

2018 No.

EXITING THE EUROPEAN UNION

MERCHANT SHIPPING

TRANSPORT

HEALTH AND SAFETY

**The Merchant Shipping (Accident Reporting and Investigation)
and the Railways (Accident Investigation and Reporting)
(Amendment) (EU Exit) Regulations 2018**

Sift requirements satisfied ***

Made - - - - - ***

Laid before Parliament ***

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(a).

The requirements of paragraph 3(2) of Schedule 7 to that Act (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Accident Reporting and Investigation) and the Railways (Accident Investigation and Reporting) (Amendment) (EU Exit) Regulations 2018 and come into force on exit day.

PART 2

Amendment of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

Introductory

2. The Merchant Shipping (Accident Reporting and Investigation) Regulations 2012(a) are amended in accordance with this Part.

Amendment of regulation 2 (interpretation)

3.—(1) Regulation 2(1) is amended as follows.

(2) Omit the definition of “Council Directive 1999/35/EC”.

(3) Omit the definition of “Directive vessel”.

(4) Omit the definition of “the Directive”.

(5) Omit the definition of “EMCIP”.

(6) For the definition of “IMO Code”, substitute—

““IMO Code” means the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code) adopted by the IMO by Resolution MSC.255(84) on 16th May 2008(b);”.

(7) Omit the definition of “ro-ro ferry” and “high speed passenger craft”.

(8) Before the definition of “safety investigation”, insert—

““relevant vessel” means any vessel other than a vessel—

(a) falling within regulation 4(1)(a)(i) to (iii);

(b) that is a warship;

(c) that is not propelled by mechanical means;

(d) that is a wooden vessel of traditional build which is not primarily propelled by mechanical means, including a dhow or junk which is made of wood and provided with sails; or

(e) that is a fishing vessel of less than 15 metres length overall;”.

(9) For the definition of “substantial interest”, substitute—

““Substantially Interested State” has the meaning given in the IMO Code;”.

Amendment of regulation 4 (application)

4. For regulation 4(1)(c), substitute—

“(c) any other ship, where the Chief Inspector considers the United Kingdom to be a Substantially Interested State.”.

Amendment of regulation 6 (duty to report accidents and serious injuries)

5. In regulation 6(3), for “the Schedule” substitute “Schedule 1”.

(a) S.I. 2012/1743, to which there are amendments not relevant to these Regulations.

(b) A copy of the IMO Code may be inspected, by prior appointment, at the Maritime Knowledge Centre, International Maritime Organisation, 4 Albert Embankment, London SE1 7SR; a digital copy may be viewed at: [http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Maritime-Safety-Committee-\(MSC\)/Documents/MSC.255\(84\).pdf#search=casualty%20investigation%20code](http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Maritime-Safety-Committee-(MSC)/Documents/MSC.255(84).pdf#search=casualty%20investigation%20code).

Amendment of regulation 7 (preliminary assessments)

- 6.—(1) Regulation 7 is amended as follows.
- (2) In paragraph (1), for “vessel covered by the Directive” substitute “relevant vessel”.
- (3) For paragraph (3), substitute—
- “(3) Where the Chief Inspector does not undertake a safety investigation into a serious marine casualty, the reasons for that decision must be recorded and published.”.

Amendment of regulation 8 (ordering of a safety investigation)

7. In regulation 8(1), for “vessel covered by the Directive” substitute “relevant vessel”.

Amendment of regulation 11 (conduct of a safety investigation)

- 8.—(1) Regulation 11 is amended as follows.
- (2) In paragraph (9), omit “(whether or not it involves a vessel covered by the Directive)”.
- (3) In paragraph (10), for “vessel covered by the Directive” substitute “relevant vessel”.
- (4) Omit paragraph (13).

Amendment of regulation 12 (co-operation with other states)

- 9.—(1) Regulation 12 is amended as follows.
- (2) In paragraph (1), omit sub-paragraph (a).
- (3) For paragraph (5), substitute—
- “(5) For the purposes of this regulation, paragraph (4)(a) applies only if the Chief Inspector is satisfied that the competent authority of the Substantially Interested State concerned ensures, or will ensure, that any document falling within paragraph (5A) is not made available for purposes other than the safety investigation, unless that competent authority determines, or has determined, that there is an overriding public interest in the disclosure of the document.
- (5A) A document falls within this paragraph if it is—
- (a) witness evidence or any other statement, account or note taken, or received by, the competent authority in the course of the safety investigation;
- (b) a record which may reveal the identity of a person who has given evidence in the context of the safety investigation;
- (c) information relating to a person involved in a marine casualty or incident which is of a particularly sensitive and private nature, including information concerning the person’s health.”.
- (4) In paragraph (6)—
- (a) omit “member States or”;
- (b) omit “, or both”;
- (c) in sub-paragraph (a), insert the “and” at the end;
- (d) in sub-paragraph (b), omit the “and” at the end;
- (e) omit sub-paragraph (c).
- (5) In paragraph (7), omit “member” in both places where the word occurs.
- (6) Omit paragraphs (8) to (10).

