
STATUTORY INSTRUMENTS

2023 No. 35

MERCHANT SHIPPING

The Merchant Shipping (Watercraft) Order 2023

<i>Made</i>	- - - -	<i>16th January 2023</i>
<i>Laid before Parliament</i>		<i>18th January 2023</i>
<i>Coming into force</i>	- -	<i>31st March 2023</i>

The Secretary of State makes the following Order in exercise of the powers conferred by section 112(1)(a) and (c), (3) and (5) of the Railways and Transport Safety Act 2003⁽¹⁾.

In accordance with section 112(7)(c) of that Act, the Secretary of State has consulted such organisations in the United Kingdom as appear to the Secretary of State to be representative of persons who will be affected by this Order.

PART 1

Introductory

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Merchant Shipping (Watercraft) Order 2023 and comes into force on 31st March 2023.

(2) This Order extends, and applies in relation, to the whole of the United Kingdom.

Interpretation

2.—(1) In this Order—

“the 1995 Act” means the Merchant Shipping Act 1995⁽²⁾;

“applied shipping provision” means a provision applied, together with any modifications made, by this Order;

“watercraft” has the meaning given in article 3.

(2) Except in—

(a) section 8(1) of the 1995 Act (as applied by article 4(a));

(1) 2003 c. 20.

(2) 1995 c. 21.

- (b) section 313(3) of the 1995 Act (as applied, and modified, by paragraph (4)(c));
- (c) the Merchant Shipping (Registration of Ships) Regulations 1993(4) (as applied, and modified, by Schedule 1);
- (d) a reference to a surveyor of ships, a surveyor general of ships or the master of a ship, a reference in an applied shipping provision to a ship is to be read as including a reference to a watercraft (and cognate expressions are to be construed accordingly).

(3) Where an applied shipping provision refers to—

- (a) an enactment;
- (b) part of an enactment;
- (c) provision—
 - (i) contained in an enactment, or
 - (ii) made under enabling powers contained in an enactment,

to the extent the enactment, part or provision is applied (and to the extent it is modified) by this Order, the reference is to be read as a reference to the enactment, part or provision as so applied (and as so modified).

(4) The definitions of terms contained in the following provisions of the 1995 Act apply for the purposes of interpreting an applied shipping provision—

- (a) the following provisions of section 1 (British ships and United Kingdom ships)—
 - (i) subsection (1)(d), as if for “is a small ship other than a fishing vessel and” there were substituted “a watercraft”;
 - (ii) the definition of “qualified owners” in subsection (2), as if “for the purposes of that paragraph; and” were omitted;
- (b) section 23 (interpretation of Part 2), except for the definition of “the private law provisions for registered ships” in subsection (1);
- (c) section 313 (definitions)—
 - (i) as if for the definition of “foreign” there were substituted—
 - ““foreign”, in relation to a watercraft, means that it is not a watercraft which is a British watercraft (as defined in section 1(1)(d) of the Merchant Shipping Act 1995);”;
 - (ii) but the definitions of “harbour” and “harbour authority” do not apply for the purposes of interpreting the applied shipping provisions mentioned in article 11(1);
- (d) section 313A(5) (meaning of “qualifying foreign ship”).

Meaning of “watercraft”

- 3.—(1) Subject to paragraph (2), “watercraft” means any type of craft which—
- (a) is capable of moving under its own mechanical power,
 - (b) is used, navigated or situated wholly or partly in or on water, and
 - (c) is capable of being used to carry one or more persons.

(3) Section 313 was amended by paragraph 19(2)(a) to (d) and (3) of Schedule 6 to the Merchant Shipping and Maritime Security Act 1997 (c. 28).

(4) S.I. 1993/3138.

(5) Section 313A was inserted by paragraph 20 of Schedule 6 to the Merchant Shipping and Maritime Security Act 1997, and it was amended by section 2(3) of the British Overseas Territories Act (c. 8).

(2) “Watercraft” does not include a ship or fishing vessel within the meanings given in section 313(1) of the 1995 Act.

