

STATES OF JERSEY



DRAFT SHIPPING (SAFETY CODE – YACHTS AND SMALL SHIPS) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 30th September 2013
by the Minister for Economic Development

STATES GREFFE



Jersey

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REPORT

Background

The Shipping (Safety Codes) (Jersey) Order 2005 has provided a good safety regime for small¹ commercial ships and larger pleasure craft for the last 8 years. It was primarily introduced to provide an appropriate Code of Safety Practice against which surveyors could certify pleasure craft on charter and small work boats.

The United Kingdom has recently passed a new Categorisation Order – the Merchant Shipping (Categorisation of Relevant British Possessions) (Amendment) Order 2013. This will allow Jersey to register commercial vessels which are not small ships and which have a tonnage up to 400gt. instead of the current limit of 150gt.

Considerations

Commercial Yachts

The change in the UK Categorisation Order will allow Jersey to register Large Yachts² operating as charter vessels. By amendment to Jersey's existing legislation, an established international Code known as the Large Yacht Code could apply to ensure appropriate safety survey and certification.

In a similar way amendment will allow the application of a Code for Passenger Yachts where the vessel has been built explicitly to carry more than 12 passengers but not more than 36.

Recognition of these vessel types has thus been included in the draft Regulations.

Large Pleasure Vessels

The current Order requires Large Pleasure Vessels to comply with provisions of a Memorandum of Understanding that is out of date. In the draft Regulations this reference has been removed. Instead, owners will have an up-to-date Marine Guidance Note issued. The requirements remain for owners to keep an annual safety equipment check list. The vessels themselves will continue to be subject to inspection and potential detention if found to be dangerously unsafe.

¹ A Small Ship is normally defined as one that is less than 24 metres in length, but older vessels, built before 1968, have a tonnage limit of 150 tons instead of this length limit.

² A Large Yacht is one that is over 24 metres or over 150gt. if built before 1968.

Legal advice

The powers provided in the Shipping (Jersey) Law 2002 for the purpose of making Regulations and Orders differ slightly in relation to safety. Legal advice is that for the Code, as referred to in Regulation 3(1), to have full legal effect, the existing Order (made under a delegated power which is arguably too narrow for the purpose) would be best replaced by Regulations (made directly under the powers in Article 49 of the Law). As a result, the amendments described above have been applied in the form of Regulations, and if passed by the States these will revoke the Order.

Financial and manpower implications

The associated additional survey and certification work which is expected to arise will be carried out by approved Recognised Organisations or within existing Shipping Registry resources. The work is carried out on a fee basis and there are no anticipated additional financial or manpower resource implications arising from these draft Regulations.

Explanatory Note

These Regulations would revoke (by *Regulation 7*) and replace the Shipping (Safety Codes) (Jersey) Order 2005, to reflect the recent reclassification of vessels which may be registered in Jersey by the Merchant Shipping (Categorisation of Registries of Relevant British Possessions) (Amendment) Order 2013 of the United Kingdom. These Regulations would apply (by virtue of *Regulation 2*) to certain classes of Jersey ships and of other ships operating from Jersey while in Jersey waters. *Regulation 3* would oblige a small commercial ship, large yacht, or passenger yacht (as defined in *Regulation 1*) to comply with the Code of Safety Practice published by the Registrar of Shipping (who is appointed under Article 188 of the Shipping (Jersey) Law 2002), and prohibits any vessel which does not so comply from proceeding to sea. *Regulation 4* would require such vessels to obtain and display certificates of compliance. *Regulation 5* would prohibit a large pleasure vessel (also defined in *Regulation 1*) from proceeding to sea if it appears to an inspector to be dangerously unsafe. Contravention of this prohibition, or of the similar prohibition in Regulation 3, is an offence punishable by 2 years' imprisonment or a fine or both.

Regulation 6 would provide for the appointment of inspectors or surveyors to enforce these Regulations, and for the application of the provisions of Article 177 of the Shipping (Jersey) Law 2002 to a ship detained under these Regulations. *Regulation 8* would make a consequential amendment to cross-references in the Harbours (Inshore Safety) (Jersey) Regulations 2012, and *Regulation 9* would provide for the citation of these Regulations.



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Jersey

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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 49 and 196 of the Shipping (Jersey) Law 2002¹, have made the following Regulations –

1 Interpretation

(1) In these Regulations –

“large pleasure vessel” means a pleasure vessel which is 24 metres or more in length;

“large yacht” means a ship which –

- (a) is not a pleasure vessel but is in commercial use for sport or pleasure;
- (b) carries no cargo;
- (c) carries no more than 12 passengers;
- (d) and –
 - (i) if built before 21st July 1968, has a gross tonnage of 150 tons or over, or
 - (ii) if built on or after that date, is 24 metres or more in length;

“Law” means the Shipping (Jersey) Law 2002²;

“length” means length as determined in accordance with Tonnage Regulations;

“passenger yacht” means a ship which –

- (a) is a pleasure vessel or is in commercial use for sport or pleasure;
- (b) carries no cargo; and
- (c) carries more than 12 but no more than 36 passengers;

“pleasure vessel” has the meaning given to that expression by Article 169(6) of the Law;

“small commercial ship” means a ship which –

- (a) is not a pleasure vessel;

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- (b) and –
 - (i) if built before 21st July 1968, has a gross tonnage of less than 150 tons, or
 - (ii) if built on or after that date, is a small ship.
 - (2) Reference in these Regulations to the “Jersey Code” is to the requirements as to safety mentioned in Regulation 3(1), whether such requirements are published by way of a Code or otherwise as described in that paragraph.

