



Law Society
of Scotland

Consultation response

Consultation on The Merchant Shipping (High Speed Craft) Regulations 2022

October 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Marine Law Sub-committee welcomes the opportunity to respond to the Maritime and Coastguard Agency's *Consultation on The Merchant Shipping (High Speed Craft) Regulations 2022*¹. We do not seek to respond to the consultation questions but have the following general comments to make.

General comments

Ambulatory reference

We consider that the intended approach to ambulatory reference in the proposed Merchant Shipping (High Speed Craft) Regulations 2022 appears to be sensible and we note the potential benefits of using such power. In particular, we support the simplicity and savings, legal certainty and clarity, and reduced burdens on businesses which this approach is likely to deliver.

However, we note that it remains important that there are suitable opportunities for consultation and scrutiny. It will therefore remain crucial for the UK to be part of the consultation and negotiation process in relation to any proposed changes to SOLAS Chapter X and the High Speed Craft (HSC) Codes 1994 and 2000. There may require to be enhanced opportunities for domestic consultation and scrutiny when changes are being considered at IMO level. It is important that relevant stakeholders who will be affected by any changes are consulted. Consultations themselves are often a trigger point for the industry to become aware of planned rule changes. We therefore consider that awareness-raising will be crucial to the success of use of the ambulatory reference provisions. This will help to ensure that industry stakeholders have the ability to influence and scrutinise the provisions, are aware when changes are made, and may guide their conduct based on a clear understanding of the legal framework. We note the intention to publicise changes in a Written Ministerial Statement (WMS) and by way of a Marine Guidance Note before they enter into force.

We consider it appropriate that the Secretary of State will retain the power to make regulations to prevent an unwanted amendment to SOLAS or the High Speed Craft (HSC) Codes 1994 and 2000 from becoming UK law, recognising, however, that the measures concerned will be international legal obligations with which UK ships are required to comply regardless of the amendments not taking effect in UK law. It is important that

¹ <https://www.gov.uk/government/consultations/the-merchant-shipping-high-speed-craft-regulations-2022>

these obligations are respected and that in the event of divergence, steps are taken to raise awareness of the situation within the sector.

Definition of high speed craft

We note that the definition of a high speed craft in the High Speed Craft Code is a *craft capable of a maximum speed (in metres per second) equalling or exceeding $3.7 \nabla^{0.1667}$ where ∇ is the volume of displacement corresponding to the design waterline in square meters²*. This definition appears to be complex and so may be difficult for operators to determine whether a vessel falls within scope.

We note that alternative definitions of high speed crafts are available – for example, The Merchant Shipping (Boatmasters' Qualifications, Crew and Hours of Work) Regulations 2015 as they relate to a 'fast craft endorsement' define a 'fast craft' as: "*a vessel capable of a maximum speed when fully laden of at least 20 knots (where "maximum speed" means the speed achieved at the maximum continuous rating of the vessel's propulsion machinery).*"³

While we appreciate that as the Regulations provide an ambulatory reference to the IMO High Speed Craft (HSC) Codes 1994 and 2000, this definition needs to be used, we consider that detailed guidance would be of benefit to the sector, including a reference to hovercraft and hydrofoils.

Offences and penalties

We note that the consultation sets out that the general policy approach is to use civil sanctions whenever possible before using criminal offences⁴. We support the rationale for this approach. We consider that it is appropriate to use civil sanctions where possible, including a potential for use of fixed and variable monetary penalties, and/or enforcement undertakings in some cases, rather than relying on prosecutions. In relation to civil penalties, we note the desirability of adopting (either directly or through parallel provisions) a set of procedural rules which mirror those within existing similar penalty regimes, rather than introducing a different set of provisions and thus, exacerbating fragmentation of the law.

We understand there to be no changes to current offences and penalties which are retained under the new regulations. As criminal offences carry both the risk of conviction and the consequences and implications for those convicted with a criminal record which may affect professional career opportunities as well as scope for foreign travel, it will be important for suitable awareness-raising to be undertaken to ensure those operating in the sector are aware of these regulations and in particular, the criminal offences.

² International HSC safety code (2000), 2008 edition, paragraph 1.4.30

³ Paragraph 6.

⁴ Paragraph 2.5.2



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