PART 2

Registration of watercraft

Registration of watercraft: application of the 1995 Act

4. The following provisions of the 1995 Act apply in relation to watercraft as they apply in relation to ships—

- (a) section 8 (central register of British ships), as if after subsection (1) there were inserted—
 - “(1A) From 31st March 2023, the register of British ships maintained under subsection (1) is to include all registrations of watercraft in the United Kingdom.”;
- (b) section 9 (registration of ships: basic provisions);
- (c) section 10 (registration regulations);
- (d) section 13 (status of certificate of registration);
- (e) section 14 (offences relating to a ship’s British connection);
- (f) subsection (3) of section 16 (private law provisions for registered ships and liability as owner);
- (g) section 21 (disclosure of information relating to registration by other government departments);
- (h) section 22(1) (forgery of documents: Scotland).

Registration of watercraft: application of the Merchant Shipping (Registration of Ships) Regulations 1993

5. Schedule 1 applies and, in some cases, modifies certain provisions of the Merchant Shipping (Registration of Ships) Regulations 1993 in relation to watercraft.

PART 3

Safety of watercraft

Conduct endangering watercraft, ships, structures or individuals

6. Section 58 (conduct endangering ships, structures or individuals) applies in relation to watercraft as it applies in relation to ships, as if it read—

- “58.—(1) This section applies in relation to a watercraft within United Kingdom waters.
- (2) If the user of the watercraft, while in or on the watercraft or in its immediate vicinity—
 - (a) does any act which causes or is likely to cause—
 - (i) the loss or destruction of or serious damage to the watercraft or its machinery, navigational equipment or safety equipment, or
 - (ii) the loss or destruction of or serious damage to any other watercraft or any ship or structure, or

- (iii) the death of or serious injury to any person, or
- (b) omits to do anything required—
 - (i) to preserve the watercraft or its machinery, navigational equipment or safety equipment from being lost, destroyed or seriously damaged, or
 - (ii) to preserve any person in or on the watercraft from death or serious injury, or
 - (iii) to prevent the watercraft from causing the loss or destruction of or serious damage to any other watercraft or any ship or structure, or death of or serious injury to any person not on or in the watercraft,

and either of the conditions specified in subsection (3) below is satisfied with respect to that act or omission, the person is (subject to subsections (6) and (7) below) guilty of an offence.

- (3) Those conditions are—
 - (a) that the act or omission was deliberate or amounted to a breach or neglect of duty;
 - (b) that the person who committed the act or made the omission was under the influence of drink or a drug at the time of the act or omission.
- (4) If the user or operator of the watercraft—
 - (a) discharges any of their duties or performs any other function in relation to the operation of the watercraft or its machinery or equipment, in such a manner as to cause, or to be likely to cause, any such loss, destruction, death or injury as mentioned in subsection (2)(a) above, or
 - (b) fails to discharge any of their duties, or to perform any such function, properly to such extent as to cause, or to be likely to cause, any of those things,

the person is (subject to subsections (6) and (7) below) guilty of an offence.

- (5) A person guilty of an offence under this section is liable—
 - (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale;
 - (c) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (6) In proceedings for an offence under this section it is a defence to prove—
 - (a) in the case of an offence under subsection (2) above where the act or omission alleged against the accused constituted a breach or neglect of duty, that the accused took all reasonable steps to discharge that duty;
 - (b) in the case of an offence under subsection (2) above, that at the time of the act or omission alleged the accused was under the influence of a drug taken for medical purposes and either—
 - (i) the accused took the drug on medical advice and complied with any directions given as part of that advice, or
 - (ii) the accused had no reason to believe that the drug might have the influence it had;
 - (c) in the case of an offence under subsection (4) above, that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence; or
 - (d) in the case of an offence under either of those subsections, that in all the circumstances, the loss, destruction, damage, death or injury in question, or (as the

case may be) the likelihood of its being caused, either could not reasonably have been foreseen by the accused or could not reasonably have been avoided by them.

