

MINISTRY OF INFRASTRUCTURE

Maritime Education Department

GM-DEM-1.5920.1.2021.MS

Information regarding the application of regulations on commercial seagoing yachts qualification

Following the entry into force of the Regulation of the Minister of Maritime Economy and Inland Navigation of 29 January 2018 *on the qualifications and training of crew members of commercial yachts and the conditions for obtaining these qualifications* [Dz. U. (Journal of Laws of the Republic of Poland) of 2018, item 490], hereinafter referred to as "the Regulation", the Ministry of Infrastructure presents the following information.

The concept of a seagoing yacht flying under the Polish flag

Seagoing yachts under the Polish flag, as well as members of the crews of these yachts, are subject to Polish law. In other cases, the rules of the flag state apply, i.e. of the state where the yacht was registered. With regard to qualifications on commercial yachts, the citizenship of the crew members of these yachts is not of fundamental importance, because the documents confirming the qualifications issued by the flag state of the yacht are important. Qualifications on commercial yachts must comply with the requirements imposed by the administration of the flag state concerned. The waters of navigation should not affect the qualification documents of crew members of commercial yachts under the Polish flag. However, it should be borne in mind that local law may specify additional requirements in this regard.

Under the current legal framework, the provisions of the Act of 18 August 2011 *on maritime safety* (Dz.U. 2020, item 680, as amended), hereinafter referred to as the "Act", apply to yachts under the Polish flag. In the case of a yacht under the Polish flag, its intended use should also be taken into account.

According to the statutory definition, a seagoing yacht is a recreational yacht or a commercial yacht intended or used for sports or recreational purposes in the sea. Pursuant to Article 5, points 8-9, seagoing yachts are divided as follows:

– recreational yacht - to be understood as a vessel intended or used exclusively for sports or recreation, other than a commercial yacht;

– commercial yacht - to be understood as vessel intended or used exclusively for sports or recreation, as part an activity consisting in:

a) payable transport of passengers;

b) payable training cruises;

c) payable provision of a vessel for the purpose of catching marine organisms on the basis of a sport fishing permit in accordance with the provisions on fisheries;

d) payable provision of a manned vessel;

e) any other provision of a vessel for consideration.

- provided that it is not used for the carriage of more than 12 passengers within the framework of this activity.

A chartered yacht, the rental of which involves fees for the yacht owner, should also be treated as a commercial yacht. If the yacht, made available under a bareboat charter, is used for the activities specified in the above-mentioned points a) to e), it is qualified as a commercial yacht. Therefore, the criteria for classifying seagoing yachts depend on their intended use and method of use.

Commercial yacht crew qualifications

Commercial yacht crew members are subject to this regulation. In the case of the engineering department, the qualifications of the crew members depend on the equipment installed and of the main propulsion machinery power. The power of the main propulsion at the unmanned engine-room will not oblige the crew members to have qualification documents from the machinery department, despite the power of the main propulsion machinery exceeding 750 kW. The necessity for crew members to have appropriate qualifications is specified in the yacht safety certificate.

Documents confirming qualifications for positions on commercial yachts

Pursuant to Articles 69 and 70 of the Act, a confirmation of qualifications necessary to occupy positions on commercial yachts, with the exception of bareboat charters of commercial yachts available under a fee, are the following qualification documents:

- sailing certificates - issued pursuant to Article 37a paragraph 15 of the Act of 21 December 2000 *on inland navigation* (Dz.U. of 2020, item 1863), or
- seafarers' qualification documents (Certificates of Competency - CoC, Certificates of Proficiency – CoP, training certificates, endorsements of recognition) - confirming professional qualifications on seagoing vessels, or
- Certificates of Competency - CoC, Certificates of Proficiency – CoP, training certificates - issued on the basis of the Regulation of the Minister of Maritime Economy and Inland Navigation of 29 January 2018 *on the qualifications and training of crew members of commercial yachts and the conditions for obtaining them*.

In addition, members of the permanent crew should have basic safety training certificates and, depending on the position held, the length or tonnage of the yacht and its equipment, other certificates.

The basic safety training certificates include training certificates in the following areas:

- Certificate of Basic Safety Training in Personal Survival Techniques;
- Certificate of Basic Safety Training in Fire Prevention & Fire Fighting
- ;
- Certificate of Basic Safety Training in Personal Safety & Social Responsibilities;
- Certificate of Basic Safety Training in Elementary First Aid
- .

On commercial yachts up to 500 gross tonnage (GT), the training certificates indicated above may be replaced by a certificate of safety training on commercial yachts.

Persons with recreational qualifications (certificates for sailing yachts and motor yachts) and basic safety training certificates are entitled to serve on commercial yachts in accordance with the capacity limitations resulting from the certificates held:

- in the deck department - on commercial yachts with a gross tonnage of up to 200 GT;
- in the engine department - on commercial yachts with a main propulsion machinery power of up to 750 kW.

When on a training cruise, training crew members do not need to have a safety training certificate. Requirements to have appropriate qualifications, including safety certificates, are not determined by the place of the yacht charter, but by the requirements of the administration of the flag state under which the yacht is sailing.

In order to obtain a CoC or CoP for seafarers of commercial yachts, it is necessary to complete the appropriate training or courses, as well as have approved seagoing service and pass the qualification exam before the Central Maritime Examination Board, if required by law. Both trainings and courses are conducted by maritime education and training centers recognized and supervised by the Minister, in accordance with the standards resulting from the STCW Convention.

In summary, the qualifications necessary to serve on commercial yachts can be confirmed by qualifications of professional seafarers in accordance with the requirements of STCW, sailing certificates and qualification documents for members of commercial yacht crews, specified in the Regulation.

