

# STATES OF JERSEY



## DRAFT SHIPPING (SAFETY OF NAVIGATION) (JERSEY) REGULATIONS 200-

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Lodged au Greffe on 6th April 2009  
by the Minister for Economic Development

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STATES GREFFE





Jersey

## **DRAFT SHIPPING (SAFETY OF NAVIGATION) (JERSEY) REGULATIONS 200-**

### **REPORT**

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#### **Background**

The States approved the principle to implement the Safety of Life at Sea (SOLAS) Convention on 18th November 2003. As a consequence, the U.K. ratified the Convention on the Island's behalf, and since then, 2 chapters out of 12 have been implemented locally, regarding local ship certification and port and ship security.

Legislation to cover a third chapter, concerning Safety of Navigation, has been under development since that time. The Order through which it will be introduced is now in its final stages of preparation. However, for the Order to be properly effective, 2 consequential changes are needed to the primary Law.

Such changes can be made by States' Regulations rather than by an amending Law, provided they are in consequence or anticipation of the Safety legislation. The changes are described in more detail below.

#### **Consultation**

The 2 specific changes that will be brought in by these Regulations have not been contentious and are necessary for the effectiveness of the Order. It is useful, however at this stage, for Members to be aware of the consultation that has taken place regarding the forthcoming Order.

External consultation on the detail to be covered by the Order took place in 2004–5 as part of the Red Tape Reform initiative in order to minimise any increase in regulation. At that time the basic limits of the Safety of Navigation package were agreed. Further public consultation took place between May and August 2008.

Shipping operators have either signalled consent or made no comment. This is because they are largely already compliant with the requirements. However, at their request a small improvement was made to the draft legislation. This will ensure that any exemption or equivalent to certain equipment requirements that the Flag State concerned has already recognised may also be accepted in Jersey at the discretion of the Minister.

Local boat-owners have also been fully engaged. A number of issues have been raised and changes made. In particular, discussion has focussed on how best to apply

requirements to carry radar reflectors and compasses as well as how far the legislation should follow its U.K. equivalent.

Opinions remain divided, as some would seek greater alignment with the U.K. whilst others would like to see progress made towards a tougher regime, which would include making compulsory some form of basic certificate of competence for local skippers.

In meeting the requirements of the Convention, the Minister has relatively little room for manoeuvre. However, Members will be glad to know that the Order will strike an appropriate balance: the bureaucracy, cost and enforcement issues surrounding compulsory certificates of competence for pleasure-craft users make it unrealistic at this stage. On the other hand, making a compass or radar reflector a basic requirement are not matters that should be compromised and should be enforced.

### **Detail of the proposed changes**

Regulation 1 amends Article 49 of the Law by inserting a new definition of ‘ship’. The reference to a vessel used in navigation is removed and replaced by a more far-reaching definition of its use for transportation on water. This change became necessary as a result of an attempted U.K. prosecution of a person following a collision between his personal water craft (PWC) or ‘jet-ski’ and another PWC, causing serious injury. The defendant was found guilty but appealed. His appeal was upheld and to date the Appeal Court judgment that a PWC is not a vessel used in navigation stands<sup>1</sup>. Whilst Jersey law is not bound by such precedent, it is clearly unwise to continue to use a definition that might mean owners of small craft, such as a jet-ski, could escape prosecution.

The change of definition and the inclusion of the reference to Wing-in-Ground (WIG) craft also bring the definition in line with the Convention on International Regulations for Preventing Collisions at Sea, which the U.K. has also ratified on behalf of the Island.

Regulation 2 repeals Article 56 of the Law regarding the duty to assist a ship in distress. It will be replaced by the relevant regulation in chapter V of the SOLAS Convention. This is necessary to take account of the requirement to inform those to whom assistance is being offered (or the search and rescue service) and to enter any reason for not offering assistance in the ship’s log-book.

Without these additional requirements Jersey legislation would not be fully compliant with chapter V of the Convention.

### **Resource implications**

There are no new financial, manpower, property, ICT or other resource implications for the States of Jersey in these amendments.

### **Conclusions**

These Regulations make small but vital differences to Safety of Life at Sea issues. They improve the effectiveness of the Shipping Law if a prosecution were found to be necessary, and they help to ensure Jersey legislation is compliant with the relevant Convention requirements. They allow the Minister to make the necessary Order to provide effective implementation of the Safety of Navigation chapter of the SOLAS

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<sup>1</sup> *R V Goodwin* [2005] EWCA Crim 3184; [2006] 1 WLR 546

Convention and so move the Island a step closer to overall compliance with its international commitment in this area.

The Minister recommends the adoption of these Regulations.

## Explanatory Note

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These Regulations are needed as a consequence of the implementation, by Order made by the Minister, of Chapter V of the SOLAS Convention in respect of Jersey ships, wherever they are, and in respect of other ships while in Jersey waters.

The “SOLAS Convention” is the International Convention for the Safety of Life at Sea, 1974, as amended. Chapter V of the Convention relates to safety of navigation.

*Regulation 1* amends Article 49 of the Shipping (Jersey) Law 2002 to add a definition of “ship”. The effect of the amendment is to define a ship, for safety purposes, by reference to its capacity for use as a means of transportation on water, instead of by reference to its use in navigation.

*Regulation 2* repeals Article 56 of the Shipping (Jersey) Law 2002, the objectives of which are more fully covered by Chapter V of the SOLAS Convention.

*Regulation 3* provides for the citation and commencement of the Regulations.



Jersey

## **DRAFT SHIPPING (SAFETY OF NAVIGATION) (JERSEY) REGULATIONS 200-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Articles 50 and 196 of the Shipping (Jersey) Law 2002<sup>1</sup>, have made the following Regulations –

### **1 Amendment of Article 49 of the Law**

After Article 49(3) of the Shipping (Jersey) Law 2002<sup>2</sup> there is inserted the following paragraph –

“(3A) In this Article –

‘ship’ includes every description of water craft, including a non-displacement craft, a WIG craft and a seaplane, that is used or is capable of being used as a means of transportation on, in or under water;

‘WIG craft’ means a wing-in-ground craft being a multimodal craft that, in its main operational mode, flies in close proximity to the surface by utilising surface-effect action.”.

### **2 Repeal of Article 56 of the Law**

Article 56 of the Shipping (Jersey) Law 2002 is repealed.

### **3 Citation and commencement**

- (1) These Regulations may be cited as the Shipping (Safety of Navigation) (Jersey) Regulations 200-.
- (2) They come into force 7 days after they are made.

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<sup>1</sup> *chapter 19.885*  
<sup>2</sup> *chapter 19.885*