EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (PORT STATE CONTROL) REGULATIONS 2026

2026 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Keir Mather MP, Parliamentary Under-Secretary of State for Aviation, Maritime and Decarbonisation at the Department for Transport, confirms that this Explanatory Memorandum meets the required standard.

2.2 Fraser Heasley, Director for UK Technical Maritime Services at the Maritime and Coastguard Agency, an executive agency of the Department for Transport, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Suzanne Capper at the Maritime and Coastguard Agency can be contacted by email at the following address with any queries regarding the instrument: hq_inspectionops@mcga.gov.uk. Alternatively, the Agency can be contacted by telephone: 020 3817 2000 or at infoline@mcga.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument revokes and replaces the Merchant Shipping (Port State Control) Regulations 2011 (S.I. 2011/2601) ("the 2011 Regulations") which gave legislative effect to the United Kingdom's commitments under the Paris Memorandum of Understanding ("Paris MoU") and EU Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on Port State Control ("the Directive"). The United Kingdom operates a regime of port State control for the monitoring, inspection and control of foreign flagged ships calling at UK ports or anchorages in order to reduce the risk such ships may pose to health, safety or the environment by ensuring that they meet relevant international standards; the United Kingdom does this in accordance with its obligations under the relevant international conventions and its commitments under the Paris MoU. The UK no longer has obligations under the Directive but the Paris MoU commitments which were reproduced within it remain. The instrument also updates the list of instruments against which ships must be inspected by the Secretary of State in accordance with the Paris MoU.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The 2011 Regulations provided a regime of port State control which fulfilled the obligations for inspection and control in key international conventions and the commitments made by the United Kingdom as a member state of the Paris MoU. In addition, the 2011 Regulations incorporated the requirements of the Directive and included many cross-references to the Directive. As an instrument implementing EU law, the 2011 Regulations became EU "assimilated law" after the United Kingdom left the EU on 31st December 2020.

5.2 The intention of this instrument is to maintain the current policy approach to port State control, which uses a risk-based scheme of inspection to identify ships which are persistently sub-standard and requires port authorities to provide information on actual times of the ships arrival and departure from their port(s). This instrument aligns provision for port State control more closely with the domestic legislation implementing international ship requirements and the current commitments made in the Paris MoU. Unlike the 2011 Regulations, the new instrument does not contain cross-references to requirements under EU law (that is, to the Directive); instead, it contains cross-references to the Paris MoU and other domestic legislation, ensuring a simpler approach.

What was the previous policy, how is this different?

5.3 There are no changes to this policy and the regulatory regime associated with port State control is retained. As noted in paragraph 4,1, the instrument updates the list of international conventions referred to in order to reflect the most up to date list in the Paris MoU.

6. Legislative and Legal Context

How has the law changed?

6.1 The instrument has updated the list of international conventions in respect of which inspections complying with the commitments under the Paris MoU can be carried out. It includes information about the content of inspection reports, the minimum qualification criteria for an inspector and the criteria for the detention of a ship that was previously specified in Annexes 9 to 11 of the Directive.

6.2 The instrument is made under powers to revoke and replace secondary assimilated law in the Retained EU Law (Revocation and Reform) Act 2023 ("the 2023 Act"); these powers expire on 23 June 2026 by virtue of section 14(9) of the 2023 Act. The revocation of the 2011 Regulations makes it necessary to amend other instruments where those Regulations are cited and this has been done under the power in section 20(1)(b) of the 2023 Act to make consequential amendments. The instrument is also made under powers in the Merchant Shipping Act 1995 ("the 1995 Act") and in various Orders which are themselves made under powers in the 1995 Act. The powers in, or arising from, the 1995 Act relate to safety, health and the prevention of pollution.

