
Implementation of Directive 2009/21/EC in the United Kingdom

Notice to all Shipowners, Operators, Managers, Shipbuilders, Classification Societies, Certifying Authorities, Masters, Seafarers

PLEASE NOTE:-

Where this document provides guidance on the law it should not be regarded as definitive. The way the law applies to any particular case can vary according to circumstances - for example, from vessel to vessel and you should consider seeking independent legal advice if you are unsure of your own legal position.

Summary

This MSN describes the way in which the United Kingdom meets its obligations under the European Flag State Directive 2009/21/EC. The broad areas covered relate to obligations regarding the transfer of data between flag States, action when UK ships are detained abroad, the storage of data about UK ships, and auditing and quality systems of, and reporting by, the UK administration.

1. Introduction

1.1 Directive 2009/21/EC, which will be referred to in this MSN as “the Directive”, outlines obligations for member states with Merchant Shipping Registers, known as “flag States”. These cover areas which include the application of international standards, receiving ships onto their register, follow-up of their ships detained in Port State Control inspections, availability and release of data, IMO Flag State auditing and Quality Systems. The United Kingdom (UK) is a flag State, and this MSN describes the way in which the UK is implementing this Directive, the text of which is at Annex. The UK is already in compliance with the main requirements of the Directive.

2. Transposition

2.1 Articles 1, 2 and 3 deal with the **Purpose, Scope and Definitions** aspects of the Directive respectively.

2.2 Article 4 - Conditions for allowing a ship to operate upon granting the right to fly the flag of a Member State

2.2.1 Paragraph 1. Prior to allowing a ship to operate on the UK flag, the UK uses a “Flagging-in matrix”, which scores the ship against international standards and risk factors. The score the ship achieves against the matrix will inform the UK administration’s decision on whether to

allow the ship to register on the UK flag, and the level of scrutiny before registering, for example, if a full inspection by the Maritime and Coastguard Agency (MCA) is necessary. The UK approaches the losing flag State if it requires any information on the past record of the ship which is not otherwise available, including any deficiencies. This also includes identifying unresolved issues.

2.2.2 Paragraph 2. It is the UK's practice to release promptly deficiency and safety related information to any receiving flag State which requests such information when a ship is transferring from the UK shipping register. If so required, the receiving flag State should contact MCA with their request on 0044 (0)23 8083 9628.

2.3 Article 5 - Detention of a ship flying the flag of a Member State

2.3.1 The MCA exercises oversight to ensure any UK ship detained abroad is brought into compliance. Depending on location of the ship at the time, either MCA surveyors or an appointed Recognised Organisation, in collaboration with the relevant Port State, will take appropriate action to ensure the ship is brought into compliance with the relevant Convention(s). It is UK practice that if a UK vessel is detained abroad, the UK administration will carry out an additional follow-up inspection, chargeable under UK legislation, within 6 weeks, where this is appropriate.

2.4 Article 6 - Accompanying measures

2.4.1 The particulars of UK ships along with their survey history are stored in the MCA Fleet Management System (FMS) and the Ship Inspection & Survey (SIAS) databases.

2.4.2 The Port State Control history of UK registered ships is available in the databases of the Paris Memorandum of Understanding (MOU), other MOUs and EQUASIS.

2.4.3 The UK holds information on marine casualties in the Department for Transport's Marine Accident Investigation Branch (MAIB) systems.

2.4.4 The UK has access to other databases which are additional sources of information.

2.5 Article 7 - Flag State auditing process

2.5.1 The UK was subject to an International Maritime Organization (IMO) audit under the voluntary Member State audit scheme in 2006, and will continue to undergo IMO audits in compliance with the Directive.

2.6 Article 8 - Quality management system and internal evaluation

2.6.1 Paragraph 1. The UK maritime safety authority is the Maritime and Coastguard Agency (MCA), which has responsibility for surveys and inspections on UK ships, and security inspections on non-passenger ships. The MCA is certified to quality management system ISO 9001:2008. The responsibility for security inspections on the remaining UK ships lies with the Department for Transport (DfT) Transport Security Compliance Division. The ship compliance part of the Transport Security Compliance Division is working towards achieving ISO 9001:2008 certification by 17 June 2012 in compliance with Article 8.1 of the Directive.