(7) Where the watercraft is registered under the law of any country outside the United Kingdom, no proceedings for any offence under this section are to be instituted against any person—

- (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
- (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

(8) In this section—

“duty” means a duty of care however it arises, but only to the extent that the duty is owed in connection with the use or, as the case may be, the operation of the watercraft;

“structure” means any fixed or moveable structure (of whatever description) other than a ship or watercraft.”.

Power to detain dangerously unsafe watercraft

7. The following provisions of the 1995 Act apply in relation to watercraft as they apply in relation to ships—

- (a) section 94(6) (meaning of “dangerously unsafe ship”), as if in subsection (1) for “96, 97 and 98” there were substituted “96 and 97”;
- (b) section 95(7) (power to detain dangerously unsafe ship), as if—
 - (i) in subsection (2), the reference to United Kingdom ships includes a reference to watercraft whether unregistered or registered in the United Kingdom;
 - (ii) in the introductory words to subsection (3), the reference to the master of the ship includes a reference to the owner of the watercraft;
- (c) section 96(8) (references of detention notice to arbitration);
- (d) section 97 (compensation in connection with invalid detention of ship);
- (e) section 284(9) (enforcing detention of ship), as if each reference to a master of a ship includes a reference to an operator of a watercraft.

Owner liable for unsafe operation of watercraft

8. Section 100(10) (owner liable for unsafe operation of ship) of the 1995 Act applies in relation to watercraft as it applies in relation to ships, as if it read—

“**100.**—(1) It is the duty of the owner of a watercraft to which this section applies to take all reasonable steps to secure that the watercraft is operated in a safe manner.

(2) This section applies to any watercraft within United Kingdom waters.

(3) If the owner of a watercraft to which this section applies fails to discharge the duty imposed by subsection (1) above, the owner is liable—

(6) Section 94 was amended by paragraph 1 of Schedule 1 to the Merchant Shipping and Maritime Security Act 1997.

(7) Section 95 was amended by paragraph 2 of Schedule 1 to the Merchant Shipping and Maritime Security Act 1997.

(8) Section 96 was amended by Schedule 4 to the Arbitration Act 1996 (c. 23) and paragraph 26 of Schedule 10 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(9) Section 284 was amended by paragraph 5 of Schedule 1 to the Merchant Shipping and Maritime Security Act 1997 and S.I. 2015/664.

(10) Section 100(3) was amended by paragraph 27(6) of Schedule 4 to S.I. 2015/664.

- (a) on summary conviction in England and Wales, to a fine;
- (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale;
- (c) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

(4) Where any such watercraft is managed, either wholly or in part, by a person (“P”) other than the owner under the terms of an arrangement (whether or not for reward) under which the operational safety of the watercraft (whether or not among other things) is to be maintained by P, any reference to the owner of the watercraft in subsection (1) or (3) above includes a reference to P.

- (5) No proceedings for an offence under this section are to be instituted—
- (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
 - (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions in Northern Ireland.”.

Safety and health regulations

9. Section 85(11) (safety and health on ships) of the 1995 Act applies in relation to watercraft as it applies in relation to ships.

Safety and health regulations: supplementary provision

10.—(1) Section 86(12) (provisions supplementary to section 85: general) of the 1995 Act applies in relation to watercraft safety regulations as it applies in relation to ship safety regulations.

- (2) In paragraph (1)—
- (a) “ship safety regulations” means regulations made in relation to ships under section 85 of the 1995 Act;
 - (b) “watercraft safety regulations” means regulations made in relation to watercraft under section 85 of the 1995 Act as applied by article 9.

PART 4

Harbour directions in relation to watercraft

Application of the Harbours Act 1964

11.—(1) The following provisions of the Harbours Act 1964(13) apply in relation to watercraft as they apply in relation to ships—

- (a) section 40A (directions), as if for “the master of a ship” were substituted “the owner or operator of a watercraft”;
- (b) section 40B (procedure);

(11) Section 85 was amended by section 8(2), (3), (4) and (5) of the Merchant Shipping and Maritime Security Act 1997; section 2(3) of the British Overseas Territories Act 2002; and section 5(4) of the Health Act 2006 (c. 28).

