EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (ACCIDENT REPORTING AND INVESTIGATION) REGULATIONS 2026

2026 No. 430

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Marine Accident Investigation Branch (the MAIB), of the Department for Transport and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

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

2.2 Rob Loder, Chief Inspector for the MAIB, at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Joanne Wake at the MAIB can be contacted with any queries regarding the instrument. Telephone: 02380395500 or email: Business.Support@maib.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 (Accident Reporting and Investigation) Regulations 2012 (the 2012 Regulations). It updates and modernises the United Kingdom (UK) framework for marine accident investigation to ensure it remains effective, internationally compliant, and reflects learning from operational experience.

4.2 The instrument reflects that the UK is no longer bound by European Union (EU) Directive 2009/18/EC (the 2009 EU Directive). It streamlines the legislative framework following EU exit while maintaining continued alignment with the International Maritime Organization's (IMO) Casualty Investigation Code adopted by the IMO (IMO Code) and the UK's international safety obligations. This instrument revokes the common methodology for investigating marine casualties and incidents developed pursuant to Directive 2009/18/EC of the European Parliament and of the Council (the 2011 EU Regulation).

4.3 The instrument introduces certain criminal offences in order to address gaps in the 2012 Regulations to support compliance with statutory duties. These changes do not alter the underlying policy intent of marine accident investigation as referenced in regulation 5 of this instrument but strengthen legal certainty, transparency, and enforcement.

Where does the legislation extend to, and apply?

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

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) covers all marine accidents occurring within UK territorial waters, as well as all UK-registered ships involved in a marine accident anywhere in the world.

5. Policy Context

What is being done and why?

5.1 The previous policy in relation to marine accidents and investigations was shaped by both EU and international law. This is reflected in the 2012 Regulations which implemented both the IMO Code and the 2009 EU Directive. The 2009 EU Directive imposed additional requirements beyond those required under international law, resulting in a more complex regulatory framework.

5.2 Following the UK's exit from the EU, there is no longer a need to retain EU-specific obligations. This instrument simplifies the regulatory framework, aligning it more closely with the IMO Code and reflecting lessons learned from operational experience.

5.3 The instrument provides the Chief Inspector of Marine Accidents with a discretionary power to decide whether, and to what extent, to investigate a reported marine accident or incident. This discretionary approach enables the MAIB to focus its resources on those cases that are likely to yield the greatest safety learning and prevention benefits, rather than applying a blanket mandatory investigation requirement to every accident or incident.

5.4 Certain categories of marine accidents will continue to attract a mandatory investigation in line with the UK's international obligations and established policy. In all other cases, the Chief Inspector will exercise discretion based on factors such as the seriousness of the accident, its potential to reveal important safety lessons, any identifiable trends, and the availability of MAIB resources.

5.5 Therefore, accidents involving vessels referred to in paragraph 6.2 (second bullet point) remain in scope for discretionary investigation should the circumstances of the event warrant it. While some accidents have catastrophic outcomes for the individuals involved, there is little new to learn about the activity that will improve safety. By reducing the range of mandatory investigations, the MAIB is required to carry out to the level required by the IMO, resources can be released to focus on investigations with the greatest potential for safety learning.

5.6 Once the Chief Inspector decides to conduct an investigation, a team of inspectors is deployed to gather further evidence and conduct interviews to gain a full understanding of the circumstances and causes of the accident or incident. After initial analysis, the findings are presented to the Chief Inspector of Marine Accidents for a decision about the scope of the investigation and to establish the need for any urgent safety recommendations. Further investigation and analysis will then be undertaken and reviewed before any recommendations are formulated and the report is written.

What was the previous policy, how is this different?

5.7 As set out above, under the previous policy, investigation obligations were shaped by both international and EU requirements. The 2009 EU Directive imposed some requirements that went beyond the IMO Code.

5.8 This instrument removes EU-derived requirements that are no longer considered to be required, while retaining a robust and independent investigation framework aligned with international standards.

Specifically, the instrument:

- removes requirements arising solely from EU legislation, including revocation of Commission Regulation (EU) No 1286/2011, which established a common methodology for investigating marine casualties and incidents developed pursuant to the 2009 EU Directive (the 2011 EU Regulation);
- aligns mandatory investigation requirements with those set out in the IMO Code;
- reflects policy development arising from operational experience;
- clarifies powers, duties, and disclosure arrangements (as described in more detail in section 6 below); and
- introduces proportionate criminal penalties linked to certain existing statutory duties to support compliance addressing gaps in the 2012 Regulations.