2 Application

- (1) These Regulations apply –
 - (a) to Jersey ships (wherever they may be); and
 - (b) to other ships operating from Jersey (while in Jersey waters).
- (2) These Regulations apply in relation to ships of a type described in paragraph (3) or (4), as specified in those paragraphs.
- (3) Regulation 3 applies to small commercial ships, large yachts, and passenger yachts.
- (4) Regulation 5 applies to large pleasure vessels.
- (5) For the avoidance of doubt, these Regulations do not apply to fishing vessels.

3 Compliance with published safety requirements

- (1) A ship to which this Regulation applies must comply with such requirements as to safety as may be published from time to time by the Registrar, whether by way of a document described as a Code of Safety Practice, by amendments to such a Code, or in such other way as the Registrar best considers will bring the requirements to the attention of those on whom they are imposed.
- (2) Paragraph (1) is subject to the exceptions in paragraphs (3) and (4).
- (3) The Minister may grant, on such terms as the Minister may specify, an exemption for a class of ships or for an individual ship from a specified requirement of the Jersey Code which would otherwise apply in relation to that class of ships or to that ship by virtue of this Regulation.
- (4) Where –
 - (a) the Jersey Code requires specified equipment or machinery to be carried, or other provision to be made, for any purpose in a ship; and
 - (b) the Minister is satisfied that other similar equipment, machinery or provision is at least as effective for the same purpose as the equipment, machinery or other provision so specified,the Minister may accept such other equipment, machinery or provision as sufficient to fulfil the requirement in question.

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- (5) The owner or master of a ship to which this Regulation applies must not proceed or attempt to proceed to sea with the ship when it does not comply with the Jersey Code.
 - (6) A certificate issued under and in accordance with Regulation 4(1), or accepted by the Minister under Regulation 4(2), shall be evidence of compliance for the purposes of paragraph (5).
 - (7) A person who contravenes paragraph (5) is guilty of an offence and liable on conviction to imprisonment for a term of 2 years or a fine, or both.
 - (8) It shall be a defence to a charge under paragraph (7) to prove that the person took all reasonable steps to avoid committing the offence.

4 Certificates of compliance

- (1) Subject to paragraph (3), a ship to which Regulation 3 applies shall not be taken to comply with the Jersey Code for the purposes of paragraph (5) of that Regulation unless there is in force, in relation to that ship, a certificate of compliance issued –
 - (a) by an inspector or surveyor appointed by the Minister under Regulation 6 or under Article 154 of the Law;
 - (b) following examination of the ship by the inspector or surveyor.
- (2) The Minister may accept as evidence a certificate of compliance issued otherwise than in accordance with paragraph (1) which –
 - (a) in the Minister's opinion demonstrates that a ship complies with requirements as to safety which are equivalent to, or more stringent than, those in the Jersey Code; and
 - (b) is in force in relation to the ship in question.
- (3) A certificate of compliance must be displayed in some conspicuous place on board the ship or (if such display is not reasonably practicable) must be available for inspection on board the ship.

5 Safety of large pleasure vessels

- (1) The owner or master of a ship to which this Regulation applies must not proceed or attempt to proceed to sea with a ship which appears to an inspector to be a dangerously unsafe ship.
- (2) Paragraph (1) applies whether or not a detention notice has been served on the master of the ship under Article 58 of the Law.
- (3) The owner of a ship to which this Regulation applies must inspect the ship on an annual basis and must make, and have available for inspection on board the ship, an annual declaration in a form approved for the purpose by the Registrar as to the safety of equipment carried in the ship.
- (4) A person who contravenes paragraph (1) is guilty of an offence and liable on conviction to imprisonment for a term of 2 years or a fine, or both.
- (5) It shall be a defence to a charge under paragraph (4) to prove that the person took all reasonable steps to avoid committing the offence.

- (6) A person who, in making a declaration under paragraph (3), knowingly or recklessly makes a false or misleading statement or a false or misleading representation, is guilty of an offence and liable on conviction to a fine of level 4 on the standard scale.

6 Enforcement and power to detain

- (1) The Minister may appoint surveyors for the purpose of enforcement of these Regulations, and –
- (a) a surveyor so appointed; or
 - (b) an inspector appointed under Part 10 of the Law,
- may exercise, for the purpose of enforcement of these Regulations, the powers conferred on a surveyor or (as the case may be) inspector by that Part.
- (2) Article 177 of the Law shall have effect in relation to a ship detained under these Regulations as it does in relation to a ship detained under the Law, and reference in paragraph (1) of that Article to an inspector or surveyor shall be taken for this purpose to include reference to such a person appointed by the Minister under Part 10 of the Law or paragraph (1) of this Regulation.

7 Revocation of Order

The Shipping (Safety Codes) (Jersey) Order 2005³ is revoked.

8 Consequential amendment

In Regulation 6 of the Harbours (Inshore Safety) (Jersey) Regulations 2012⁴, for paragraph (2)(b) there shall be substituted the following sub-paragraph –

- “(b) in the case where the permit is for the purpose of Regulation 4, evidence that –
- (i) if Regulation 3 of the Shipping (Safety Code – Yachts and Small Ships) (Jersey) Regulations 201-⁵ applies to that ship, the ship complies with paragraph (1) of that Regulation (to the extent that the ship is not exempt under paragraph (3));
 - (ii) if Regulation 5 of the Shipping (Safety Code – Yachts and Small Ships) (Jersey) Regulations 201- applies to that ship, the ship complies with paragraph (3) of that Regulation;”.

9 Citation

These Regulations may be cited as the Shipping (Safety Code – Yachts and Small Ships) (Jersey) Regulations 201-.

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- ¹ *chapter 19.885*
 - ² *chapter 19.885*
 - ³ *R&O.6/2005 (chapter 19.885.72)*
 - ⁴ *chapter 19.060.30*
 - ⁵ *P.118/2013*