6.3 As noted above, this instrument revokes and replaces the 2011 Regulations in order to ensure that the legislation is up to date. The overall effect of the changes made by the instrument in relation to the subject matter, port state control, is considered not to increase the regulatory burden (and the instrument therefore complies with section 14(5) of the 2023 Act). This is because the port state control regime does not set

regulatory standards itself – these are set out in international agreements and are enforced in local law through local legislation – but instead is concerned with inspection of foreign-flagged ships in order to monitor compliance with existing regulatory standards. Therefore, replacing the 2011 Regulations with this instrument does not change the extent of the regulatory regime with which ships have to comply. It also does not change the number of inspections which the Secretary of State is required to undertake.

Why was this approach taken to change the law?

6.4 The Department has taken this approach because the 2011 Regulations do not implement the commitment for inspections in relation to the full suite of conventions under the Paris MoU to which the UK is a party and currently in force. At the same time, it is necessary to align domestic legislation directly to the Paris MoU because of the UK's ongoing obligations as a signatory to the MoU.

Ambulatory Reference

6.5 The instrument includes an ambulatory reference provision (in regulation 3(3)) to ensure that, as far as possible, the powers in the instrument are available in respect of the international conventions referred to in it ("the Conventions") as amended in future, relying on the power in section 306A of the 1995 Act. This in turn ensures that United Kingdom domestic law remains in line with the international requirements. Where an amendment to a Convention falls outside the scope of the ambulatory reference provision (because of the limits of the power in section 306A), it may be necessary to amend this instrument to ensure that it remains in line with international requirements.

6.6 The United Kingdom will continue to be able to scrutinise and, if necessary, object to, any proposed amendments to a Convention in an international arena (that is, in the International Maritime Organization, or "IMO" or, the case of the MLC, the International Labour Organization (or "ILO") and to assess the impact of the changes well before any amendment is due to come into force. This will inform decision making. United Kingdom industry and workers' representatives are also involved at the stage at which the United Kingdom negotiating strategy is formulated so will be able to influence it. If the United Kingdom objects to an amendment to a cross-referenced provision which is due to come into force internationally, then the Secretary of State will, where necessary, make amending secondary legislation to prevent that amendment from becoming incorporated into domestic law by way of ambulatory reference.

6.7 An amendment that is accepted by the United Kingdom will be publicised in advance of its in force date by a Parliamentary Statement to both Houses of Parliament, and by a Marine Guidance Note, which will be available by appointment from the Maritime and Coastguard Agency (MCA) from Spring Place, 105 Commercial Road, Southampton, SO15 1EG, and at https://www.gov.uk/government/collections/marine-guidance-notices-mgns.

6.8 Once a future amendment to a Convention other than the MLC comes into force it can be obtained in hard copy from the IMO of 4 Albert Embankment, London SE1 7SR, or found on the IMO's Index of Resolutions[1]. The IMO publish Convention amendments following adoption by the relevant IMO Committee, so they will generally be available online ahead of the international acceptance and in force dates.

[1] https://www.imo.org/en/knowledgecentre/indexofimoresolutions/pages/default.aspx

6.9 Consolidated versions of the MLC can be obtained in hard copy, as part of the Compendium of Maritime Labour Instruments from www.tsoshop.co.uk, or by post from TSO Customer Services, 18 Central Avenue, St. Andrew's Business Park, Norwich NR7 0HR, telephone number: +44 (0) 333 202 5070; copies of amendments to the MLC, and consolidated text, can also be found on the ILO's homepage for the MLC[2]. Amendments to the MLC will generally be available online ahead of the coming into force dates.

6.10 Relevant amendments will also be available on the Foreign, Commonwealth and Development Office online treaties database once the amendment is in force internationally[3]. Until such publication is made on the treaties database, amendments will be available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG (telephone: 0203 817 2000) and on https://www.gov.uk.

Sanctions

6.11 In a similar way to the 2011 regulations, the instrument provides for criminal offences in the event of a failure to comply with the regulatory requirements for ships subject to port State control in accordance with regulation 27. A ship may also be detained under regulation 12 in accordance with the detailed conditions specified in that provision.

6.12 These sanctions are applicable in respect of non-United Kingdom ships visiting United Kingdom ports. The Maritime & Coastguard Agency is a prosecuting authority, acting on behalf of the Secretary of State; it has the power to investigate potential offences and, where necessary, bring prosecutions.