5.9 A key policy objective is to reflect lessons from operational experience. The MAIB was established in 1989, and the secondary legislation enabling its work has been updated periodically to incorporate learning from investigations and evolving international standards.

5.10 This instrument continues that approach by updating the law to reflect operational experience since 2012, while preserving the MAIB's independent, no-blame investigation model and maintaining confidence among witnesses and international partners.

Alignment with international obligations

5.11 The UK remains bound by treaty obligations under the International Convention for the Safety of Life at Sea (SOLAS). This instrument ensures continued compliance with the IMO Code and reinforces international confidence in the UK's marine accident investigation regime.

5.12 By removing EU-specific obligations while retaining international standards, the instrument removes EU law derived requirements that are no longer considered necessary.

Scope and clarity of application

5.13 This instrument amends the Merchant Shipping (Watercraft) Order 2023 so that the relevant references to the 2012 Regulations and its provisions are updated to refer to this instrument and its provisions. This ensures continuity of the existing policy position that accidents involving mechanically powered watercraft such as powered craft including rigid inflatable boats may be investigated by the MAIB where there is a safety interest.

5.14 The instrument also clarifies notification requirements where pleasure vessels (i.e. vessels which are usually used for leisure, recreation or sport rather than for

commercial purposes) are temporarily used for commercial purposes, improving consistency and understanding of reporting obligations across the sector.

6. Legislative and Legal Context

How has the law changed?

6.1 The 2012 Regulations are the primary instrument governing marine accidents and investigations in the UK. This instrument, which is made using the powers in the Merchant Shipping Act 1995 (MSA), revokes and replaces the 2012 Regulations to ensure the law remains effective, complies with international law, and is informed by operational experience. It also reflects the UK's departure from the EU by removing requirements derived from the 2009 EU Directive and by revoking the 2011 EU Regulation.

6.2 A non-exhaustive list of some of the more specific changes introduced by the instrument includes:

- Narrowing the circumstances in which the MAIB is required to carry out investigations and making other investigations discretionary. This will enable the MAIB to better focus on investigations with the greatest potential for safety learning while continuing to comply with the IMO Code.
- The changes made by the instrument have the effect of moving from the scope of mandatory investigation, to discretionary investigation:
    - ships which are not registered, or registrable, in the UK;
    - cargo ships of less than 500 tons gross tonnage; and
    - fishing vessels.
- Clarifying the MAIB's power to publish information otherwise protected under the instrument in an anonymised or statistical form.
- Introducing a power for the Chief Inspector to share certain categories of evidence, particularly physical items of evidence, with a limited range of other investigating bodies that have a legal right to access that evidence for their own investigation.

Why was this approach taken to change the law?

6.3 Legislation was considered necessary to give effect to the changes made by this instrument, as the rules on marine accidents and investigations are already set out in legislation. In any event, it is considered important that the rules governing marine accidents and investigations are placed on a statutory footing to ensure legal clarity and certainty.

6.4 This approach was taken to change the law because using the existing powers to revoke and replace the 2012 Regulations through secondary legislation was considered the most expedient and appropriate mechanism for making the necessary legal changes. Although amending the 2012 Regulations was an option, revoking and replacing them was preferred as it provides greater clarity in light of the amendments being made.

6.5 No specific commitments were made to Parliament to legislate in any particular way. As noted above, this was considered the most expedient and appropriate mechanism for implementing the changes.

6.6 This instrument contains provisions relating to the processing of data. In accordance with Article 36(4) of the UK General Data Protection Regulation, the Government has discharged its obligation to consult the Information Commissioner's Office in respect of those provisions.

6.7 As previously mentioned, this instrument revokes the 2011 EU Regulation. This EU Regulation has been revoked using the powers in section 267 of the MSA read with paragraph 3 of Schedule 8 to the European Union (Withdrawal) Act 2018 (EUWA). This is on the basis that the 2011 EU Regulation constitutes assimilated direct legislation, and paragraph 3 of Schedule 8 to the EUWA provides that a power make subordinate legislation conferred before the EUWA came into force (such as the powers in section 267 of the MSA) may be read, so far as context requires or permits, as capable of being exercised to modify assimilated direct legislation.

