

## Circular - Series R

Circular Series R (Regulations) supersedes previous Series F. In the new Series R, relevant legal amendments and amendments to conventions are also published.

### Circular recipients: (check box)

- Sdir : Norwegian Maritime Authority
- A: 16 specially authorized employment offices
- U: Selected Foreign Service stations
- P: Equipment manufacturers, any subgroups
- OFF: Offshore companies/OIM/operators
- Hov: Main organizations
- H.i. Bodies or agencies for their comments
- Others:

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*The Circular should be entered into a special diagram or as appropriate in the latest editions of relevant NMA publications and kept until the next editions.*

## Regulations of 29 August 2016 on marine equipment replacing Regulations 29 December 1998 No. 1455 on marine equipment

### 1. Introduction

The Norwegian Maritime Authority (NMA) has laid down new Regulations on marine equipment. These Regulations enter into force on 18 September 2016. As from the same date, the Regulations of 29 December 1998 No. 1455 on marine equipment are repealed.

The background for the Regulations is that the current Directive 98/98/EC is repealed and replaced by Directive 2014/90/EU. The Directive continues the basic principles of a common European regime for the requirements for, testing of and marking of marine equipment placed on board EEA ships. Nevertheless, the Directive involves changes in a few areas, where the main purpose is to facilitate improved conformity between the Marine Equipment Directive and the requirements of the international instruments, improved quality assurance of the notified bodies, and an implementation and enforcement in the EU and EEA which is as uniform as possible.

The Directive applies to marine equipment which is placed on board EEA ships, when the international conventions SOLAS, MARPOL or COLREG, or instruments originating from these, require flag state approval of equipment.

Since the enforcement of the Directive is connected with the issue, renewal or endorsement of international certificates, the Directive only regulates marine equipment which is placed on board ships engaged on international voyages.

In Norwegian legislation, the current Regulations on marine equipment were also made applicable to mobile offshore units, fishing vessels, passenger ships and cargo ships engaged on domestic voyages. As a main rule, the Regulations on marine equipment apply to equipment listed in the Annex to the Directive, when such equipment is placed on board Norwegian ships and mobile offshore units, unless otherwise provided in the various regulations on construction and equipment which are applicable to the vessel.

Like the Directive, the Regulations on marine equipment regulate the duties of manufacturers and other economic operators that make marine equipment available on the market, and the company's duty to see to that only wheel-marked marine equipment is placed on board the ship.

### 2. Consultation

The Norwegian Maritime Authority's Circulars consist of 2 series, **Series R: Regulations, Acts and Conventions, and Series V: Guidelines and interpretations.**

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A proposal for new Regulations on marine equipment was circulated for review for three months until 10 June of this year, and we received comments from authorities concerned, shipowner organisations and the Norwegian Bar Association.

An overview of the comments is attached to this Circular (in Norwegian only), but we will comment on some of the statements below.

The Norwegian Pelagic Association, the Norwegian Fishermen's Association and the Norwegian Coastal Shipowners' Association (Kystrederiene) expressed concern that the Regulations would result in requirements to replace equipment already placed on board. The Norwegian Maritime Authority (NMA) specifies that we have not intended to implement requirements for wheel-marked equipment with a retroactive effect. The listing in sections 8a to 8g in the current Regulations on marine equipment, which is continued in the form of a table in Appendix IV to the new Regulations, expresses the current law and preserves the history on when the requirements for wheel-marked equipment for the various ship types and equipment categories were introduced in the previous rules. Where the table for instance indicates that there is a requirement for wheel-marked life-saving equipment when this is placed on board cargo ships without an international safety certificate on or after 1 January 2005, it is because the requirement for wheel-marked equipment was introduced at that time.

For fishing vessels, in connection with the work on the new Regulations, we have been made aware of some discrepancies between the dates in the current Regulations on marine equipment and the central Regulations on fishing vessels of 15 meters in overall length and upwards. That has been corrected in Annex IV to the new Regulations, so that the table correctly reflects current law.

Several consultative statements mentioned that it might be excessive, in some cases, to require small vessels to use wheel-marked equipment intended for larger vessels. In this connection, the Norwegian high-speed craft owners' association (Hurtigbåtrederienes forbund) suggested that the NMA should not use the Marine Equipment Directive as basis for the regulation of such vessels, but instead approve equipment in accordance with national requirements and standards. The Norwegian Environment Agency mentioned the requirement for a wheel-marked line-throwing appliance on board cargo ships of less than 15 metres as an example of a requirement which, in the opinion of the Norwegian Environment Agency, was inappropriate and excessive. The NMA appreciates that general rules may in some cases have unfortunate effects. Some such circumstances have been taken into account when drawing up equipment requirements for certain vessel types, in that equipment that satisfies a different standard has been specifically allowed. Moreover, the various regulations on construction and equipment have provisions on exemptions which could in individual cases allow other solutions that are justifiable in terms of safety.

