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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations replace The Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 (S.I.2005/881) (“the 2005 Regulations”) and implement the provisions of Directive 2009/18/EC (“the Directive”) of the European Parliament and of the Council of 23<sup>rd</sup> April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council. The Regulations use the powers set out in Section 267 of the Merchant Shipping Act 1995 (c.21) (“the Act”) to implement the provisions of the Directive.

These Regulations set out the procedures for dealing with specified casualties and incidents which are collectively defined as an “accident”, including the purpose and scope of an investigation and how an investigation is to be conducted and which accidents and incidents may be investigated. The requirements for reporting accidents and incidents and the publication of reports and summaries are also provided for. The Regulations—

- (a) contain a list of definitions for the purposes of the Regulations (*regulation 2*);
- (b) provide for new definitions as regards what constitutes an accident, these being, a marine casualty, a very serious marine casualty, a serious marine casualty or a marine incident (*regulation 3*);
- (c) provide for any ship involved in an accident which in the opinion of the Chief Inspector of Marine Accidents (“the Chief Inspector”) involves the substantial interests of the United Kingdom to potentially be the subject of a safety investigation (*regulation 4(1)(c)*);
- (d) set out new reporting requirements as detailed in the Schedule when a duty to report an accident or serious injury arises (*regulation 6(3)*);
- (e) provide for a preliminary assessment to be undertaken into all serious marine casualties in order to decide whether or not a safety investigation should be undertaken and in circumstances where it is decided that no such investigation should take place then the Chief Inspector must record the reasoning for this and communicate this to the European Commission (*regulation 7*);
- (f) require the Chief Inspector to carry out a safety investigation whenever a very serious marine casualty occurs involving a vessel to which the Directive applies (*regulation 8(1)*);
- (g) provide for the Chief Inspector to terminate a safety investigation (other than an accident which is either a very serious marine casualty, or in the case of a serious marine casualty where a preliminary assessment has taken place and the Chief Inspector decides to conduct a safety investigation) at any time whether or not it involves a vessel covered by the Directive. Reasons for doing so must be made publically available (*regulation 11(9) and (10)*);
- (h) provide that when carrying out a safety investigation into an accident in United Kingdom waters and when preparing a safety report into an accident in United Kingdom waters the Chief Inspector must take into account the IMO Guidelines on the fair treatment of seafarers (*regulation 11(11)*);
- (i) provide that an inspector may record a witness interview of anyone assisting a safety investigation (*regulation 11(12)*);
- (j) provide that when the Chief Inspector is asked to assist a member State in a safety investigation to which the United Kingdom is not a party then the costs of providing any assistance must be agreed between them (*regulation 11(13)*);

- (k) provide that other States shall be entitled to participate in a safety investigation ordered by the Chief Inspector by mutual agreement and that such States shall have equal rights of access to witnesses and other evidence where the Chief Inspector is satisfied that the any evidence provided will be treated confidentially, and to have any representations they make taken into consideration for the purposes of the safety investigation (*regulation 12(2),(4) and (5)*);
- (l) provide that where another State has been allowed to participate in a safety investigation commenced by the Chief Inspector but where there has been no agreement as regards which State shall lead the investigation or the procedures to be applied then each State shall conduct a parallel safety investigation and share information and evidence as far as possible for the purposes of reaching shared conclusions, if parallel investigations are undertaken then the reasons for doing so must be communicated to the European Commission (*regulation 12(3) and (6)*);
- (m) provide that the Chief Inspector may delegate the whole or any part of a safety investigation to a member State via mutual agreement (*regulation 12(7)*);
- (n) provide that if a ro-ro ferry or high-speed passenger craft is involved in an accident within United Kingdom territorial waters then the Chief Inspector shall commence a safety investigation, alternatively the Chief Inspector shall commence a safety investigation if an accident takes place to either of the above types of vessel if they are outside the territorial waters of another member State but the last port departed from was in the United Kingdom, in which case the Chief Inspector will remain responsible for the safety investigation until it has been agreed with the other member State that they shall lead it (*regulation 12(9) and (10)*);
- (o) provide that new categories of information received by the Chief Inspector or produced during the course of a safety investigation shall not be discloseable unless a Court of relevant jurisdiction so orders (*regulation 13(2)(a)-(i)*);
- (p) require the Chief Inspector to publish a safety report within 12 months of an accident or within the shortest possible time but if this is not possible then an interim report must be published within 12 months of the date of the accident being notified to the Chief Inspector and must include the information set out in Annex 1 of the Directive and may be published in such manner as the Chief Inspector thinks appropriate (*regulation 14(2), (3) and (9)*);
- (q) provide that where a Substantially Interested State requests a copy of a draft safety investigation report this must not be provided unless the Chief Inspector is satisfied that the State will not circulate or disseminate its contents to any third party without the Chief Inspector's express consent so as to comply with Chapter 13 of the IMO Code (*regulation 14(7)*);
- (r) provide that where the Chief Inspector carries out a safety investigation but is satisfied that such an investigation will not result in safety lessons being learnt then the Chief Inspector may publish a simplified report that complies with regulation 14 (*regulation 14(8)*);
- (s) provide that an inspector who has been provided with or who has obtained information or evidence during a safety investigation cannot be required in certain court proceedings to give an opinion or analysis of any such information or evidence unless the High Court in England and Wales or Northern Ireland or the Court of Session in Scotland so orders (*regulation 14(16)*);
- (t) provide that the Chief Inspector may at any stage of a safety investigation inform the European Commission with regard to any urgent action that needs to be undertaken by member States or other States or other relevant parties so as to prevent similar accidents occurring (*regulation 16(8)*);
- (u) require the Secretary of State to review the operation and effect of these Regulations and lay a report before Parliament within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether

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the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them (*regulation 20*).

A Regulatory Impact Assessment has been prepared and copies can be obtained from the Marine Accident Investigation Branch, Mountbatten House, Grosvenor Square, Southampton SO15 2JU or from their website which is [www.maib.gov.uk](http://www.maib.gov.uk). A copy has been placed in the Library of each House of Parliament.

Copies of the IMO Code for the Investigation of marine casualties and Incidents may be obtained from the International Maritime Organization at 4 Albert Embankment, London SE1 7SR.

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