EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (WATERCRAFT) (AMENDMENT) ORDER 2026

2026 No. 348

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.

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

2. Declaration

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

2.2 Dave Whyte, Deputy Director for Maritime People & Safety, at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Christopher Angell at the Department for Transport can be contacted by email at the following address with any queries regarding the instrument: maritimesafety@dft.gov.uk. Alternatively, the Department can be contacted by telephone: 0330 330 3000.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Merchant Shipping (Watercraft) Order 2023[1] (the 2023 Order) provides for certain provisions of the Merchant Shipping Act (MSA) 1995 (and of instruments made, or treated as made, under that Act) to apply in relation to powered recreational watercraft (watercraft) as they apply to ships. In particular, the Order enables prosecution of those responsible for causing accidents involving watercraft. This instrument applies the accident investigation provisions of the MSA 1995 in the same way, to provide legal clarity on the ability of the Marine Accident Investigation Branch (MAIB) to investigate accidents and incidents involving watercraft.

4.2 The MAIB is an independent part of the Department for Transport with statutory responsibility for investigating marine accidents and incidents involving UK vessels worldwide and all vessels in UK territorial waters.

4.3 This instrument also corrects two drafting errors identified in the 2023 Order by the Joint Committee on Statutory Instruments (JCSI) in its Twenty-Ninth Report of Session 2022-23.[2] In its response, the Department for Transport acknowledged that both points raised by the JCSI reflect errors and committed to correcting those errors

[1] S.I. 2023/35 see www.legislation.gov.uk/uksi/2023/35

[2] See https://committees.parliament.uk/publications/34328/documents/189000/default

at the next suitable opportunity. Articles 3 and 5 of this instrument make the necessary corrections.

Where does the legislation extend to, and apply?

4.4 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.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 The MSA defines a "ship" in terms of a vessel "used in navigation".[3] The Court of Appeal decision in R v Goodwin,[4] concluded that the term "ship" did not apply to the watercraft in question (personal watercraft, such as jet skis, being used for recreational purposes were not "used in navigation"). The scope of the MSA 1995 has been narrowed accordingly. The decision also cast doubt on whether other descriptions of vessel might fall within the definition of "ship" for the purposes of the MSA 1995.

5.2 The 2023 Order enables prosecution of those responsible for causing accidents involving the dangerous use of watercraft by applying the relevant provisions of the MSA 1995 in relation to such watercraft. This instrument also applies the provisions of the MSA 1995 which enable the MAIB to investigate accidents and incidents involving watercraft.

5.3 Although the Chief Inspector of Marine Accidents has significant latitude about which accidents and incidents the MAIB should investigate, this amendment clarifies the application of the MAIB's investigatory powers under the MSA 1995 to watercraft.

5.4 Although they have had no practical impact on the operation of the 2023 Order, this opportunity is also being taken to deliver the Department for Transport's commitment to correct the two drafting errors identified by the JCSI noted in paragraph 4.3.

What was the previous policy, how is this different?

5.5 This instrument provides legal certainty in respect of the MAIB's powers to investigate incidents and accidents involving watercraft and corrects errors in the 2023 Order.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends the 2023 Order to apply section 267 of the MSA 1995 (which relates to investigations of marine accidents), and regulations made under that section (the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012),[5] to apply, with modifications, to watercraft as they apply to ships. It also applies section 259 of the MSA 1995 (which relates to the powers of the MAIB's inspectors in relation to premises and ships) in relation to watercraft so far as it applies for the purposes of section 267(8) of the MSA 1995.

