

**EXPLANATORY MEMORANDUM TO**  
**THE MERCHANT SHIPPING (ACCIDENT REPORTING AND**  
**INVESTIGATION) REGULATIONS 2012**

**2012 No. 1743**

1. This explanatory memorandum has been prepared by the Marine Accident Investigation Branch (MAIB).

2. **Purpose of the instrument**

The purpose of this instrument is to replace the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (S.I 2005/881) (“the 2005 Regulations) with updated Regulations, primarily to reflect the requirements of Directive 2009/18/EC of the European Parliament and of the Council (“the Directive”).

These Regulations specify the purpose of investigations, make provision for their scope and conduct, define the accidents and incidents which may be investigated and set out the requirements for reporting accidents and the publication of reports and summaries.

3. **Matters of special interest to the JCSI**

3.1 The instrument provides a new power to the Chief Inspector of Marine Accidents. This power enables the Chief Inspector, following an accident, to declare a “substantial UK interest”, where such an interest exists. The definition of “substantial interest” can be found in the IMO Code<sup>1</sup> and is referenced in the Directive that is being transposed.

3.2 The instrument provides a new power to the Chief Inspector of Marine Accidents. This power enables the Chief Inspector to delegate whole, or part of, a safety investigation to another EEA Member State, where it has been mutually agreed and where he deems it appropriate. This is required by the Directive.

3.3 The instrument does not create any new offences.

3.4 The instrument must be reviewed within 5 years.

4. **Legislative Context**

4.1 The Merchant Shipping Act 1995 (MSA) makes general provisions for the regulation of Shipping. Part X (sections 256 to 260) contains a number of provisions concerned with the appointment of inspectors and surveyors and

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<sup>1</sup> IMO Code ‘Casualty-related matters’: Code of International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident, Annex, Part I, p. 8.

the powers they may enjoy. Part XI (section 267) provides for the appointment of a Chief Inspector of Marine Accidents by the Secretary of State.

4.2 Section 267 of the MSA provides powers for the Secretary of State to make Regulations to define what constitutes a Marine Accident, how such accidents are to be reported, what evidence pertaining to such accidents is to be preserved for how long and by whom, how such accidents are to be investigated and by whom, the appointment of persons to investigate such accidents and the publication of findings of investigations into such accidents.

4.3 This instrument applies the powers in the MSA in transposing the Directive, pertaining to the investigation of Marine Accidents.

4.4 As the updates since the 2005 Regulations are minor and mandated by the Directive, the MAIB carried out a focused consultation with industry stakeholders and the Admiralty Solicitors' Group. The results of this consultation will be made available on the MAIB website.

4.5 A Regulatory Impact Assessment has been carried out and was contained within the consultation pack.

## **5. Territorial Extent and Application**

5.1 This instrument applies to the United Kingdom.

5.2 This instrument applies to all individuals and ships involved in accidents within UK territorial waters, as defined under the United Nations Convention on the Law of the Sea, and to all UK-registered ships, and individuals onboard, involved in an accident anywhere in the world. Various provisions will affect ship owners, operators, harbour and port authorities, inland waterway authorities, and the Maritime and Coastguard Agency (MCA).

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 Section 267 of the MSA enables the Secretary of State to appoint inspectors of marine accidents, together with a Chief Inspector of marine accidents. It also sets out powers to enable the Secretary of State to make regulations with respect to the investigation of marine accidents, as well as setting out the general powers available to inspectors of marine accidents.

7.2 The aim of these Regulations is to transpose the Directive without impinging upon the MAIB's ability to operate efficiently or imposing any extra burdens on industry.