Some consultative bodies also stated that there is no reason for having the same stringent requirements for equipment which is not required, but is placed voluntarily on board. The NMA has reviewed the practice in this area. There are a number of factors to take into account related to this issue, and we refer to a separate section on voluntary equipment further down.

### **3. Further details on the new Regulations on marine equipment**

#### Introduction

We have envisaged that the main elements of the current Regulations on marine equipment are to be continued. The Regulations will, same as today, implement the EU Directive, but also regulate requirements for marine equipment for other Norwegian ships, fishing vessels and mobile offshore units.

In order to verify that products satisfy the requirements for design, construction, performance and testing laid down in the Regulations, the manufacturer or its representative should use designated notified bodies to carry out conformity assessment procedures. The manufacturer should issue a declaration of conformity as documentation of conformity, and the product should be marked with the "wheel mark".

The company should ensure that marine equipment being placed on board ships and mobile offshore units required to carry such equipment, is wheel-marked and equipped with a declaration of conformity. The wheel mark, together with the declaration of conformity from the manufacturer, documents that the equipment satisfies the requirements for design, construction, performance, testing and conformity assessment laid down in Appendix A to the Regulations.

#### Implementation of Directive 2014/90/EU

The Directive has 42 articles, and is implemented into Norwegian legislation through these Regulations, existing acts and the NMA's internal procedures.

Provisions in the Directive regulating obligations of economic operators and companies have been transformed and laid down in the new Regulations on marine equipment.

Provisions regulating the notified bodies are covered by the Act relating to Notified Bodies<sup>1</sup> currently in force. The Act regulates circumstances related to designation, withdrawal of designation, information obligation and the relationship to the Public Administration Act. The Act expressly provides that conditions may be attached to the designation, and this has also currently been done in the form of guidelines for designation. The NMA has been delegated responsibility and authority for designation pursuant to the Marine Equipment Directive, and the NMA has started updating the guidelines, i.a. to specify that Annex II, IV and V to Directive 2014/90/EU should apply to the designation of notified bodies.

The Directive's provisions on enforcement are ensured by the NMA's procedures on supervision and on issue of certificates.

The Directive also includes market surveillance obligations for authorities. For marine equipment, this responsibility is currently divided between the NMA and the Norwegian Communications Authority, and this will still be the case with the new Directive. The NMA is working on procedures for market surveillance, including a procedure for decisions on safeguard measures.

Appendix A to the current Regulations on marine equipment is continued as Appendix A to the new Regulations on marine equipment. Future changes to requirements and standards will be in the form of implementing regulations laid down by the EU Commission. Implementing regulations will in the EU apply without national implementing measures. For the EFTA countries, the regulations will still need to be incorporated into the EEA Agreement and implemented into national legislation. The NMA will as far as practicable plan the work with future implementation so that entry into force is concurrent with the EU.

#### Voluntary equipment

Voluntary equipment means equipment listed in Appendix A that is not required for a specific vessel, but that the company voluntarily places on board for use.

In connection with the restructuring of the regulations on construction and equipment and amendments to the previous Regulations on marine equipment in 2014, several regulations and historical versions of the Marine Equipment Regulations were reviewed and analysed with a view to finding the ship categories where current law required wheel-marked equipment. This resulted in the additions in sections 8a to 8g in the Marine Equipment Regulations in force at the time. However, following these amendments, the NMA has found that there have been ambiguities related to certain categories of equipment being voluntarily placed on board ships engaged on domestic voyages, and whether such equipment is required to be wheel-marked. The previous regulations had varying ways of regulating this for the different types of equipment and ship. The purpose of the amendments in 2014 was to sum up and continue the current law at the time, any material changes were not intended.

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<sup>1</sup> Act of 16 June 1994 No. 920 relating to Notified Bodies responsible for carrying out conformity assessments

For more details on the assessments and background related to the mentioned amendments from 2014, please refer to RSR 19-2014 which can be found on our website (in Norwegian only).

<https://www.sjofartsdir.no/regelverk/rundskriv/forskrift-om-endring-i-forskrift-29-desember-1998-om-skipsutstyr/>

For ships with international safety certificates, the clear starting point is that all equipment listed in Appendix A being placed on board the ship should be wheel-marked. Mobile offshore units also follow this principle.

For cargo ships without international safety certificates and fishing vessels of 15 metres in overall length and upwards, the practice is different for certain types of equipment. Even if the starting point for these vessel groups is that navigational equipment should be wheel-marked, such equipment is not required to be wheel-marked when it is placed voluntarily on board. The same applies to radiocommunication equipment, although radiocommunication equipment (GMDSS equipment) voluntarily placed on board should be wheel-marked or CE-marked.