Amendment of regulation 13 (disclosure of records)

10. In regulation 13(2)(d), for “regulation 14(4)(a), (5) or (12)” substitute “regulation 14(4)(a) or (5)”.

Amendment of regulation 14 (reports of safety investigations)

- 11.**—(1) Regulation 14 is amended as follows.
- (2) In paragraph (2)(b), omit “in the case of a report to which the Directive applies,”.
 - (3) For paragraph (3), substitute—

“(3) A report in relation to an accident must contain, but need not be limited to, the information set out in Schedule 2 which is relevant to the safety investigation.”.
 - (4) Omit paragraph (11)(f).
 - (5) Omit paragraph (12).

Amendment of regulation 16 (recommendations)

- 12.** In regulation 16(8)—
- (a) for “the European Commission” substitute “such other persons or parties as the Chief Inspector considers relevant”; and
 - (b) omit “member States or”.

Amendment of the Schedule (marine casualty or incident notification data)

- 13.**—(1) The Schedule is amended as follows.
- (2) In the heading, for “The Schedule” substitute “Schedule 1”.
 - (3) For “(This Schedule substantially reproduces the provisions of Annex II to the Directive)”, substitute “The information is—”.

Insertion of Schedule 2 (safety investigation report content)

- 14.** After Schedule 1 (as so renumbered), insert—

“SCHEDULE 2

Regulation 14

Information to be included, where relevant, in reports in relation to an accident

Summary

- 1.** An outline of the basic facts of the marine casualty or incident, including what happened, when, where and how it happened.
- 2.** Summary information about any deaths or injuries, or any damage to the ship, cargo, third parties or environment that occurred.

Factual information

- 3.** Particulars about the vessel concerned, including details of its—
 - (a) flag and register;
 - (b) identification;
 - (c) main characteristics;
 - (d) ownership and management;
 - (e) construction;
 - (f) minimum safe manning;
 - (g) authorised cargo.

4. Particulars about the voyage, including—

- (a) ports of call;
- (b) the type of voyage;
- (c) cargo information;
- (d) manning.

5. Marine casualty or incident information, including—

- (a) the type of marine casualty or incident;
- (b) the date and time of casualty or incident;
- (c) the position and location of the marine casualty or incident;
- (d) information about the external and internal environment;
- (e) information about the vessel's operation and voyage segment;
- (f) the place on board the ship where the casualty or incident occurred;
- (g) human factors data;
- (h) information about its consequences (for people, any ship, cargo, the environment or other).

6. Information about shore authority involvement and emergency response, including—

- (a) who was involved in the response;
- (b) the means used to respond to the casualty or incident;
- (c) the speed of response;
- (d) actions taken;
- (e) results achieved.

Narrative details

7. A description or reconstruction of the marine casualty or incident setting out, in chronological order, the sequence of events leading up to, during and following the marine casualty or incident and the involvement of relevant actors or factors (persons, material, environment, equipment or external agents).

8. Relevant details of the safety investigation conducted, including the results of any examinations or tests.

Analysis

9. Analysis and comment, as necessary, to enable the report to reach logical conclusions, establishing all of the contributing factors, including those with risks for which existing defences aimed at preventing an accidental event, and those aimed at eliminating or reducing its consequences, are assessed to be either inadequate or missing, including—

- (a) an analysis of each accidental event, with comments relating to the results of any relevant examinations or test conducted during the course of the safety investigation and to any safety action that might have been taken to prevent marine casualties in relation to the incident;
- (b) the context of, and the environment in relation to, the accident or incident;
- (c) human errors and omissions;
- (d) events involving hazardous material;
- (e) environmental effects of the accident or incident;
- (f) equipment failures;
- (g) external influences or factors;

- (h) contributing factors involving person-related functions, shipboard operations, shore management or regulatory influence.

Conclusions

10. The main conclusions, including conclusions as to the established contributing factors and missing or inadequate defences (material, functional, symbolic or procedural) for which safety actions should be developed to prevent marine casualties.

Safety Recommendations

11. Any safety recommendations derived from the analysis and conclusions and related to particular subject areas, such as legislation, design, procedures, inspection, management, health and safety at work, training, repair work, maintenance, shore assistance and emergency response.

12. Safety recommendations must be addressed to those that are best placed to implement them, such as ship owners, managers, recognised organisations, maritime authorities, vessel traffic services, emergency bodies and international maritime organisations with the aim of preventing marine casualties and incidents.

13. Any interim safety recommendations that may have been made, or any safety actions taken, during the course of the safety investigation.

Appendices

14. If appropriate, the following non-exhaustive list of information may be attached to the report (in paper or electronic form)—

- (a) photographs, moving images, audio recordings, charts, drawings;
- (b) applicable standards;
- (c) technical terms and abbreviations used;
- (d) special safety studies;
- (e) miscellaneous information.”.

PART 3

Amendment of the Railways (Accident Investigation and Reporting) Regulations 2005

Introductory

15. The Railways (Accident Investigation and Reporting) Regulations 2005(a) are amended in accordance with this Part.

Amendment of regulation 2 (interpretation)

16.—(1) Regulation 2 is amended as follows.