- 7.2.1 There are minor updates to the Definitions provisions as required.
- 7.2.2 The most substantive change is in the definition of “Accident”. In contrast to the 2005 Regulations, “Accident” incorporates “hazardous incident”, which is known as a “marine incident” under the Directive.
- 7.2.3 As required by the Directive, “Accidents” are now defined as being, “Very Serious Marine Casualties”, “Serious Marine Casualties”, “Marine Casualties” or “Marine Incidents”, depending on their severity.
- 7.2.4 The Regulations shall apply to all vessels covered by the 2005 Regulations. As required by the Directive, the Regulations shall also apply to ships which involve the “substantial interests” of the United Kingdom, as deemed by the Chief Inspector of Marine Accidents.
- 7.2.5 As required by the Directive, a “preliminary assessment” shall be carried out into all Serious Marine Casualties, to decide whether there is merit in their investigation. Where the Chief Inspector decides that there is not merit in investigating, he shall inform the European Commission of the reasons behind this.
- 7.2.6 As required by the Directive, the Chief Inspector shall investigate all Very Serious Marine Casualties involving vessels within the Scope of the Directive.
- 7.2.7 Throughout the Regulations, and in accordance with the Directive, all periods of 28 days shall now be of 30 days’ duration.
- 7.2.8 The Chief Inspector shall have the power to terminate an investigation mandated by the Directive, should the Directive no longer be applicable.
- 7.2.9 As required by the Directive, The Chief Inspector shall take into account the IMO Guidelines on the Fair Treatment of Seafarers, when investigating marine accidents, particularly those which may require the impounding of a ship or the interrogation of her crew.
- 7.2.10 An inspector may record a witness interview of a person who is assisting a safety investigation in any manner he sees fit. This provision is required to cover fast-moving technology, e.g. MP3 recording.
- 7.2.11 As required by the Directive, when the MAIB is requested to assist another Member State in a safety investigation, the costs

of doing so shall be agreed between the MAIB and the other State.

- 7.2.12 As required by the Directive, the Regulations include provisions to ensure the co-operation with other States and to grant them equal rights and access to witnesses and/or evidence. The Chief Inspector will only do this, where he is certain that the other State will ensure adequate confidentiality of information shared, as provided for in Article 9 of the Directive.
- 7.2.13 As required by the Directive, The Chief Inspector may delegate all or part of a safety investigation to another EEA Member State, where he deems it appropriate, and with mutual consent.
- 7.2.14 As required by the Directive, where an accident has occurred outside of any of the EEA States' territorial waters, which involves a ro-ro ferry, or High Speed Passenger Craft, whose last port of call was in the United Kingdom, the MAIB shall remain responsible for the safety investigation unless it is agreed with another EEA Member State that they shall be responsible.
- 7.2.15 As required by the Directive, the Chief Inspector shall publish an "interim report", should a full report into a Marine Accident, covered by the Directive, not be ready within 12 months of the date of the accident.
- 7.2.16 As required by the Directive, reports into safety investigations shall now include information set out in Annex I to the Directive.
- 7.2.17 As required by the Directive, when a Substantially Interested State requests a draft report of a safety investigation, the Chief Inspector shall only provide such a draft if the state has agreed in writing to comply with the provisions of Chapter 13 of the IMO Code.<sup>2</sup>
- 7.2.18 Where the Directive obliges the Chief Inspector to investigate a Very Serious Marine Casualty which he thinks will not lead to safety lessons being learned, he may publish a simplified report which satisfies the minimum requirements of the Directive. This provision is made to ensure that the MAIB is not obliged to produce full-length reports into accidents which technically class as Very Serious Marine Casualties. This might, for example, include an unattended old barge sinking at its moorings.

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<sup>2</sup> MSC-Mepc.3/Circ.2 Annex, p. 12, "Draft Marine Safety Investigation Reports."

7.2.19 The Chief Inspector may publish a report in such a manner as he sees fit.

7.2.20 As required by the Directive, the Chief Inspector may inform the European Commission at any stage of a safety investigation, if he is of the view that urgent action is required to prevent similar accidents occurring.

7.2.21 The Regulations include an updated Schedule (“Schedule I”), to reflect the reporting requirements of the Directive, following a Marine Accident. It does not reproduce the Directive Annex II verbatim, as some of the required data cannot be provided by the reporting party, such as the Inspector dealing with the case.

## **8. Consultation outcome**

8.1 The MAIB carried out a focused consultation with industry stakeholders and the Admiralty Solicitors’ Group. The results of this consultation will be made available on the MAIB website.

## **9. Guidance**

9.1 Guidance will be promulgated by Marine Guidance Note (MGN), which is the standard practice for new marine regulation.

## **10. Impact**

10.1 The accompanying Impact Assessment assesses the costs and benefits of the two options for UK implementation of the Directive. Having updated our operational procedures, the MAIB is operationally compliant with the Directive. Therefore, it should be noted that some of the costs of UK implementation have already been incurred and the associated benefits realised.

