

Guidance for brokering vessels manufactured post 1998.



Version 2 – updated information on the vessel build dates Major Craft Conversion applies to.

Introduction

This guidance has been created only for brokers who are acting as agents between a buyer and a seller.

This guidance does not cover transactions where brokerages/companies take ownership of the vessels as part of the transaction, such as part exchanging a vessel, or bringing a vessel into the brokerage's stock. Such transactions may carry higher legal responsibilities for the brokers under the recreational craft regulations. British Marine is urgently seeking further clarifications from the UK government on these transactions and will issue further guidance to its members once this has been received.

This document offers guidance and clarifications on the complexities of vessel certification and the minimum checks that should be carried out by the broker to ascertain if the vessels certification is correct.

When followed this guidance forms part of a broker's due diligence aimed at checking a recreational crafts certification status, allowing the broker to correctly market the vessel as well as offering the correct advice to both the seller and buyer after the due diligence checks have been completed.

This guidance has been written following a legal review, commissioned by British Marine, on certain aspects of the recreational craft directive after industry requested further clarifications.

The terminology used throughout this guide:

RCD - Recreational Craft Directive:
EU Directive 94/25/EC - Introduced (optional) on the 16th June 1994 and put into force (mandatory) on the 16th June 1998; also,
EU Directive 2003/44/EC – Update of original RCD and put into force (mandatory) on the 1st January 2005 for selected products amending Directive 94/25/EC.

EU Directive 2013/53/EU – Published December 28th 2013 and came into force on the 17th January 2017.

RCR - Recreational Craft Regulations:
The EU Directives were transposed into UK law, EU Directive 2013/53/EU came into force on the 3rd August 2017. Sometimes referred to as RCD II.

- MCC -** Major Craft Conversion: The 2004 UK Regulation amendment of the transposed RCD 2003/44/EC included major craft conversion, however it did not refer to the essential requirements. The RCR (2017) wording is notably different from the 2004 version, referring to the essential requirements. It is now the case, that any alteration to a vessel that has changed the essential requirements of the vessel will require re-certification under the RCR. Examples of a MCC are: the fitting out of a CE or UKCA certified vessel that was supplied to be completed by others; and/or, removing a diesel engine and installing an electric motor; and/or, installing an engine of a power different from that designated by the manufacturer; and/or, altering the internal fit-out to an extent that it may affect the stability (or any other essential requirement) of the vessel; and/or, making major changes to the systems of a vessel, such as removing lead acid batteries and installing Lithium batteries, or installing a solid fuel stove. This list is not exhaustive and is a grey area. Following updated information from British Marines Primary Authority Partnership (PAP) it has now been confirmed MCC and the need to recertify a vessel through a PCA applies to vessels built after the implementation of the original RCD with the changes to the vessel being made after the UK implementation of RCD 2 i.e. vessels built after June 16th 1998 with the major craft conversion occurring after 03rd August 2017.
- PCA -** Post Construction Assessment: Third party assessment of a vessel by a Notified or Approved government appointed organisation.
- WIN -** Watercraft Identification Number: A defined set of 14 characters, some of which are pre-determined and others, chosen by the boatbuilder, specific details in the creation and use are set out in ISO standard 10087.
- MIC -** Manufacturer Identity Code: Managed by British Marine who are appointed by the Government to administer the MIC code national register. A MIC forms part of the unique serial number (WIN) that every CE/UKCA marked vessel must have, enabling manufacturers and regulators to identify each particular vessel.

General understanding

For vessels manufactured post 1998, the vessel must have been built and correctly CE marked to satisfy the requirements of the RCR (RCD).

The exception to this is for a vessel that has been self-built in its entirety for the owner's use, provided the vessel is not placed on the market within 5 years. If the vessel is placed on the market within 5 years, it must be CE marked to satisfy the requirements of the RCR (RCD).

Ultimately the judgement as to whether or not the vessel is correctly certified can only be made by a judge should a certification issue be taken to court; this is a complex assessment based upon multiple factors and whilst brokers will try and make a suitable assessment based upon the vessel and its existing documentation, in the absence of documented proof a Post Construction Assessment may be the only way of guaranteeing no subsequent liability to any party.

Brokering vessels built from 1998 to date

The first thing is to establish (or otherwise) that the vessel is correctly UKCA (or CE) Marked.

A correctly marked vessel will have:

- 1) A Watercraft Identification Number stamped on the starboard transom in the correct format that clearly identifies the craft. An example of a WIN is: GB ELT 57 140 D 4 24;
- 2) A builders' plate affixed to the vessel which clearly identifies the builder;
- 3) A Declaration of Conformity, representative of the vessel, signed and dated by a representative of the boatbuilder that quotes the vessel's WIN, and/or an owners manual with vessel details.

If all 3 of the above are present, it is reasonable to safely assume that the vessel is correctly UK (or CE) Marked. Provided that the vessel has not undergone a major craft conversion (MCC) since 2017 (see below), you may market the vessel without making additional disclosures to prospective purchasers.

