Sjøfartsdirektoratet
Norwegian Maritime Authority

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.

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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.

Amendments to the Health Regulations reflecting the GDPR

1. Introduction

The Norwegian Maritime Authority (NMA) has laid down amendments to the Regulations of 5 June 2014 No. 805 on the medical examination of employees on Norwegian ships and mobile offshore units (henceforth the "Health Regulations") to ensure satisfactory implementation of the General Data Protection Regulation (henceforth the "GDPR"). The legal basis for amendments is the Ship Safety and Security Act section 17 second paragraph.

The purpose of amending the Health Regulations is to ensure compliance with the requirements for the protection of personal data set out in the GDPR and the Act relating to the processing of personal data (the "Personal Data Act") by removing the access to the Norwegian Maritime Authority's database for seafarer's doctors in third countries without an adequate level of protection. In this regard, "*third countries without an adequate level of protection*" refers to countries outside the EU/EEA that have not been deemed by the to provide an adequate level of protection and that have not been considered by the NMA to have an adequate level of protection. Here is a list of areas with an adequate level of protection (only available in Norwegian).

The regulatory amendments mean that such seafarer's doctors abroad will not be able to register or check medical certificates or declarations of unfitness electronically. The regulatory amendments will not, however, affect the seafarer's doctors in Norway and other countries with an adequate level of protection.

2. Consultation

The proposed amendments to the Health Regulations were circulated for review from 23 March to 8 May 2023. The deadline for comments was shorter than usual. According to the NMA, this is justifiable since the regulatory amendments include updated legislation to bring the rules in line with the GDPR.

The NMA has received five consultative statements. None of the statements included comments.

3. Details on the legislation

The regulatory amendments deal with seafarer's doctors with Norwegian approval in third countries without an adequate level of protection.

3.1 Background for the legislation

The GDPR contains comprehensive general data protection provisions and applies to all countries within the European Economic Area (EEA). In Norway, the GDPR has been implemented into the Personal Data Act by incorporation. The GDPR requires the NMA as a data controller to implement appropriate

measures, both technical and organisational, to "ensure and to be able to demonstrate" that the processing of personal data is performed in accordance with to the legislation. The specification of requirements for data controllers and data processors in the Schrems II judgment issued by the Court of Justice of the European Union on16 July 2020 means that the Health Regulations need to be amended.

In the GDPR context, seafarer's doctors are processors of data from the NMA as a *data controlling* authority. When an employee goes to see a seafarer's doctor
for a medical certificate renewal, the seafarer's doctor uses Altinn to check the last registered medical certificate or declaration of unfitness in the NMA's database called "Tilsynssystemet" (supervision system). This log-in can be regarded as "processing personal data" within the meaning of the Personal Data Act, and the seafarer's doctor is regarded as a *data processor*. Since health information is concerned, which is a "special category of personal data" (sensitive personal information), there is also a requirement for a higher level of protection of personal data.

3.2 Need for amendments to Norwegian legislation

Seafarer's doctors with a Norwegian approval have been delegated administrative authority by the NMA, and they are the public administration's initial point of contact for the issue of medical certificates and declarations of unfitness pursuant to the Health Regulations. Furthermore, seafarer's doctors are subject to the Public Administration Act due to their administrative role, cf. the Public Administration Act section 1 second sentence.

The regulatory amendments mean that seafarer's doctors in third countries without an adequate level of protection pursuant to the GDPR and the Personal Data Act will no longer have access to the NMA's database and will not be able to register new medical certificates or declarations of unfitness, or to check previously issued certificates or declarations in the database.

The NMA hereby lays down amendments to the Health Regulations section 9 on the seafarer's doctor's competence and administrative procedure, section 10 on the issue of medical certificate, section 11 on the issue of limited medical certificate and section 12 on the issue of declarations of unfitness.

In sections 11 and 12, a requirement is also laid down for seafarer's doctors in third countries without an adequate level of protection to send copies of issued declarations of unfitness and limited medical certificates to the NMA, as set out in the Regulations of 19 October 2001 No. 1309 on the medical examination of employees on ships section 12 third paragraph and section 13 second paragraph before it became possible to register the certificates and declarations in the NMA's database.

4. Administrative and financial implications

4.1 Private sector

4.1.1 Shipping companies owning Norwegian vessels

The medical certificates shall be kept by the master on board Norwegian vessels, cf. the Health Regulations section 4 sixth paragraph. This means that the shipping company is required to ensure that the employee brings a signed and stamped original medical certificate on board, also if the seafarer's doctor has registered the medical certificate in the NMA's database, see the Health Regulations section 10 fifth paragraph and section 11 fourth paragraph. The fact that the medical certificates can no longer be registered in the NMA's database, will therefore not affect the requirement for keeping the original medical certificate on board.

On the other hand, the fact that the seafarer's doctor is no longer able to check previously issued declarations of unfitness and limited medical certificates in the NMA's database, will make it more difficult to prevent employees from choosing a seafarer's doctor who issues medical certificates even if a different seafarer's doctor has just issued a declaration of unfitness or a limited medical certificate. This can lead to uncertainty for the shipping companies. Also, the shipping companies will no longer be able to lay down requirements for the employees to see a seafarer's doctor who has access to the NMA's database if they ask for a new medical certificate pursuant to the Health Regulations section 6 first

paragraph, laying down that «the company or master shall require a new medical certificate if it is likely that the person working on board no longer satisfies the requirements for medical certificate of these Regulations.»

