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STATUTORY INSTRUMENTS

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**2023 No. 35**

**The Merchant Shipping (Watercraft) Order 2023**

**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(1) (meaning of “dangerously unsafe ship”), as if in subsection (1) for “96, 97 and 98” there were substituted “96 and 97”;

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

- (b) section 95(2) (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(3) (references of detention notice to arbitration);
- (d) section 97 (compensation in connection with invalid detention of ship);
- (e) section 284(4) (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(5) (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—

- (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(6) (safety and health on ships) of the 1995 Act applies in relation to watercraft as it applies in relation to ships.

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(2) Section 95 was amended by paragraph 2 of Schedule 1 to the Merchant Shipping and Maritime Security Act 1997.  
(3) 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).  
(4) Section 284 was amended by paragraph 5 of Schedule 1 to the Merchant Shipping and Maritime Security Act 1997 and S.I. 2015/664.  
(5) Section 100(3) was amended by paragraph 27(6) of Schedule 4 to S.I. 2015/664.  
(6) 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).

**Safety and health regulations: supplementary provision**

**10.**—(1) Section 86(7) (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.

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