6.8 The context permits the exercise of that power here because (i) the ships to which the 2011 EU Regulation applied in the UK were UK ships and ships in UK waters, bringing them within the scope of section 267(2) of the MSA, which sets out the types of accidents that may be investigated by inspectors appointed by the Secretary of State; and (ii) the subject matter of the 2011 EU Regulation (accident investigation) falls within section 267(3) of the MSA, which allows the Secretary of State to make regulations they consider appropriate in relation to the investigation of the accidents covered by section 2.

7. Consultation

Summary of consultation outcome and methodology

7.1 Between 6 August 2025 and 30 September 2025, the MAIB ran a public consultation on revoking and replacing the 2012 Regulations to provide greater clarity and consistency for both the maritime industry and relevant authorities. The consultation received 19 responses from industry bodies, individuals and trade unions.

Type of respondent	Number of responses
Individual	2
Industry body	10
Union	2
Emergency Service	3
HM Coroner/Procurator Fiscal	1
Law Society	1

7.2 Responses were received from a range of stakeholders, representing a variety of interests from individual seafarers to large organisations operating with more than 250 staff. Organisations that responded included those that would experience a direct impact on their operations from the revisions to the legislative framework, no significant objections were received. [1]

8. Applicable Guidance

8.1 Marine Guidance Notice 564 Marine Casualty and Marine Incident Reporting[2] covers accident and incident reporting requirements to MAIB. This guidance will be revised and updated to include references to the amendments in this instrument.

[1] See summary of response https://www.gov.uk/government/consultations/amendments-to-the-maib-regulations
[2] See www.gov.uk/government/publications/mgn-564-marine-casualty-and-marine-incident-reporting

8.2 A Marine Guidance Notice will be updated within 3 to 6 months of the coming into force date of this instrument and will be published on www.MAIB.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 it is estimated that the equivalent annual net direct cost to business as a result of this instrument falls below the threshold that is required for a full impact assessment (i.e. the equivalent annual net direct cost to business resulting from this instrument falls below ±£10 million). Therefore, a de minimis assessment has been completed and is published alongside this Explanatory Memorandum at www.legislation.gov.uk.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument primarily aims to streamline the legislative framework for marine accidents and investigations following the UK's departure from the EU, while maintaining alignment with international safety standards and reflecting operational experience.

9.3 The legislation does impact small or micro businesses.

9.4 Small and micro businesses could not be exempted from the requirements in this instrument because its provisions apply in relation to accidents involving ships and mechanically powered watercraft and to the effective investigation of marine accidents more broadly. Exempting small or micro businesses from the requirements in this instrument would undermine the consistency and integrity of the investigative framework and could compromise alignment with international safety standards. Applying the provisions uniformly ensures that everyone regardless of business size is subject to the same legal obligations.

9.5 There is no, or no significant, impact on the public sector because this instrument primarily aims to streamline the legislative framework for marine accidents and investigations following the UK's departure from the EU, while maintaining alignment with international safety standards and reflecting operational experience.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that it will be reviewed as and when necessary to ensure that it remains fit for purpose, continues to align with international safety standards, and accurately reflects lessons learned from operational experience.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Keir Mather MP has made the following statement:

"Having 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 would not be appropriate to make provision for review in this instrument because it would be disproportionate, taking into account the expected economic impact of the legislation."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Section 13 of this Explanatory Memorandum sets out the relevant statements required under the relevant European Union Acts (as defined in that section). While this instrument is not made under any power in those Acts, section 6 of this Explanatory Memorandum sets out the additional information regarding the exercise of the powers to make certain provisions of this instrument, when read with the provisions of the EUWA.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the EUWA, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("the relevant European Union Acts"). However, it does in part relate to the UK's withdrawal from the European Union, as it removes the additional requirements imposed by the 2009 EU Directive that went beyond those required under international law, while maintaining alignment with international standards.

13.2 As noted in paragraph 6.7, the instrument also relies on the powers in section 267 of the MSA read with paragraph 3 of Schedule 8 to the EUWA to revoke the 2011 EU Regulation.