



Law Society  
of Scotland

# Consultation response

Strengthening enforcement of the dangerous use of  
recreational and personal watercraft

November 2021



## Introduction

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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 Department for Transport's consultation on *Strengthening enforcement of the dangerous use of recreational and personal watercraft*<sup>1</sup>. We have the following comments to make.

## Response

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### **Question 1: Is new legislation necessary in this area?**

We support this legislation to provide for the regulation of recreational and personal watercraft, particularly within harbour areas.

While bespoke legislation for recreational and personal watercraft is attractive and may allow for the environmental risks to be more fully dealt with, we consider that the approach of bringing recreational and personal watercraft within scope of the provisions of the Merchant Shipping Act (MSA) 1995 is pragmatic and seems sensible.

### **Question 2: Are the personal watercraft ownership and accident figures quoted above an accurate representation?**

No comment.

### **Question 3: Does the proposed definition of "watercraft" meets the intended aim of bringing all PWCs, recreational and other watercraft back within scope of safety and misuse requirements? Are the intended exclusions appropriate?**

We note that Article 3 of the draft Order sets out the definition of a watercraft including in 3(1)(b): "*is used, or is capable of being used, to carry one or more persons.*"

<sup>1</sup> <https://www.gov.uk/government/consultations/strengthening-enforcement-of-the-dangerous-use-of-recreational-and-personal-watercraft>

We consider that this wording suggests that remotely operated craft, such as unmanned surface vessels, which are used for pleasure, rather than commercial use, would not be within scope of the regime. It seems conceivable that remotely operated watercraft could be used for pleasure taking into account the way that technology is progressing and becoming more accessible to the general public.

Article 3(2)(b) refers to and excludes “*an unpowered craft which is less than 2.5 metres in overall length*”. We suggest that consideration be given to reducing this length to allow for small paddleboards, kayaks and similar crafts to be included within the definition. These activities appear to have grown in popularity and can cause problems in many smaller harbours.

Article 3(2)(c)(i) refers to shallow water. We suggest that this should exclude shallow water in harbour areas and in this regard, suggest that wording such as “(excluding shallow water within a harbour)” be added.

#### **Question 4: Should the UK Ship Register should be open on a voluntary basis to watercraft owners?**

This would appear sensible, however, we consider it unlikely that there would be significant uptake for voluntary registration.

#### **Question 5: Should the provisions of section 58 of the MSA 1995 be applied to watercraft and, if so, which ones?**

We support the proposed extension of section 58 of the MSA 1995 to watercraft in line with the provisions of Article 7 of the draft Order.

#### **Question 6: Should the power of detention be available to enforcement officials to ensure dangerously unsafe watercraft are not used on the water?**

We note that the scope of Article 8 of the draft Order concerns the *Power to detain dangerously unsafe watercraft*. We support the extension of relevant provisions of the MSA 1995 in this regard, although anticipate that in relation to sections 95, 96 and 97, this may be difficult to manage in practice. Detention of the craft will provide an immediate solution if problems around safety arise.

The existing detention powers under section 95 of the MSA 1995 apply to “dangerously unsafe ships”. We consider that it may be appropriate for powers of detention to extend to the unsafe operation of watercraft as well unsafe condition. Detention is an effective and immediate tool which can be used by those who have the power to enforce it.

#### **Question 7: Should the provisions of section 100 of the MSA 1995 be applied to the owners of watercraft and, if so, which ones?**

No comment.

It will be important to raise awareness of these provisions, particularly the criminal offences, so that people may guide their behaviour accordingly. This will be of particular importance among those members of the general public who operate such craft in and around harbours.

**Question 8: Should the provisions of sections 85 and 86 of the MSA 1995 be applied to watercraft and, if so, which ones?**

No comment.

**Question 9: Should the same definition of “watercraft” be used for the purposes of the Harbours Act 1964?**

Yes, we favour the same definition being used in the interests of clarity and certainty. The management of safety of navigation is becoming more problematic with the use of recreational and personal watercraft within harbour areas.

We note that Article 12 refers only to sections 40A to 40D of the Harbours Act 1964 which apply only to “Harbour Directions”. We consider that the definition should apply across all local legislation and Byelaws concerning harbours, General Directions, Special Directions and Harbour Directions. These instruments follow regulation-making powers within legislation and so this needs to be reflected within the Order to allow harbours to be able to apply the changes.

We also suggest that amendment may be required to section 57 of the 1964 Act where “ship” is defined.

**Question 10: Should these consequential amendments to incorporate watercraft within related merchant shipping legislation be made?**

Yes, we support these consequential amendments being made to ensure clarity in relation to the legislation in this area.

**Question 11: Are there any significant new costs or administrative burdens which might be created as a result of the introduction of this legislation? What is your assessment of these?**

We consider that the management costs for detaining recreational or personal watercraft will be minimal. There are likely to be much greater costs of prosecution. If the UK Ship Register is opened on a voluntary basis to watercraft owners, we anticipate that the Register would be able to absorb additional work without too much difficulty – as referred to above, we consider it unlikely that there would be significant uptake for voluntary registration. However, we suggest that the position should be kept under review in case there are more registrations than anticipated and this adversely impacts on costs and/or administrative burdens.

**Question 12: What, if any, documentary evidence are you able to supply that alcohol or drug use among recreational mariners is leading to safety concerns or an increased number of accidents or incidents? Are you aware of any recent prosecutions for related offences?**

No comment.



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