prior training, he is to be treated as falling within the criteria in that sub-paragraph if the time he has spent working and the time during which he has received prior training, when taken together, equal—

- (a) in relation to sub-paragraph (3)(b), at least six years; and
- (b) in relation to sub-paragraph (3)(d), at least eight years.

Proof of professional training and experience

6.—(1) The competent harbour authority shall accept as proof of any of the matters mentioned in paragraph 5(3), other than proof of the prior training mentioned in paragraph 5(3)(b) and (d), a certificate concerning the nature and duration of the activity in question and issued by—

- (a) a competent harbour authority; or
- (b) the competent authority of the EEA State from which the applicant comes.

(2) For the purpose of proof of the prior training mentioned in paragraph 5(3)(b) and (d), that training must be either—

- (a) attested to by a certificate which is nationally recognised in the EEA State in which it was obtained (“a training certificate”); or
- (b) regarded by a competent professional or trade body of an EEA State other than the United Kingdom as fully satisfying that body's requirements.

(3) Where the applicant holds a certificate which—

- (a) is nationally recognised in the EEA State in which it was obtained; and
- (b) attests to knowledge and ability equivalent to at least three years of professional training in pilotage,

that certificate may be treated by the competent harbour authority in the same way as a training certificate.

(4) For the purposes of paragraphs (a) and (b) of paragraph 5(3), a person shall be regarded as having worked in pilotage as manager of an undertaking if he has so worked—

- (a) as a manager of an undertaking or a manager of a branch of an undertaking;
- (b) as a deputy to the proprietor or the manager of an undertaking where that post involves responsibility equivalent to that of the proprietor or manager represented; or
- (c) in a managerial post with duties of a commercial or technical nature and with responsibility for one or more departments of the undertaking.

Proof of other matters

7.—(1) This paragraph applies where—

- (a) a competent harbour authority requires persons who apply for authorisation to furnish proof of their good character or proof that they are not and have not previously been declared bankrupt; and
- (b) a person applying for authorisation (“the applicant”) is a national of an EEA State other than the United Kingdom.

(2) The competent harbour authority shall accept, as sufficient evidence that such a requirement is satisfied by the applicant—

- (a) an extract from the judicial record of the EEA State of which the applicant is a national or from which he comes, showing that the requirement is satisfied; or
- (b) failing this, an equivalent document issued by a competent judicial or administrative authority in the EEA State of which he is a national or from which he comes, showing that that requirement is satisfied,

which in either case complies with sub-paragraph (3).

(3) The extract or equivalent document must have been issued within the period of three months ending with the date on which it is produced to the competent harbour authority.

8.—(1) This paragraph applies where—

- (a) a competent harbour authority imposes requirements as to the good character of persons who apply for authorisation and requires such persons to prove that they are not and have not previously been declared bankrupt and have not previously been the subject of professional or administrative disciplinary measures; and
- (b) a person applying for authorisation (“the applicant”) is a national of an EEA State other than the United Kingdom.

(2) If proof of such requirements cannot be obtained from a document such as mentioned in paragraph 7, the competent harbour authority shall accept, as sufficient evidence that such a requirement is satisfied by the applicant, a certificate which—

- (a) is issued by a competent judicial or administrative authority in the EEA State of which the applicant is a national or from which he comes, attesting that the requirement is satisfied;
- (b) relates to the specific facts regarded by the authority as relevant; and
- (c) complies with sub-paragraph (3).

(3) The certificate must have been issued within the period of three months ending with the date on which it is produced to the competent harbour authority.

9.—(1) This paragraph applies in a case to which either paragraph 7 or 8 applies, where the EEA State of which the applicant is a national or from which he comes does not issue the document in question mentioned in the relevant paragraph.

(2) Subject to sub-paragraph (3), the competent harbour authority shall accept, as sufficient evidence of the satisfaction of a requirement mentioned in paragraph 7(1)(a) or 8(1)(a), a declaration that the relevant requirement is satisfied, which—

- (a) is made by the applicant before a competent judicial or administrative authority, or a notary in the relevant EEA State; and
- (b) complies with sub-paragraph (4).

(3) The competent harbour authority shall also accept, as sufficient evidence of the satisfaction of a requirement in paragraph 7 or 8 to prove no previous bankruptcy, a declaration of no previous bankruptcy, which,—

- (a) is made by the applicant before a competent professional or trade body in the relevant EEA State; and
- (b) complies with sub-paragraph (5).

(4) The declaration mentioned in sub-paragraph (2) must—

- (a) be a declaration on oath or, in an EEA State where there is no provision for declaration on oath, be a solemn declaration;
- (b) have been made within the period of three months ending with the date on which it is produced to the competent harbour authority; and
- (c) be accompanied by a certificate issued by the relevant authority or notary and attesting to the authenticity of the declaration.

(5) The declaration mentioned in sub-paragraph (3) must—

- (a) be a declaration on oath or, in an EEA State where there is no provision for declaration on oath, be a solemn declaration; and
- (b) have been made within the period of three months ending with the date on which it is produced to the competent harbour authority.

10.—(1) This paragraph applies where a competent harbour authority requires persons applying for authorisation or authorised persons to provide proof of financial standing.

(2) The authority shall regard certificates issued by banks in an EEA State of which such a person is a national or from which such a person comes, as equivalent to those issued by banks in the United Kingdom.

11.—(1) This paragraph applies where a competent harbour authority requires persons applying for authorisation or authorised persons to provide proof that they are insured against the financial risks arising from their professional liability.

(2) The authority shall accept, as equivalent to a certificate issued by an insurance undertaking of the United Kingdom, a certificate which is issued—

- (a) by an insurance undertaking of an EEA State other than the United Kingdom; and
- (b) within the period of three months ending with the date on which it is produced to the competent harbour authority.”.

Signed by authority of the Secretary of State for Transport

5th May 2003

David Jamieson
Parliamentary Under Secretary of State,
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement directive 1999/42/EC of the European Parliament and of the Council of 7th June 1999 in relation to qualifications which may be required, by competent harbour authorities in the United Kingdom, from persons applying to such authorities for authorisation to act as pilots in inland waters. The Directive established a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications (O.J. L 201, 31.7.1999, p.77). The Directive was extended to the EEA by Decision of the EEA Joint Committee 88/2000, adopted on 27th October 2000 (O.J. (supplement) L007/05, 1.1.2001).

This Explanatory Note incorporates the transposition note which would otherwise have been made available separately.

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