
STATUTORY INSTRUMENTS

1998 No. 2771

The Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998

1.—(1) These Regulations may be cited as the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998 and shall come into force on 16th December 1998.

(2) The Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1993⁽¹⁾ are hereby revoked: provided that such revocation shall not affect the amendments made by regulation 3 of those Regulations to the statutory instruments listed in Schedule 2 to those Regulations.

Interpretation

2.—(1) In these Regulations—

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992⁽²⁾ as adjusted by the Protocol signed at Brussels on 17th May 1993;

“EEA State” means a State which is a Contracting Party to the EEA Agreement;

“large vessel” means a vessel which is not a small vessel;

“Maritime and Coastguard Agency” means the Maritime and Coastguard Agency, an executive agency of the Department of the Environment, Transport and the Regions;

“pleasure vessel” means—

(a) any vessel which at the time it is being used is:

(i) (aa) in the case of a vessel wholly owned by an individual or individuals, used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or

(bb) in the case of a vessel owned by a body corporate, used only for sport or pleasure and on which the persons on board are employees or officers of the body corporate, or their immediate family or friends; and

(ii) on a voyage or excursion which is one for which the owner does not receive money for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion; or

(b) any vessel wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club; and

(c) in the case of any vessel referred to in paragraphs (a) or (b) above no other payments are made by or on behalf of users of the vessel, other than by the owner.

In this definition “immediate family” means—

(1) S.I.1993/1072.

(2) Cm. 2073.

in relation to an individual, the husband or wife of the individual, and a relative of the individual or the individual's husband or wife; and "relative" means brother, sister, ancestor or lineal descendant;

"small vessel" means a vessel of less than 24 metres in load line length or, in the case of a vessel the keel of which was laid or which was at a similar stage of construction before 21st July 1968, less than 150 tons; and in this definition—

"load line length" means the greater of the following distances, measured at and along the waterline—

- (a) the distance between the foreside of the stem and the axis of the rudder stock; or
- (b) a distance measured from the foreside of the stem, being 96 per cent of the distance between that point and the aft side of the stern.

The waterline referred to in this definition shall be at 85 per cent of the least moulded depth of the vessel. In the case of a vessel having a rake of keel, the waterline shall be parallel to the designed waterline;

"similar stage of construction" means a stage at which

- (a) construction identifiable with a specific vessel begins; and
- (b) assembly of that vessel, comprising at least 1% of the estimated mass of all structural material has commenced; and

"tons" means gross tons, measured in accordance with the Regulations for measuring tonnage in force on 20th July 1968.

(2) References to Codes of Practice in these Regulations are references to the Codes of those names published (or treated as published) by the Maritime and Coastguard Agency, and include any document amending the same which the Secretary of State considers relevant from time to time.

(3) Any reference in these Regulations to "proceeding to sea" includes a reference to proceeding on a voyage or excursion that does not involve going to sea.

Application

3.—(1) Subject to paragraphs (2) and (3) below, these Regulations apply to any vessel used for sport or pleasure which is not a pleasure vessel.

- (2) These Regulations apply—
 - (a) to United Kingdom vessels wherever they may be; and
 - (b) to other vessels operating from United Kingdom ports whilst in United Kingdom waters.
- (3) These Regulations do not apply to vessels carrying more than twelve passengers.

Commercially operated large vessels complying with Code of Practice

- (a) 4. (1) (a) This regulation applies only to large vessels.
- (b) In this regulation, "Code of Practice" means the Code of Practice for Safety of Large Commercial Sailing and Motor Vessels.

(2) Vessels shall comply with the provisions of the Code of Practice and accordingly any provision of the Code of Practice expressed in the conditional (i.e. "should") shall be a requirement.

(3) The statutory instruments listed in Schedule 1 to these Regulations do not apply to a vessel which has been examined, and in respect of which appropriate certificates have been issued, in accordance with the Code of Practice.

(4) Where a vessel has been so examined and appropriate certificates issued, the vessel shall not proceed or attempt to proceed to sea unless:

- (a) the certificates are currently in force; and
- (b) the vessel complies with the applicable requirements of the Code of Practice (including any requirements as to operation, manning and maintenance).

Commercially operated small vessels complying with a Code of Practice

5.—(1) This regulation applies only to small vessels.

(2) In this regulation:

- (a) “Code of Practice” means “The Safety of Small Commercial Sailing Vessels—A Code of Practice”, or “The Safety of Small Commercial Motor Vessels—A Code of Practice”; and
- (b) “the phase-in arrangements of the Code of Practice” means such arrangements set out in the relevant paragraphs of a Code of Practice.

(3) The statutory instruments listed in Schedule 2 to these Regulations do not apply to a vessel which has been examined, and in respect of which a certificate has been issued, in accordance with the applicable Code of Practice, or to a vessel which is operating under the phase-in arrangements of the Code of Practice.

(4) Where a vessel has been so examined and a small commercial vessel certificate issued, the vessel shall not proceed, or attempt to proceed, to sea unless:

- (a) the certificate is currently in force;
- (b) the vessel complies with the requirements of the relevant Code of Practice (including any requirements as to operation, manning and maintenance); and for this purpose any provision of the Code expressed in the conditional (i.e. “should”) shall be a requirement; and
- (c) the certificate is displayed in some conspicuous place on board; or, if this is not reasonably practicable, is available for inspection on board.

(5) Where a vessel is operating under the phase-in arrangements of a Code of Practice it shall not proceed or attempt to proceed to sea unless it meets the requirements for phase-in which are specified in the Code of Practice.

Equivalent provisions

6. Where these Regulations or a Code of Practice require that a particular piece of equipment or machinery shall be provided or carried in a vessel to which these Regulations apply, or that any particular provision shall be made, the Secretary of State shall permit any other piece of equipment or machinery to be provided or carried or any other provision to be made in that vessel if he is satisfied by trial thereof or otherwise that such other fitting, material, appliance or apparatus, or type thereof, or provision is at least as effective as that required by these Regulations or the Code of Practice.

7. For the purpose of these Regulations, the results of verifications and tests carried out by the bodies and laboratories of other EEA States offering suitable and satisfactory guarantees of technical and professional competence and independence shall be accepted.

Penalties

8.—(1) Contravention of any of these Regulations shall be an offence by the owner and the master of the vessel which shall render both of them liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment for a term not exceeding two years, or a fine, or both.

(2) It shall be a good defence to a charge under this regulation to prove that the person charged took all reasonable steps to avoid commission of the offence.

Power to detain

9. In any case where a vessel does not comply with the requirements of these Regulations, the vessel shall be liable to be detained and section 284 of the Merchant Shipping Act 1995 (which relates to the detention of a ship) shall have effect in relation to the vessel, subject to the modification that as if for the words “this Act” wherever they appear, there were substituted “the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998”.

Signed by authority of the Secretary of State for the Environment, Transport and the Regions

Glenda Jackson
Parliamentary Under-Secretary of State,
Department of the Environment, Transport and
the Regions

11th November 1998