[3] Section 313(1) of the MSA 1995.
[4] Court of Appeal decision, 2005, EWCA Crim 3184 see https://caselaw.nationalarchives.gov.uk/ewca/crim/2005/3184.
[5] S.I. 2012/1743 see www.legislation.gov.uk/uksi/2012/1743

6.2 This instrument also makes minor corrections to Schedules 1 and 2 of the 2023 Order in response to the drafting errors identified by the JCSI in its Twenty-Ninth Report of Session 2022-23. These:

- confirm that the modified references in paragraph 2(1)(b) of Schedule 1 relate to the MSA 1995 rather than the Merchant Shipping (Registration, etc.) Act 1993; and
- omit the reference to Schedule 1, paragraph 11, which applied regulation 91 of the Merchant Shipping (Registration of Ships) Regulations 1993 which disapplies Schedule 1 to the Merchant Shipping (Registration, etc.) Act 1993 and, therefore, does not apply.

6.3 These minor corrections do not have any practical legal effect but are included to ensure that errors identified in the 2023 Order are corrected.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Department for Transport consulted on a draft of this instrument between 3 February 2026 and 3 March 2026. The consultation paper was sent to a wide variety of organisations across the maritime sector including representative associations, user groups, businesses, the devolved administrations and enforcement bodies as well as being published on gov.uk.[6]

7.2 Seventeen responses were received from navigation authorities, watercraft user groups, maritime and associated membership organisations, professional bodies representing the legal profession, government bodies and individuals. Of those which expressed a preference, all supported the proposals and agreed that these would provide the required legal clarity. One response suggested a minor revision to the drafting to move some parenthesis in Article 3 which has been accepted in line with best practice. Several responses also sought assurance that the related guidance would be amended to ensure that responsibilities for reporting of accidents and incidents involving watercraft were clear. These changes have been made, and revised guidance will be published alongside the new MAIB accident investigation regulations, on which consultation[7] was completed in 2025, and will be introduced shortly.

7.3 A summary of responses will be published on gov.uk within three months of the consultation end date.

8. Applicable Guidance

8.1 Guidance on the provisions of the 2023 Order is available in Marine Guidance Note 684 (M) Safety of Powered Watercraft.[8] The text of this Marine Guidance Note has been reviewed considering the amendments introduced by this instrument. However, since these do not make any significant alterations to the operation of the existing parent legislation, no revisions to the guidance have been made.

[6] See www.gov.uk/government/consultations/amending-legislation-ensuring-watercraft-accidents-are-investigated-by-maib/draft-merchant-shipping-watercraft-amendment-order
[7] See www.gov.uk/government/consultations/amendments-to-the-maib-regulations.
[8] See www.gov.uk/government/publications/mgn-684-m-safety-of-powered-watercraft

8.2 Guidance covering what and when accidents and incidents should be reported to MAIB is contained in Marine Guidance Note 564 Marine Casualty and Marine Incident Reporting.[9] This guidance will be revised and updated to include references to watercraft where appropriate.

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 no, or no significant, impact is foreseen. It does not impose any new regulatory burdens or costs on business, charities or the voluntary sector. A De Minimis Assessment was conducted in tandem with the preparation of this instrument. It has been published alongside this instrument on 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 the accident investigation powers applied by this instrument are exercised by the MAIB. The application of the MSA 1995 provisions and the regulations made under them in relation to powered watercraft are not expected to impose any new regulatory burdens or costs on business, charities or the voluntary sector, save to the extent that a watercraft owned or operated by them may be involved in an accident investigated by the MAIB but the impact is likely to be negligible.

9.3 The legislation may impact small or micro businesses if watercraft owned or operated by them are involved in accidents or incidents which are investigated by the MAIB, but the impact is likely to be negligible.

9.4 There is no, or no significant, impact on the public sector because this instrument does not have any significant effect on the powers of the Chief Inspector of Marine Accidents to investigate a marine incident or accident.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is for the government to maintain it under review and ensure it remains fit for purpose. The amendments this instrument contains are, in part, a result of that process.

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."

[9] See www.gov.uk/government/publications/mgn-564-marine-casualty-and-marine-incident-reporting

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument corrects drafting errors identified in the 2023 Order by the JCSI in its Twenty-Ninth Report of Session 2022-23.

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 European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023.