Marine equipment placed on board for use on passenger ships is required to be wheel-marked. This applies regardless of whether the equipment is required or placed voluntarily on board for use.

The NMA also refers to guidance circular RSV 11-2016, which specifies requirements for wheel-marking of navigation equipment, radiocommunication equipment and fire protection equipment (in Norwegian only).

#### Appendix A

Appendix A to Regulations of 29 December 1998 No. 1455 on marine equipment, last updated by Regulation of 14 March 2016 No. 29 (in force on 30 April 2016), will continue to apply. This ensures continuity of requirements and marking of marine equipment from the old to the new regime.

#### **4. Economic and administrative consequences**

The new Regulations on marine equipment continue the basic principles of current law. In the opinion of the NMA, the amendments will not have any economic or administrative consequences of significance for economic operators, companies or authorities.

#### **5. Comments to the individual sections**

To section 1, Scope of application

The provision lays down that the Regulations apply to marine equipment placed or to be placed on board Norwegian ships, fishing vessels and mobile offshore units. The Regulations also apply to marine equipment to be placed on board EEA ships. The term EEA ship reflects the term EU ship used in the Directive. The term covers ships flying the flag of an EEA member state and falling within the scope of the international conventions SOLAS, MARPOL and COLREG. The phrasing "placed or to be placed on board" is taken from the Directive, and reflects that the Directive also regulates manufacturers and other economic operators with regard to marine equipment that will be made available on the market.

The scope of application of Directive 2014/90/EU is, like 96/98/EC, connected with ships with international certificates. In the proposal for the new Regulations, the scope of application is broader than in the Directive, in that the Regulations as a starting point also regulate marine equipment placed or to be placed on board Norwegian ships with national certificates and mobile offshore units, as long as the equipment concerned is listed in Appendix A. This is a continuation of current law, where the requirements for wheel-marked marine equipment to a relatively large extent have been made gradually applicable to ships engaged on domestic voyages as well.

The information contained in sections 8a to 8g in the now repealed Regulations on marine equipment has been continued in a table included in Annex

IV to the new Marine Equipment Regulations. The table gives an overview of when wheel-marked marine equipment is required, and is based on the criteria vessel type, gross tonnage, length, certificates and/or date for placement on board. The Appendix also takes into account that the wheel mark requirement has been made applicable on different dates, and that the requirement applies to marine equipment placed on board after the dates set out in the table. The table should be read so that the criteria that apply to a ship, may be indicated several places in the left column.

Example: When fire protection equipment listed in Appendix A chapter 3 is placed on board a cargo ship with an international safety certificate, such equipment should be wheel-marked. The same applies to cargo ships without international safety certificate, for equipment placed on board on or after 1 January 2005. The former cargo ships will generally be of 400 gross tonnage and upwards, and equipment placed on board to prevent environmental pollution should thus be wheel-marked. For cargo ships of less than 400 gross tonnage, the equipment covered by Appendix A/2.7 to 2.10 is relevant, since such equipment is required for all ships.

The Regulations implement the Marine Equipment Directive's standardisation requirements, as well as the requirements for testing, quality assurance and marking, but do not say anything about which equipment is required to be on board the various vessel categories. The required equipment for a specific vessel will be laid down in the regulations regulating construction and equipment of the vessel in question. In the regulations regulating the various vessel types, provisions may be laid down that allow equipment approved in accordance with other standards than the standard required for wheel-marking. Such special provision will then take precedence over the main rule in the Marine Equipment Regulations. If provisions regulating e.g. fishing vessels allow equipment approved in accordance with other standards than the standards required for wheel-marking, such special provisions will prevail. Another example of prevailing special provisions may be requirements for equipment being installed or placed on a mobile offshore unit and where such equipment has stricter requirements for approval than the requirements related to wheel-marking.

For equipment other than the equipment listed in Appendix A, which is not required, the company will be responsible for assessing the suitability of the equipment, and whether it is justifiable in terms of safety to place the equipment on board. Nonetheless, such equipment may not replace, nor be used in such a way that it may interfere with, required equipment.

To section 2, Requirements for marine equipment

The provision refers to Appendix A with regard to which requirements for design, construction, performance, testing and conformity assessment that apply for the wheel-marking of the equipment in question. Appendix A indicates what specifically applies to each piece of equipment, and is the key document ensuring a harmonised enforcement within the EEA.

The company is responsible for ensuring that marine equipment placed on board satisfies the requirement for design, construction, performance, testing and conformity assessment pursuant to the Regulations. That a product is wheel-marked and provided with an EC conformity assessment is considered documentation that the product satisfies these requirements. Therefore, the company's obligation basically does not go beyond verifying these circumstances.