2.6.2 Paragraph 2. The UK is, and always has been, on the Paris MOU White list and would not be required to send a report to the Commission as long as it remains on the White list. However, if the UK were to appear on the Black or Grey lists for the periods specified in the Directive, it would publish annual reports as described in Article 8.2 of the Directive.

2.7 Article 9 - Reports

2.7.1 This Article does not place any obligation on the UK as a member state.

2.8 Article 10 - Committee Procedure

2.8.1 This Article does not place any obligation on the UK as a member state.

2.9 Article 11 - Transposition

2.9.1 The UK has produced this Merchant Shipping Notice in pursuance of this Article.

2.10 Article 12 - Entry into force

2.10.1 This Article does not place a specific obligation on the UK as a member state.

2.11 Article 13 - Addressees

2.11.1 This Article places an obligation of compliance with all the provisions of this Directive on member states. The manner in which the UK complies is outlined above.

Annex

DIRECTIVE 2009/21/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 23 APRIL 2009 ON COMPLIANCE WITH FLAG STATE REQUIREMENTS (Text With EEA Relevance)

Official Journal L 131 , 28/05/2009 P. 0132 - 0135

Directive 2009/21/EC of the European Parliament and of the Council
of 23 April 2009

on compliance with flag State requirements

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) The safety of Community shipping and of citizens using it and the protection of the environment should be ensured at all times.

(2) In respect of international shipping a comprehensive framework enhancing maritime safety and the protection of the environment with regard to pollution from ships has been set up through the adoption of a number of conventions for which the International Maritime Organisation (hereinafter the IMO) is the depository.

(3) Under the provisions of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) and of the conventions for which IMO is the depository (hereinafter the IMO Conventions), the States which are party to those instruments are responsible for promulgating laws and regulations and for taking all other steps which may be necessary to give those instruments full and complete effect so as to ensure that, from the point of view of safety of life at sea and protection of the marine environment, a ship is fit for the service for which it is intended and is manned with competent maritime personnel.

(4) Due account has to be taken of the Maritime Labour Convention, adopted by the International Labour Organisation (ILO) in 2006, which also addresses flag State-related obligations.

(5) On 9 October 2008, the Member States adopted a statement in which they unanimously recognised the importance of the application of the international conventions related to flag States obligations in order to improve maritime safety and to contribute to preventing pollution by ships.

(6) Implementation of the procedures recommended by the IMO in MSC/Circ.1140/MEPC/Circ.424 of 20 December 2004 on the transfer of ships between States should strengthen the provisions of the IMO Conventions and Community maritime safety legislation relating to a change of flag and should increase transparency in the relationship between flag States, in the interests of maritime safety.

(7) The availability of information on ships flying the flag of a Member State, as well as on ships which have left a register of a Member State, should improve the transparency of the performance of a high-quality fleet and contribute to better monitoring of flag State obligations and to ensuring a level playing field between administrations.

(8) In order to help Member States in further improving their performance as flag States, they should have their administration audited on a regular basis.

(9) A quality certification of administrative procedures in accordance with the standards of the International Organisation for Standardisation (ISO) or equivalent standards should further ensure a level playing field between administrations.

(10) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [4].

(11) Since the objectives of this Directive, namely the introduction and implementation of appropriate measures in the field of maritime transport policy, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

1. The purpose of this Directive is:

(a) to ensure that Member States effectively and consistently discharge their obligations as flag States; and

(b) to enhance safety and prevent pollution from ships flying the flag of a Member State.

2. This Directive is without prejudice to Community maritime legislation, as listed in Article 2(2) of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) [5], and to Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) [6].

Article 2

Scope

This Directive shall apply to the administration of the State whose flag the ship is flying.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

(a) "ship" means a ship or craft flying the flag of a Member State falling within the scope of the relevant IMO Conventions, and for which a certificate is required;

(b) "administration" means the competent authorities of the Member State whose flag the ship is flying;

(c) "recognised organisation" means an organisation recognised in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (recast) [7];

(d) "certificates" means statutory certificates issued in respect of the relevant IMO Conventions;

(e) "IMO audit" means an audit conducted in accordance with the provisions of Resolution A.974(24) adopted by the IMO Assembly on 1 December 2005.