(12) Section 86 was amended by section 8(6) of the Merchant Shipping and Maritime Security Act 1997.

(13) 1964 c. 40. Sections 40A to 40D were inserted by section 5(1) of the Marine Navigation Act 2013 (c. 23). Amendments to section 40A(4)(a) were made in relation to Wales by section 30(4) of the Wales Act 2017 (c. 4).

(c) section 40C (enforcement), as if for “The master of a ship” were substituted “The owner and operator of a watercraft”;

(d) section 40D (supplemental).

(2) The definitions of “harbour” and “harbour authority” in section 57(1)(14) of the Harbours Act 1964 apply for the purposes of interpreting the applied shipping provisions mentioned in paragraph (1).

PART 5

Miscellaneous provisions

Appointment and powers of surveyors in relation to watercraft

12. The following provisions of the 1995 Act apply in relation to watercraft as they apply in relation to ships—

(a) section 256 (appointment of inspectors and surveyors), as if subsections (6) to (8) were omitted;

(b) section 258(15) (powers to inspect ships and their equipment, etc.), as if subsection (2) were omitted.

Powers to make subordinate legislation under the 1995 Act

13. The following provisions of the 1995 Act apply for the purposes of any power to make subordinate legislation in relation to watercraft conferred by an applied shipping provision as they apply for the purposes of any power to make subordinate legislation in relation to ships conferred by the 1995 Act—

(a) section 306(1) and (2)(16) (regulations, rules and orders, etc.);

(b) section 306A(17) (power to make ambulatory references to international instruments).

Application of other shipping provisions in relation to watercraft

14. Schedule 2 applies and, in some cases, modifies certain shipping provisions in relation to watercraft.

Signed by authority of the Secretary of State for Transport

16th January 2023

Vere
Parliamentary Under Secretary of State
Department for Transport

(14) The definition of “harbour” was amended by the Local Government (Scotland) Act 1973 (c. 65) and paragraph 33(a) of Schedule 13 to the 1995 Act.

(15) Section 258 was amended by paragraph 4(2), (3) and (4) of Schedule 1 to the Merchant Shipping and Maritime Security Act 1997 and paragraph 2(1) of Schedule 10 to the Protection of Freedoms Act 2012 (c. 9).

(16) Section 306 was amended by paragraph 18(2), (3) and (5) of Schedule 6 to the Merchant Shipping and Maritime and Security Act 1997; section 1(3) of the Wreck Removal Convention Act 2011 (c. 8); and regulation 3(1)(c) of S.I. 1998/2241.

(17) Section 306A was inserted by section 106 of the Deregulation Act 2015 (c. 20).

SCHEDULE 1

Article 5

Application of the Merchant Shipping (Registration of Ships) Regulations 1993 in relation to watercraft

Registration of watercraft: application of the Merchant Shipping (Registration of Ships) Regulations 1993

1.—(1) The following provisions of the Merchant Shipping (Registration of Ships) Regulations 1993⁽¹⁸⁾ apply in relation to watercraft as they apply in relation to ships.

(2) Regulation 2 (the Register), as if in the introductory words of paragraph (1), for “section 1(1) and (2)” there were substituted “section 8(1), (1A) and (2)”.

(3) Regulation 5 (registration on only one Part of the Register).

(4) Regulation 6 (trusts not to be entered).

(5) Regulation 20 (form of application), as if paragraph (2) were omitted.

(6) Regulation 21 (the applicant).

(7) Regulation 24 (applications by bodies corporate).

(8) Regulation 88 (qualification and entitlement to be registered as a small ship on Part III of the Register).

(9) Regulation 89 (persons qualified to be owners of small ships to be registered on Part III of the Register).

(10) Regulation 90 (British connection).

(11) Regulation 91 (disapplication of Schedule 1 to the Act in respect of small ships).

(12) Regulation 92 (applications), as if paragraphs (c) and (ca) were omitted.