7. Consultation

Summary of consultation outcome and methodology

7.1 A public consultation was carried out between 4 July and 1 August 2025. It was posted on GOV.UK, notified to passenger ship groups comprising government and industry representatives, including representative groups, and industry stakeholders.

7.2 The government received five responses and one enquiry which was resolved by telephone. The measures were substantially supported. As a result of the consultation comments, an item (the ship's call sign) was removed from the mandatory list of items to be included when a marine pilot reports anomalies with a ship, as this piece of information is not required to be included under the Paris MoU in this context and therefore exceeded the requirements of the agreement. The government deemed that no other change was necessary following the consultation.

7.3 This legislation falls under the maritime policy area, which is a reserved matter, but contacts in devolved administrations were notified of the consultation, but none responded to it.

7.4 A summary of the responses to the consultation is contained in the Consultation Outcome Report[4].

[2] https://www.ilo.org/international-labour-standards/maritime-labour-convention-2006
[3] https://treaties.fcdo.gov.uk/responsive/app/consolidatedSearch/
[4] https://www.gov.uk/government/consultations/consultation-on-merchant-shipping-port-state-control-regulations

8. Applicable Guidance

8.1 Information about Port State Control is published by the Maritime and Coastguard Agency (MCA), an executive agency of the Department for Transport, in a Marine Guidance Note (**MGN 711(M)).** This MGN revises the content of Merchant Shipping Notice (MSN) 1832(M) which it replaces to reflect the proposed instrument. It has been changed from an MSN to an MGN because a review has established that it contains no mandatory requirements which are not already made mandatory through other legislative vehicles, as it therefore more appropriate as guidance (an MGN) than as an MSN. The changes are minor and do not change policy or affect shipowners, masters or crew. MGN 711(M) provides the same direction as MSN 1832(M) before it provided on the Port State Control policy. Copies of MGN 711(M) may be obtained free of charge at www.gov.uk or in hard copy by prior appointment with the MCA at Spring Place, 105 Commercial Road, Southampton SO15 1EG (telephone 020 3817 2000 and email infoline@mcga.gov.uk.).

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the proposed instrument continues the current regulatory standards while clarifying and updating the legislation. Costs to business amount to less than £10m because the instrument maintains the existing policy and regulatory standards and does not require industry to comply with anything new. As nothing has changed, impacts on industry are simply negligible familiarisation costs which are therefore significantly under the £10m +/- threshold, and these are unlikely to be of interest to UK shipowners as the Regulations relate to inspections for non-UK ships visiting UK ports. A de minimis assessment has been prepared and has been published, with this Explanatory Memorandum

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the proposed instrument does not change the regulatory framework or policy.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the proposed instrument does not introduce any changes that involve the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Paris MOU will be monitored by Member States including the United Kingdom on an ongoing basis, and the United Kingdom will express its views in this forum. This instrument will be kept under review to ensure when changes are made to the Paris MOU these will be reflected as necessary in the instrument.

10.2 No statutory review clause is required because this instrument is made partly under the Retained EU Law (Revocation and Reform) Act 2023, and in respect of the provisions of the instrument made under the Merchant Shipping Act 1995, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Keir Mather MP, Parliamentary Under-Secretary of State for Aviation, Maritime and

Decarbonisation at the Department for Transport, with responsibility for maritime policy at the Department for Transport, has made the following statement:

"Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and the Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that it is not appropriate to make provision for review in this instrument because it would be disproportionate, taking into account the economic impact of the legislation."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State for Aviation, Maritime and Decarbonisation at the Department for Transport has made the following statement regarding Human Rights:

12.2 "In my view the provisions of the Merchant Shipping (Port State Control) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is made under section 14(2) of the Retained EU Law (Revocation and Reform) Act 2023 and therefore relates to the reform of assimilated law. This instrument revokes and replaces assimilated law under section 14(2) of that Act.