4.1.2 Employees working on board Norwegian vessels

These regulatory amendments are likely to have little impact on most employees. A few employees may hold back information about a declaration of unfitness or a limited medical certificate if he or she sees another seafarer's doctor for a second opinion rather than appealing the decision for a declaration of unfitness or a limited medical certificate. In the opinion of the NMA, it will be unfortunate if this leads to a circumvention of the purpose of the Health Regulations. Pursuant to the Health Regulations, the appellate body for health cases may consider appeals against decisions made by seafarer's doctors and applications for exemption from one or more of the health requirements, cf. the Health Regulations section 14 first paragraph. Please note, however, that it is not a circumvention as such to request a second opinion by another seafarer's doctor instead of appealing or applying for exemption.

4.1.3 Seafarer's doctors

The regulatory amendments will lead to changes for seafarer's doctors in third countries without an adequate level of protection pursuant to the Personal Data Act and the GDPR. For all other seafarer's doctors, the state of the law will remain the same.

The regulatory amendments mean that seafarer's doctors in third countries without an adequate level of protection must send copies of limited medical certificates and declarations of unfitness to the NMA for registration in the archive. The declarations contain sensitive personal data and must therefore be sent by regular mail or encrypted e-mail unless the seafarer's doctor uses eDialog[1] for secure submission of information and documents. Encryption is a built-in function in PDF and Word documents, but passwords should not be sent by e-mail. When e-mailing, the seafarer's doctors should send the password using SMS/MMS or other safe, electronic means of sending – such as WhatsApp. If it is not possible to send the password this way, a seafarer's doctor (who does not use eDialog) must send copies of declarations of unfitness and limited medical certificates to the NMA by mail. Both seafarer's doctors in Norway and seafarer's doctors abroad with a D-number and access to MinID may use e-Dialog to send information securely. If the seafarer's doctors already have an e-mail account or eDialog, the transition to a paper-based solution will mainly entail more administration compared to registering the certificates and declarations in the NMA's database. E-mailing or eDialog will not have additional costs compared to registration in the NMA's database. Regular mail will, however, include postage costs.

Based on previous dialogue with seafarer's doctors abroad, the NMA presumes that being a seafarer's doctor is profitable enough to still be attractive even if the doctor loses access to the NMA's database. Besides, it will be possible to be issued with medical certificates from seafarer's doctors in EEA countries and flag States recognised by the NMA.

The regulatory amendments mean that seafarer's doctors in third countries without an adequate level of protection will be subject to differential treatment since the other seafarer's doctors will be able to continue their electronic processing in the NMA's database. There is, however, a good reason for the differential treatment since the purpose of the regulatory amendments is to limit the measures to what is necessary to ensure compliance with the Personal Data Act and the GDPR.

The requirement to send copies of declarations of unfitness and limited medical certificates will lead to more administrative work for seafarer's doctors in third countries without an adequate level of protection. It is the NMA's assessment that the requirement will not affect competing actors substantially

[1] eDialog is a secure and automatically encrypted tool for sending documents. The service is free of charge and can be used provided you have a D-number and access to MinID.

differently since the costs will most likely be low. Moreover, the same conditions will apply to seafarer's doctors operating in the same country.

4.2 Public sector

4.2.1 Administration

More administrative work for the NMA must be expected for the reception and registration of declarations of unfitness and limited medical certificates from seafarer's doctors in third countries without an adequate level of protection.

It will also be necessary to offer affected seafarer's doctors assistance and guidance on the new arrangement outside of the NMA's database, including the secure submission of limited medical certificates and declarations of unfitness.

The NMA must keep up to date regarding which third countries with an adequate level of protection pursuant to the Personal Data Act and the GDPR via the website of the Norwegian Data Protection Authority.

4.2.2 Costs

The production and distribution of forms for medical certificates and declarations of unfitness will lead to increased costs for the NMA.

The NMA usually orders 20,000 forms for *medical certificates* to be printed every two years, amounting around NOK 10,000. There will be more frequent orders of medical certificate forms when seafarer's doctors in third countries without an adequate level of protection will no longer be able to use the NMA's database. The NMA currently has around 30,000 forms ready for distribution.

The printing of forms for *declarations of unfitness* will be ordered when needed. The NMA has not ordered any forms for declarations of unfitness since September 2014, when the seafarer's doctors were given access to the NMA's database. An order of 25,000 forms amounted to NOK 11,625 in 2014. The NMA has currently around 18,000 forms for declaration of unfitness ready for distribution. Since these forms are not sent out nearly as much as the forms for medical certificate, the NMA believes that the current amount will go a long way.

The current cost of sending one package of 1,000 medical certificates to the Ministry of Foreign Affairs, who will forward the certificates to relevant Norwegian foreign missions, is NOK 255.

In 2022, 33,028 electronic medical certificates and declarations of unfitness were issued by seafarer's doctors in third countries without an adequate level of protection. The NMA estimates that up to 40,000 forms for medical certificates will be sent annually, while the number of forms for declarations of unfitness will be much lower.

These inconveniences are insignificant compared to the risk of being fined for a violation of the Personal Data Act and the GDPR.

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