(13) Regulation 93 (details to be registered and refusal), as if for paragraph (1) there were substituted—

“(1) The Registrar must register a watercraft and record on the Register the details mentioned in paragraph (1A) if the Registrar is satisfied in respect of an application to register the watercraft that—

(a) the watercraft is eligible to be registered,

(b) the particulars of the watercraft furnished in respect of the application are correct,

(c) the ownership of the watercraft has been sufficiently established, and

(d) the requirements of these Regulations which apply in relation to the watercraft have been complied with.

(1A) The details referred to in paragraph (1) are—

(a) the registration number of the watercraft;

(b) the date of registration;

(c) the date of expiry of the registration in accordance with regulation 96;

(d) a description of the watercraft;

(e) the overall length of the watercraft;

(f) the name and address of every owner of the watercraft.”.

(14) Regulation 94 (certificate of registry).

⁽¹⁸⁾ S.I. 1993/3138, amended by S.I. 1994/541, 1994/1328, 1997/2971, 1998/1915 and 2976, 1999/3206, 2011/1043, 2012/1809, 2017/879, 2018/1221 and 1299, 2019/509 and 746, and 2022/203, 241 and 748.

- (15) Regulation 95 (marking).
- (16) Regulation 96 (period of registration).
- (17) Regulation 97 (renewal).
- (18) Regulation 98 (notification of changes to ownership etc.), as if in paragraph (2) the words “the name and” were omitted.
- (19) Regulation 99 (supplementary information—production of ship).
- (20) Regulation 100 (termination of registration).
- (21) Regulation 103 (documents not in the English language to be accompanied by a translation).
- (22) Regulation 104 (witnessing of documents).
- (23) Regulation 105 (dispensing with declarations).
- (24) Regulation 105A (copies of documents).
- (25) Regulation 106 (supplementary information).
- (26) Regulation 107 (fees).
- (27) Regulation 108 (duplicate certificates), as if the reference to “the master” in paragraph (3) (b) includes a reference to “the owner”.
- (28) Regulation 109 (custody of certificate).
- (29) Regulation 110 (surrender of certificate on termination or expiry of registration).
- (30) Regulation 111 (dispensing with production of certificate).
- (31) Regulation 113 (removal of marks on cessation of registration), as if “or if a marks removal note has been issued in respect of the ship under regulation 87E,” were omitted.
- (32) Regulation 114 (offences), as if the words “or master” in paragraph (2) were omitted.

Interpretation of the Merchant Shipping (Registration of Ships) Regulations 1993

2.—(1) For the purposes of interpreting the applied shipping provisions mentioned in paragraph 1—

- (a) each reference to a ship in regulations 5, 6, 88, 92, 93(2), 95, 96, 98 to 100, 106, 108, 109, 110, 111, 113 and 114 is to be read as including a reference to a watercraft;
- (b) the definitions of terms contained in regulation 1(2) of the Merchant Shipping (Registration of Ships) Regulations 1993 apply as if—
 - (i) in the definition of “certificate of registry” the reference to a ship includes a reference to a watercraft;
 - (ii) in the definition of “fishing vessel” for “vessel within the meaning of paragraph 2(1)(c) of Schedule 4 to” there were substituted “fishing vessel as defined in section 313(1) of”;
 - (iii) in the definition of “owner” at the end there were inserted “and in relation to watercraft means a person able to satisfy the Registrar that they are the owner”;
 - (iv) for the definition of “small ship” there were substituted—
 - ““small ship” means—
 - (a) a watercraft, or
 - (b) a ship which is less than 24 metres in overall length, which is, or is applying to be, registered under Part 11;”.

SCHEDULE 2

Article 14

Application of other shipping provisions in relation to watercraft

Application of the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996

1. The Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996⁽¹⁹⁾ apply in relation to watercraft as they apply in relation to ships, as if—

- (a) in paragraph (1)(a) of regulation 2 (application)—
 - (i) the reference to United Kingdom ships includes a reference to watercraft registered in the United Kingdom under the Merchant Shipping Act 1995, and
 - (ii) the reference to other ships includes a reference to other watercraft;
- (b) the references in regulation 5 (exemptions) to any ship or description of ships includes a reference to any watercraft or description of watercraft;
- (c) any reference to a master includes a reference to any person for the time being using a watercraft.