Article 4

Conditions for allowing a ship to operate upon granting the right to fly the flag of a Member State

1. Prior to allowing a ship to operate, which has been granted the right to fly its flag, the Member State concerned shall take the measures it deems appropriate to ensure that the ship in question complies with the applicable international rules and regulations. In

particular, it shall verify the safety records of the ship by all reasonable means. It shall, if necessary, consult with the losing flag State in order to establish whether any outstanding deficiencies or safety issues identified by the latter remain unresolved.

2. Whenever another flag State requests information concerning a ship which was previously flying the flag of a Member State, that Member State shall promptly provide details of outstanding deficiencies and any other relevant safety-related information to the requesting flag State.

Article 5

Detention of a ship flying the flag of a Member State

When the administration is informed that a ship flying the flag of the Member State concerned has been detained by a port State, it shall, according to the procedures it has established to this effect, oversee the ship being brought into compliance with the relevant IMO Conventions.

Article 6

Accompanying measures

Member States shall ensure that at least the following information concerning ships flying their flag is kept and remains readily accessible for the purposes of this Directive:

- (a) particulars of the ship (name, IMO number, etc.);
- (b) dates of surveys, including additional and supplementary surveys, if any, and audits;
- (c) identification of the recognised organisations involved in the certification and classification of the ship;
- (d) identification of the competent authority which has inspected the ship under port State control provisions and the dates of the inspections;
- (e) outcome of the port State control inspections (deficiencies: yes or no; detentions: yes or no);
- (f) information on marine casualties;
- (g) identification of ships which have ceased to fly the flag of the Member State concerned during the previous 12 months.

Article 7

Flag State auditing process

Member States shall take the necessary measures for an IMO audit of their administration at least once every seven years, subject to a positive reply of the IMO to a timely request of the Member State concerned, and shall publish the outcome of the audit in accordance with relevant national legislation on confidentiality.

This Article shall expire at the latest on 17 June 2017 or at an earlier date, as established by the Commission in accordance with the regulatory procedure referred to in Article 10(2), if a mandatory IMO Member State Audit Scheme has entered into force.

Article 8

Quality management system and internal evaluation

1. By 17 June 2012 each Member State shall develop, implement and maintain a quality management system for the operational parts of the flag State-related activities of its administration. Such quality management system shall be certified in accordance with the applicable international quality standards.

2. Member States which appear on the black list or which appear, for two consecutive years, on the grey list as published in the most recent annual report of the Paris Memorandum of Understanding on Port State Control (hereinafter the Paris MOU) shall provide the Commission with a report on their flag State performance no later than four months after the publication of the Paris MOU report.

The report shall identify and analyse the main reasons for the lack of compliance that led to the detentions and the deficiencies resulting in black or grey status.

Article 9

Reports

Every five years, and for the first time by 17 June 2012 the Commission shall present a report to the European Parliament and to the Council on the application of this Directive.

This report shall contain an assessment of the performance of the Member States as flag States.

Article 10

Committee procedure

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Article 3 of Regulation (EC) No 2099/2002.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at two months.

Article 11

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 17 June 2011 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 12

Entry into force

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Article 13

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 23 April 2009.

For the European Parliament

The President

H.-G. Pöttering

For the Council

The President

P. Nečas

[1] OJ C 318, 23.12.2006, p. 195.

[2] OJ C 229, 22.9.2006, p. 38.

[3] Opinion of the European Parliament of 29 March 2007 (OJ C 27 E, 31.1.2008, p. 140), Council Common Position of 9 December 2008 (OJ C 330 E, 30.12.2008, p. 13) and Position of the European Parliament of 11 March 2009 (not yet published in the Official Journal).

[4] OJ L 184, 17.7.1999, p. 23.

[5] OJ L 324, 29.11.2002, p. 1.

[6] OJ L 167, 2.7.1999, p. 33.

[7] See page 11 of this Official Journal.

More Information

Survey and Operations Policy Branch
Maritime and Coastguard Agency
Bay 2/22
Spring Place
105 Commercial Road
Southampton
SO15 1EG

Tel : +44 (0) 23 8032 9133
Fax : +44 (0) 23 8032 9104
e-mail: hq_surveyops@mcga.gov.uk

General Inquiries: infoline@mcga.gov.uk

MCA Website Address: www.mcga.gov.uk

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