A major craft conversion is an alteration (or series of alterations) that has (have) changed the Essential Requirements of the vessel to such an extent that it requires recertification under the RCR (RCD).

It is the boat owner's responsibility and decision to decide whether a MCC has taken place and to take the appropriate actions. Examples of MCC's are, but are not limited to:

- The fitting out of a vessel that was supplied as intended to be finished by others (commonly referred to as a 'sailaway'); and/or
- Removing a diesel engine and installing an electric motor; and/or
- Installing an engine of a power different from that designated by the manufacturer; and/or
- Altering the internal fit-out to an extent that may affect the stability of the vessel; and/or

- Making major changes to the systems of a boat such as replacing lead acid batteries with Lithium batteries or installing a solid fuel stove.

This is not meant to be an exhaustive list and you as a broker must make careful enquiries of your seller and ensure that these are documented.

If the vessel has undergone an MCC, it must undergo a PCA carried out by a 'Notified Body'. Once it goes through this process a new WIN along with the relevant documentation is allocated to the vessel by the Notified Body. In the UK there are two Notified/Approved Body's that undertake this process. For a full list of notified bodies (European/CE marking) and approved bodies (UK/UKCA marking) please follow the links below:

Notified Bodies – [EUROPA – European Commission – Growth – Regulatory policy - SMCS](#)

Approved Bodies - [Search - UK Market Conformity Assessment Bodies \(find-a-conformity-assessment-body.service.gov.uk\)](#)

If the vessel has undergone a MCC and has been subjected to a PCA with appropriate documentation and CE marking, you may market the vessel without making additional disclosures to prospective purchasers, although it would be prudent to mention in your marketing materials that the vessel has gone through a PCA, with the reasons why.

If the vessel is not UK (or CE) Marked, in part or whole, you may market the vessel to prospective purchasers provided that the seller is not you, the original boatbuilder or a corporate body. You MUST disclose the non-compliant RCR (RCD) status of the vessel in your marketing materials and bring this to the attention of all prospective purchasers. Suggested guidance on the due diligence you should exercise is set out below.

If the vessel has had a MCC but has not undergone a PCA, before marketing the vessel you need to establish if your seller was the owner of the vessel when the MCC occurred. If they were, then you must not market the vessel. You must inform them that it is a criminal offence under the RCR (RCD) for the vessel to be sold without a PCA being completed first.

If your seller was not the owner of the vessel when the MCC occurred, you may market the vessel, but you MUST disclose the MCC in your marketing materials and state that the vessel is not correctly CE marked and it is your understanding that it should have had a PCA, but that this has not been done. Suggested guidance on the due diligence you should exercise is set out below.

Within the Inland Waterways sector, it is common practice for builders to sell vessels that are not completed, these are legally defined as partially completed and must not be used, with the intention that the vessel is to be completed by others before use. These vessels are usually sold as a 'sailaway', although this is not a recognised term in the RCR (RCD). These vessels are typically sold to professional boat fitters and private boat owners who then

complete the vessel build. The professional builder will then usually place the vessel on the market, whereas the private owner will complete and put into service the vessel.

The presence of the 'sailaway' manufacturer's WIN on the vessel does not remove the responsibility of the person (private or commercial) completing the vessel to have completed the build to meet the Requirements of the RCR (RCD) including correctly UK (or CE) marking the vessel. This process might be achieved by the professional builder, some of whom can self-certify taking on the responsibilities of a manufacturer, or by the vessel having a PCA, both of which would require a new WIN.

When such a vessel is placed on the market for the first time, brokers should be diligent with ascertaining the correct CE/UKCA marking of these vessels. If the vessel's documentation identifies it as being initially sold as a 'sailaway' for completion by others and the 'sailaway' builders WIN is still marked on the vessel, then it is almost definite that the vessel is not properly UK (or CE) Marked and will need to undergo a PCA if still owned by the person who completed it.

Suggested guidance to be given to vendors and purchasers if proof of RCD compliance has not been achieved but the vessel can be legally sold.

Suggested guidance from the Broker to the vendor:

As a Broker, our understanding is that your vessel should have been built and correctly CE marked to satisfy the requirements of the Recreational Craft Directive, but there is no such proof provided by yourself, as such the vessel can be legally sold but you should satisfy yourself of any such implications that may arise from selling the vessel.

The only way to mitigate all risk to you as the vendor is for you to instruct a PCA to be undertaken, however it is not a requirement for you to do this.

Suggested guidance from the Broker to the purchaser:

As a Broker, our understanding is that the vessel you are purchasing should have been built and correctly CE marked to satisfy the requirements of the Recreational Craft Regulations and there is no such proof provided by the vessel owner. You should satisfy yourself of any implications that may arise from purchasing the vessel.

You are advised to seek further advice should you see fit.

However, whilst the purchase is not illegal, you should be mindful that there could be implications for future saleability or value of the vessel.

For further information please contact
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