Application of the Merchant Shipping (EPIRB Registration) Regulations 2000

2.—(1) The following provisions of the Merchant Shipping (EPIRB Registration) Regulations 2000⁽²⁰⁾ apply in relation to watercraft as they apply in relation to ships.

(2) Regulation 2 (interpretation), for the purposes of interpreting an applied shipping provision mentioned in this paragraph.

(3) Regulation 4 (competent authority).

(4) Regulation 5 (requirement for EPIRBs to be registered), as if—

- (a) in paragraph (1) the reference to every United Kingdom ship includes a reference to every watercraft in United Kingdom waters;
- (b) for paragraph (2) there were substituted—

“(2) The registered particulars referred to in paragraph (1) are the following—

- (a) EPIRB identification code (if applicable) and its homing frequency;
- (b) country where the watercraft is registered;
- (c) brief description of the watercraft, including its type and identifying marks;
- (d) name, address, telephone and (if applicable) telefax number of emergency contact person ashore;
- (e) alternative 24-hour emergency contact telephone number (alternative contact ashore);
- (f) capacity of watercraft for carrying persons;
- (g) date of last modification of registered particulars.”

(5) Regulation 6 (change in registered particulars).

(6) Regulation 7 (offences), as if the references to the owner and operator of the ship included reference to the owner (but not the operator) of the watercraft.

(7) Regulation 8 (defence).

⁽¹⁹⁾ S.I. 1996/75, as amended by S.I. 2004/302 and 2015/664

⁽²⁰⁾ S.I. 2000/1850.

EXPLANATORY NOTE

(This note is not part of the Order)

The Merchant Shipping Act 1995 (c. 21) regulates, and confers powers to regulate, United Kingdom ships and ships in United Kingdom waters. The Harbours Act 1964 (c. 40) provides, among other things, for designated harbour authorities to give directions in respect of ships. The Railways and Transport Safety Act 2003 (c. 20) confers power to provide for a provision which is expressed to apply in relation to ships to apply, including with modifications, in relation to specified things which are used, navigated or situated wholly or partly in or on water.

This Order provides for certain provisions of the Merchant Shipping Act 1995 (and of instruments made, or treated as made, under that Act) and of the Harbours Act 1964 as they apply in relation to ships to apply, in some cases with modifications, in relation to watercraft (as defined in article 3). In particular—

- (a) Part 2 applies the following provisions to enable the registration of watercraft on the UK Ship Register as if they are small ships—
 - (i) sections 8, 10, 13, 14, 16(3), 21 and 22 of the Merchant Shipping Act 1995;
 - (ii) the provisions of the Merchant Shipping (Registration of Ships) Regulations 1993 (S.I. 1993 No. 3138) specified in paragraph 1 of Schedule 1;
- (b) Part 3 applies sections 58, 85, 86, 95 to 97, 100 and 284 of the Merchant Shipping Act 1995 to secure the safe operation of watercraft;
- (c) Part 4 applies sections 40A to 40D of the Harbours Act 1964 to enable designated harbour authorities to give directions in respect of watercraft;
- (d) Part 5 applies—
 - (i) sections 256 and 258 of the Merchant Shipping Act 1995 to enable the survey of watercraft;
 - (ii) sections 306(1) and (2) and 306A of the Merchant Shipping Act 1995 in respect of powers to make provision under that Act which are applied by this Order in relation to watercraft;
 - (iii) in respect of the safe operation of, and the use of distress signals in relation to, watercraft, the Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1996 (S.I. 1996 No. 75);
 - (iv) in respect of the registration of emergency position indicating radio beacons carried on watercraft, the provisions of the Merchant Shipping (EPIRB Registration) Regulations 2000 (S.I. 2005 No. 1850) specified in paragraph 2 of Schedule 2.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.