

**EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (ACCIDENT REPORTING AND INVESTIGATION)
(AMENDMENT) REGULATIONS 2013**

2013 No. 2882

1. This explanatory memorandum has been prepared by the Marine Accident Investigation Branch and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The instrument amends the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 (S.I. 2012/1743, “the Regulations”) to enable the Chief Inspector of Marine Accidents to return, at their discretion, information obtained from voyage data recorders removed from a ship by an accident inspector in the course of a safety investigation, to the ship’s owner without the need for the owner to apply for a Court Order.
 - 2.2 The instrument amends the Regulations to exclude the Maritime and Coastguard Agency (MCA) from a requirement to provide a report of an accident to the Chief Inspector of Marine Accidents.
 - 2.3 The instrument therefore removes administrative and cost burdens from ship owners and the MCA.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 The Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 apply the powers of the Merchant Shipping Act 1995 to implement the requirements of Directive 2009/18/EC of the European Parliament and of the Council, and revoke the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005.
 - 4.2 This instrument amends the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 and is made under the powers conferred by section 267 of the Merchant Shipping Act 1995.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of 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. Its provisions will affect ship owners and the MCA.

6. European Convention on Human Rights

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

7. Policy background

- 7.1 The Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 came into force on July 31st 2012. Under powers contained in the Merchant Shipping Act 1995, they transpose the requirements of Directive 2009/18/EC, such as providing definitions of marine accidents, 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.
- 7.2 The aim of the Regulations was to transpose the requirements of the Directive without impinging upon the MAIB's ability to operate effectively or imposing any extra burdens on industry. However the MAIB has become aware that some of the provisions contained in the Regulations do not help achieve this aim and should be amended.
- 7.2.1 Regulation 2(1) of the Regulations is amended to make a minor typographic change to the definition of EMCIP.
- 7.2.2 Regulation 6(4) of the Regulations is amended to remove a provision requiring officials from the MCA to provide a report of the circumstances of a marine accident to the Chief Inspector. This was not the intention of the Regulations. There remains a requirement for MCA officials to notify the Chief Inspector of an accident as soon and as quickly as possible.
- 7.2.3 Regulation 13 of the Regulations is amended to provide for the Chief Inspector to, at their discretion, return information obtained from a ship's voyage data recorders in the course of an investigation to the ship's owner.. Under the current Regulations this information can only be returned upon obtaining a Court Order, which is not the intention of the Regulations.

8. Consultation outcome

8.1 The MAIB carried out informal consultation by writing to 13 primary stakeholders to explain the proposed amendments. The consultation letters asked for the stakeholders' view on the proposal and whether a wider consultation was desirable. Four responses were received, all of which were wholly supportive of the proposed amending Regulations and respondents did not consider further consultation to be necessary.

9. Guidance

9.1 Guidance to the shipping industry will be promulgated through a revision to the Marine Guidance Note relating to the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012, MGN 458 (M+F).

10. Impact

10.1 The impact on business, charities or voluntary bodies is not quantified, however as the measure is deregulatory it is likely to have the positive effect of reducing the burden of regulation on these groups. Given the nature of marine accidents and the individual nature of MAIB cases it has not been possible to monetise the impact.

10.2 The impact on the public sector is negligible. The MAIB will continue to investigate and report marine accidents under the amended Merchant Shipping (Accident Reporting and Investigation) Regulations 2012. The removal of the requirement for the MCA to provide a report of an accident to the Chief Inspector of Marine Accidents is likely to result in a small cost saving for the MCA. In addition removing the requirement for ship owners to apply for a Court Order is likely to result in a small cost saving to Her Majesty's Courts and Tribunal Service. It has not been possible to monetise these impacts.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum at www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business and has a deregulatory impact.

12. Monitoring & review

12.1 The Merchant Shipping (Accident Reporting and Investigation) Regulations 2012, which this instrument amends, will be subject to review within 5 years of coming into force.

13. Contact

- 13.1 Rory Wilson at the Marine Accident Investigation Branch, Tel: 02380 395503 or email: Rory.Wilson@dft.gsi.gov.uk, can answer any queries regarding the instrument.