It should be emphasized that the requirements for the qualifications of crew members of commercial yachts specified in the regulation do not apply to recreational yachts. On the other hand, the qualifications of the crew of a commercial yacht should meet the minimum requirements specified in the yacht safety certificate. Moreover, there should be no more than 12 passengers on a commercial yacht, and the number of persons including the crew should not exceed the number indicated in the yacht safety certificate. This restriction also applies when members of the trainees crew (members of training and internship cruises) are on the yacht. The total number of passengers and trainees crew (without a safety training certificate) must not exceed 12 persons. Due to the fact that people on an internship and training cruise are not required to have safety certificates, they are treated as passengers.

Recognition of foreign qualification documents

The procedure for recognizing foreign qualification documents for members of commercial yacht crews should meet the requirements set out in the STCW Convention. As is the case with the recognition of foreign documents of crew members of seagoing ships in international shipping. The confirmation of recognition of a foreign certificate may be issued only for a document issued according to the STCW Convention, with reference to specific regulations. This basis must clearly result from the certified qualification document. However, the document should be issued by the maritime administration of a given state or under the authority of the maritime administration.

The same is the case with safety training certificates and specialist certificates, i.e. the endorsement of recognition may only apply to certificates issued on the basis of the relevant regulation of the STCW Convention by the administration of an EU Member State or a third country that has been recognized by the European Commission in the field of training of seafarers and issuing qualification documents and with which the minister competent for maritime economy concluded an agreement on the recognition of diplomas and certificates issued by that state or by an authorized training center under the authority of the maritime administration of these states.

At the same time, it should be noted that in the case of sailing on yachts under the Polish flag on the territory of another country, additional qualification requirements may apply (dictated, among others, by

specific safety conditions), specified by that country, despite the fact that the crew members meet the requirements of Polish regulations in the field of qualifications.

Medical certificates

A person applying for obtaining, renewal or replacement of the qualification document must have a valid medical certificate issued by an recognized medical practitioner. The medical certificate must be issued in accordance with the requirements set out in the Act of 5 August 2015 on maritime labour (Dz.U.of 2020, item 1353). The medical certificate is a document confirming the ability of a crew member to perform the duties resulting from the capacity, to which he is entitled by his qualification document.

Based on Article 2 (7), Article 3 (2) and Article 100 above of the Maritime Labour Act, members of the crew of a non-convention vessel may be employed if they have:

- documents confirming professional qualifications,
- a valid medical certificate,
- a valid seafarer's book.

The medical certificate is issued for 2 years. A medical certificate may be issued for a period shorter than 2 years, if the recognized medical practitioner determines that the medical fitness of the person applying for this certificate does not allow the document to be issued for a period of 2 years.

The obligation to have medical certificates for members of commercial yacht crews rests with the vessel owner, who is responsible for the proper manning of the yacht's crew.

In addition, it is necessary to submit the medical certificate when issuing and renewing qualification documents.

It should be noted that a medical certificate issued in another country may be accepted if it meets the essential requirements set out in Regulation I / 9 and section A-I / 9 of the STCW Convention.

Seagoing service

The seagoing service means the period of sailing as a crew member on a commercial yacht.

Pursuant to § 30 of the Regulation, proof of seagoing service and additional seagoing service, including: actual sea service, yard service and stand-by service, is the entry in the seafarer's book (issued on the basis of maritime labor regulations), a sea voyage evaluation form or sea voyage certificate, confirmed by the master or the owner of the seagoing yacht.

The sea voyage evaluation form or sea voyage certificate should contain information allowing identification of the seagoing service necessary to obtain, renew or replace the qualification document, in particular: name and surname of the person undergoing the apprenticeship, name of the seagoing yacht, IMO number of the yacht, if any, and gross tonnage (GT) and the main propulsion machinery power of the seagoing yacht, as well as the period and type of seagoing service, information about the position occupied during the internship, name and address of the shipowner of the yacht, signature of the master or the chief mechanic, or the shipowner of the seagoing yacht. In order to verify the correct seagoing service faster and to standardize the information about the cruises made, a template of the sea voyage evaluation form has been developed, which is recommended for use (not obligatory) by crew members. The model cruise card is attached to this information.

Seagoing service on commercial yachts will be counted towards the internship required for the renewal of training certificates in accordance with the requirements of the STCW Convention. On the other hand, the seagoing service on recreational yachts for tourist purposes will not be counted towards obtaining qualification documents for members of commercial yacht crews.

GMDSS certificates

The requirements for the application for and renewal of the GMDSS Operator Certificate are regulated by Article 150 of the *Telecommunications Law* (Dz.U. of 2019, item 2460, as amended) and by the Regulation of the Minister of Administration and Digitization of 16 January 2015 *on radio equipment operator certificates* (Dz.U. of 2015, item 99). To obtain the GMDSS General Operator's Certificate (GOC) and the GMDSS Restricted Operator's Certificate (ROC), it is necessary to complete the training, have documented seagoing service and pass the exam for the appropriate certificate.

A person holding a GMDSS General Operator's Certificate and a GMDSS Restricted Operator's Certificate may apply for its renewal. The person is required to submit an application for a certificate (within the period of validity of the certificate or not later than within 12 months from the date of expiry of this certificate) and demonstrate sea service consisting in the performance of the functions of the operator responsible for radiocommunication in the distress situations that are appropriate for the certificate confirmed by the master of the yacht (for at least 12 months in the period of 5 years before the expiry date of the certificate held). Such functions may be performed only when the yacht is equipped with appropriate radio devices functioning in the GMDSS system.

In the absence of confirmation of sea service, in order to renew the certificate, it is necessary to pass an exam in the scope specified in the above-mentioned regulation on radio equipment.