## **11. Regulating small business**

11.1 The legislation applies to small business.

## **12. Monitoring & review**

12.1 The instrument will be reviewed within 5 years.

## **13. Contact**

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## Transposition note

### Transposition of Directive 2009/18/EC on Merchant Shipping Accident Reporting and Investigation

<b>Art.</b>	<b>Content</b>	<b>Current UK legislation or guidance</b>	<b>Planned implementation</b>
1.1 Subject Matter	Purpose to improve maritime safety, prevent pollution by ships, and reduce risk of future marine casualties.	Not applicable.	This is an expression on the purpose of the Directive and does not therefore require implementation.
1.2	Investigations shall not be concerned with determining liability or apportioning blame.	Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Provision retained in replacement Statutory Instrument (SI).
2.1 Scope	Applies to marine casualties and incidents that involve ships, waters or other substantial interest of a Member State (MS).	Not applicable.	This is an expression on the application of the Directive and does not therefore require implementation.
2.2	Does not apply where only warships, small fishing vessels, offshore drilling units, or pleasure craft are involved.	Not applicable. The Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881) do apply to small fishing vessels and inland watercraft.	This is an expression on the application of the Directive and does not therefore require implementation. No change to existing coverage of UK regulations is proposed.
3.1-3.7 Definitions	Defines some of the terms used in the Directive.	Not applicable.	This defines some of the terms used in the Directive and does not therefore require implementation.
4.1 Status of safety investigations	Investigations shall be carried out as rapidly as possible, independent of and not delayed by criminal proceedings.	Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Provision retained in replacement SI.
4.2	Provision for cooperation and mutual assistance in other MS investigations and coordination of investigative bodies' activities.	Partially covered by Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Replacement SI will cover this provision in full.
5.1 Obligation to investigate	Requires an investigation be carried out after "very serious marine casualties".	The Chief Inspector is not required to investigate specific types of accident, but may investigate any accident at his discretion.	Replacement SI will cover this provision in full.
5.2	Requires a preliminary assessment to	Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI	Replacement SI will cover this provision in full.

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	decide if investigation necessary after "serious casualties".	2005/881) provide for "preliminary examinations", which is a similar but not identical process.	
5.3	Scope and conduct of investigations shall be determined in co-operation with substantially interested states.	Partially covered by Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Replacement SI will cover this provision in full.
5.4	Investigations shall follow common methodology.	The methodology has been set out in European Commission regulations (No 1286/2011) which apply directly to MS.	No further implementation required.
5.5	Investigation shall start no later than two months after incident.	Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881) provide for the Chief Inspector to decide whether to investigate within 28 days.	Replacement SI will cover this provision.
6 Obligation to notify	Parties involved in an incident must report it without delay.	Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Provision retained in replacement SI.
7.1 Leading of and participation in safety investigations	Each incident shall be subject to only one investigation; if two or more MS involved, they shall agree who will be lead MS.	Not covered in existing regulations.	Replacement SI will cover this provision in full.
7.2 to 7.4	Describes arrangements where the lead MS is not yet agreed or is delegated to another MS.	Not covered in existing regulations.	Replacement SI will cover this provision in full.
8.1 Investigative bodies	Investigations must be conducted by an impartial permanent independent body.	The Merchant Shipping Act 1995 sets out the basis of the powers of the Marine Accident Investigation Branch and its investigators.	No further implementation required.
8.2	Investigators shall have knowledge and experience of subject area.	A consistent job specification exists for appointing inspectors which sets out the specific qualifications required.	No further implementation required.
8.3	Investigative body may gather and analyse data relating to maritime safety.	Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Provision retained in replacement SI.
8.4	Investigators shall have free access to any relevant area, evidence, test	Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Provision retained in replacement SI.



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	result, witness or other assistance required.		
8.5	Investigative body shall be able and resourced to respond immediately to incidents and maintain independence.	Merchant Shipping Act 1995. A protocol between MAIB and DfT covers resourcing, at: <a href="http://www.maib.gov.uk/cms_resources.cfm?file=/MAIBProtocol2009.pdf">www.maib.gov.uk/cms_resources.cfm?file=/MAIBProtocol2009.pdf</a>	No further implementation required.
8.6	Investigative body may also investigate non-marine incidents.	The UK has separate investigation branches for different transport modes.	No further implementation required.
9 Confidentiality	Witness evidence and private information about persons in an incident may not be disclosed.	Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Provision retained in replacement SI.
10.1 Permanent cooperation framework	MS and Commission shall establish a permanent cooperation framework for investigative bodies.	Not applicable.	This is an obligation for the Commission to take forward with MS, and does not therefore require implementation.
10.2	Describes method for deciding rules and arrangements for the cooperation framework.	Not applicable.	This is an obligation for the permanent cooperation framework, and does not therefore require implementation.
10.3	Describes activities where the cooperation framework will decide how best to work.	Not applicable.	This is an obligation for the permanent cooperation framework, and does not therefore require implementation.
11.1 to 11.2 Costs	Describes how costs to be apportioned when more than one MS involved in an investigation.	Not applicable	This describes Member States' obligations to each other on costs and therefore does not require domestic implementation.
12.1 Cooperation with substantially interested third countries	MS shall cooperate with substantially interested third countries in investigations.	Not covered in existing regulations.	Replacement SI will cover this provision in full.
12.2	Third countries may join an investigation led by a MS.	Not covered in existing regulations.	Replacement SI will cover this provision in full.
12.3	MS may join an investigation led by a third country.	Not covered in existing regulations.	Replacement SI will cover this provision in full.