(2) In paragraph (1)—

- (a) omit the definition of “European Railway Agency”;
- (b) after the definition of “railway property”, insert—

(a) S.I. 2005/1992, to which there are amendments not relevant to these Regulations.

““railway undertaking” means any public or private undertaking, the principal business of which is to provide services for the transport of goods and passengers, or goods or passengers, by rail with a requirement that the undertaking ensure traction; this includes undertakings which provide traction only;”;

(c) omit the definition of “Safety Directive”;

(d) before the definition of “working days”, insert—

““safety management system” means the organisation and arrangements established by an infrastructure manager or a railway undertaking to ensure the safe management of its operations;

“vehicle” has the meaning given in the Railways and Other Guided Transport Systems (Safety) Regulations 2006(a);”.

(3) Omit paragraph (5).

Amendment of regulation 5 (conduct of investigations by the Rail Accident Investigation Branch)

17.—(1) Regulation 5 is amended as follows.

(2) In paragraph (1), omit sub-paragraphs (c) to (e).

(3) In paragraph (4)(d), omit “member”.

(4) Omit paragraph (6).

(5) In paragraph (7), omit “member” in each place where the word occurs.

(6) In paragraph (8), omit “member” in each place where the word occurs.

(7) In paragraph (11), omit “; and in making” to the end.

Amendment of regulation 6 (persons conducting, etc., an investigation by the Rail Accident Investigation Branch)

18. In regulation 6(3)(a)—

(a) omit “member”;

(b) omit “or the European Railway Agency”.

Amendment of regulation 10 (disclosure of evidence)

19. In regulation 10(7)(d), omit “member”.

Amendment of regulation 11 (reports etc of accidents and incidents investigated by the Rail Accident Investigation Branch)

20. In regulation 11(5), omit “the European Railway Agency and to”.

Amendment of regulation 12 (recommendations of the Rail Accident Investigation Branch)

21. In regulation 12(1)(b), omit “member”.

Amendment of regulation 13 (duty of the Rail Accident Investigation Branch to consider representations)

22. In regulation 13(2)(b)(viii), omit “member”.

(a) S.I. 2006/599, as amended by S.I. 2011/1860.

Amendment of regulation 14 (annual report of the Chief Inspector)

23. In regulation 14, omit paragraph (4).

Amendment of regulation 15 (miscellaneous functions)

24.—(1) Regulation 15 is amended as follows.

(2) In paragraph (2)(a)—

- (a) omit “member”;
- (b) omit “or the European Railway Agency”.

(3) For paragraph (5), substitute—

“(5) The Branch must use its best endeavours to exchange information and views with similar investigation bodies established in other States for the purpose of—

- (a) improving railway and train safety;
- (b) developing and improving investigation methods;
- (c) adapting to, and keeping up to date with, technical and scientific progress in relation to railway and train safety and investigation methods.”

Amendment of Schedule 6 (principal content of an accident and incident investigation report)

25. In Schedule 6, in paragraph 3 (record of investigations and inquiries), in sub-paragraph (3), for “Community” substitute “international”.

PART 4

Amendment and revocation of retained direct EU legislation

Amendment of Commission Regulation (EU) No. 1286/2011

26.—(1) Commission Regulation (EU) No. 1286/2011 is amended as follows.

(2) In Article 1, omit “as provided for in Article 5(4) of Directive 2009/18/EC”.

(3) Omit Article 2.

(4) After Article 2, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

(5) In the Annex, in Part A—

- (a) in the second paragraph—
 - (i) omit “of the Member States”;
 - (ii) omit “in accordance with Directive 2009/18/EC” to the end of the paragraph;
- (b) in the third paragraph, omit “carried out in accordance with the Directive”.

(6) In the Annex, in Part B—

- (a) in paragraph 2.2, for “the factors listed in Article 5(2) of Directive 2009/18/EC” substitute “the seriousness of the marine casualty or incident, the type of vessel and cargo involved, and the potential for the findings of the safety investigation to lead to the prevention of future casualties and incidents”;
- (b) in paragraph 3.1, for “lead investigating Member State” substitute “United Kingdom”;
- (c) omit paragraph 3.4;
- (d) in paragraph 3.8, omit “, including that of European Marine Casualty Information Platform,”;

- (e) in paragraph 4.1, for “lead investigating Member State” substitute “United Kingdom”;
- (f) in paragraph 6.1, for “lead investigating Member State” substitute “United Kingdom”.

Revocation of Commission Implementing Regulation (EU) No. 651/2011

27. Commission Implementing Regulation (EU) No. 651/2011 is revoked.

Signed by the authority of the Secretary of State

Address
Date

Name
Parliamentary Under Secretary of State
Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 8(1) of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. They relate to the categories of deficiencies in retained EU law specified in section 8(2)(a), (b), (d) and (g) of that Act.

Part 2 amends the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 (S.I. 2012/1743). Part 3 amends the Railways (Accident Investigation and Reporting) Regulations 2005 (S.I. 2005/1992). Part 4 amends and revokes retained direct EU legislation which relates to the subordinate legislation amended by Part 2.

A full impact assessment has not been produced for these Regulations as no, or no significant, impact on business, charities or voluntary bodies is foreseen.