The provision lays down the main rule that marine equipment listed in Appendix A should be wheel-marked when placed on board. Provisions in the regulations on construction and equipment, allowing equipment approved in accordance with other standards, will prevail.

To section 3, Marking of marine equipment

The manufacturer affixes the wheel mark, and the provision refers to Annex I and requirements for form of the wheel mark.

#### To section 4, The manufacturer's responsibilities

The manufacturer's responsibilities are described in more detail here. Section 4 must be seen in connection with Annex II, which also contains a series of obligations for manufacturers. Obligations of manufacturers and other economic operators are generally concurrent with the horizontal provisions in the EU product package (i.a. Regulation (EC) No 765/2008 and Decision No 768/2008/EC), which have been incorporated into the EEA Agreement.

#### To section 5, Importers and distributors

Other central economic operators with responsibilities pursuant to the Regulations are importers and distributors. Certain obligations follow directly from Annex II for these as well.

#### To section 6 Conformity assessment procedures

The various models for conformity assessment are described in Annex II. Appendix A lays down which models that may be selected for each piece of equipment. Nevertheless, where module B type-examination is used for conformity assessment, module D, E or F should always be used for follow-up of production.

Annex II also described the role of notified bodies in each conformity assessment procedure. The manufacturer initiates the conformity assessment for a specific piece of marine equipment, and the manufacturer chooses a notified body to carry out the assessments. Provided that the product conforms with the applicable requirements, the notified body should thereafter issue a type-approval certificate (MED B) or unit approval (MED G) for the equipment in question. Only then may the manufacturer affix the wheel mark and issue a declaration of conformity.

The third paragraph refers to the Act regulating the rights and obligation of notified bodies designated by Norway. Norwegian and foreign manufacturers of marine equipment may also use conformity assessment bodies designated in accordance with equivalent rules in other EEA member states. The EU Commission has an information system for conformity assessment bodies (NANDO) where there is an overview of notified bodies.

#### To section 7, Declaration of conformity

The provision lays down form requirements for the declaration of conformity, and that this should as a minimum be in accordance with Annex III. The template is taken from Annex III to Decision No 2008/768/EC.

#### To section 8, Market surveillance

According to this provision, the NMA has the authority to carry out market surveillance of marine equipment, and we included all the provisions in the Directive that impose duties on economic operators with regard to market surveillance authorities. Provisions in the Directive imposing obligations on Norway as authority are implemented in a procedure for market surveillance.

#### To section 9, Marine equipment presenting a risk to life, health, the environment or material values

This provision regulates equipment that presents a risk, and the provision implements Articles 26 and 28 of the Directive. The central issue is that economic operators have an obligation to act in such cases, and the NMA has the authority to follow up this obligation to act through injunctions and sanctions.

#### To section 10, Formal non-compliance

Non-compliance means lack of or unsatisfactory marking, declaration of conformity or technical documentation. The provision is relevant in the cases where there is no reason to believe that there are faults in the equipment or that the equipment presents a risk to life, health, the environment or material values.

#### To section 11, Technical innovations



The provision implements Article 30 and continues for the most part section 10 of the repealed Regulations on marine equipment.

To section 12, Testing and evaluation of equipment

The provision implements Article 31 and continues for the most part section 11 of the repealed Regulations on marine equipment.

To section 13, Replacement of equipment in a port outside the EEA

The provision implements Article 32 paragraphs 1 to 4 and continues for the most part section 12 of the repealed Regulations on marine equipment.

To section 13, When wheel-marked equipment is not available on the market

When a specific wheel-marked piece of marine equipment is not available on the market, the NMA may, on specified terms, issue an interim certificate allowing alternative equipment to be placed on board. This provision implements Article 32 paragraphs 5 to 8 in the Directive. This is novel; that the Marine Equipment Directive aims to regulate a situation where specific marine equipment is not found on the market.

To section 15, Transfer to the Norwegian flag

The provision implements Article 7 of the Directive, which regulates the transfer of ships from a register outside the EEA. The starting point is that marine equipment should be wheel-marked, or be in compliance with an equivalent technical standard. For equipment which is not wheel-marked, but which is in compliance with an equivalent technical standard, the NMA should issue a certificate confirming that the equipment in question satisfies the standards required by international conventions.

To section 16 Exemptions

The possibility to grant exemptions from the requirements for wheel-marking etc. for marine equipment, required pursuant to international conventions, is exhaustively regulated in the Directive, and is implemented in sections 12 to 15 of the Regulations. A general provision on exemption may therefore only be relevant to equipment placed or being placed on board vessels not covered by the Directive's scope of application, e.g. mobile offshore units, fishing vessels or ships engaged on domestic voyages.

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Countersigning  
title