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13 Preservation of evidence	Parties involved in an incident must preserve relevant information and other evidence.	Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Provision retained in replacement SI.
14.1 Accident reports	Investigations shall result in a published report.	Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Provision retained in replacement SI.
14.2	Reports – or at least an interim report – shall be published within 12 months of the incident.	Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881) requires a report in the ‘shortest time possible’.	Replacement SI will cover this provision in full.
14.3	Reports shall be sent to the Commission.	Partially covered by Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Replacement SI will cover this provision in full.
15.1 Safety recommendations	MS shall ensure reports’ recommendations are taken into account and followed-up.	Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Provision retained in replacement SI.
15.2	Investigative bodies or the Commission may make recommendations from overall investigation results or analysis.	Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Provision retained in replacement SI.
15.3	Recommendations shall not determine liability or apportion blame for an incident.	Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Provision retained in replacement SI.
16 Early alert system	Investigative body may inform Commission of need for an early alert where urgent action needed at Community level.	Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Provision retained in replacement SI.
17.1 European database for marine casualties	Data on incidents to be saved to a database to be established by the Commission.	Not applicable.	This is an obligation for the Commission to take forward, and does not therefore require implementation.
17.2	MS shall notify the Commission of authorities that will have access to the database.	Not applicable	This describes Member State’s obligations within the European Marine Casualty Information Platform (EMCIP) database process and therefore does not require

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			implementation.
17.3	Investigative bodies shall notify Commission on incidents and data from investigations according to a common format.	Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Provision retained in replacement SI (albeit altered to reflect the revised format).
17.4	MS and Commission shall develop the database and method for notification of data.	Not applicable.	This is an obligation for the Commission to take forward with MS, and does not therefore require implementation.
18 Fair treatment of seafarers	MS shall take account of IMO guidelines on fair treatment of seafarers.	The UK abides by the IMO guidelines (though not required in domestic legislation).	Replacement SI will cover this provision in full.
19.1 to 19.3 Committee	Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships.	Not applicable.	This is a matter for the Commission, and does not therefore require implementation.
20 Amending powers	Commission may update definitions and reference to being them into line with measures that enter into force.	Not applicable.	This is a matter for the Commission, and does not therefore require implementation.
21 Additional measures	MS may take additional measures on maritime safety.	Not applicable.	This describes Member States' ability to take additional measures not covered by the Directive and does not therefore require implementation.
22 Penalties	MS shall lay down penalties applicable to infringements and ensure they are implemented.	Penalties are set out in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (SI 2005/881).	Provision retained in replacement SI.
23 Implementation report	Commission will submit 5-yearly report to Euro. Parliament and Council on implementation and compliance with the Directive.	Not applicable.	This is an obligation for the Commission to take forward, and does not therefore require implementation.
24 Amendments to existing acts	Deletes certain articles of Directives 1999/35/EC and 2002/59/EC.	Not applicable.	This article simply states which articles of other Directives are deleted, and therefore does not require implementation.
25.1 Transposition	Deadline for transposition.	Not applicable	Compliance with Directive required by 17 June 2011.

Art.	Content	Current UK legislation or guidance	Planned implementation
25.2	Member State reporting national law applicable to this Directive to EU Commission.	Not applicable	This describes the Member State's obligation to report to the commission, and therefore does not require implementation.
26 Entry into force	Cites entry into force date of Directive.	Not applicable	This Article simply states the entry into force date of the Directive, and therefore does not require implementation.
27 Addres sees	Provides addresses.	Not applicable	This Article simply states that the Directive is addressed to member states.