

<b>Title:</b> The Merchant Shipping (Accident Reporting and Investigation) Regulations <b>PIR No:</b> DfTPIR0050  <b>Original IA/RPC No:</b> DfT00130 <b>Lead department or agency:</b> DfT/MAIB  <b>Other departments or agencies:</b> N/A  Contact for enquiries: <b>Julie.nelson@dft.gov.uk</b>	<b>Post Implementation Review</b>
	<b>Date:</b> 06/05/2022
	<b>Type of regulation:</b> Domestic
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 31/07/2022
	<b>Recommendation:</b> Keep
	<b>RPC Opinion:</b> N/A

### 1. What were the policy objectives of the measure?

The policy aim was to provide the enabling legislation for the state investigation of marine accidents. Merchant seafaring and commercial fishing are two of the most hazardous occupations in the UK, with fishing being significantly more hazardous than agriculture or construction. The UK's Marine Accident Investigation Branch (MAIB) was established in 1989 following the public inquiry into the Herald of Free Enterprise disaster. Its duties, set out in secondary legislation, were to investigate marine accidents, to learn lessons and make recommendations to help prevent future accidents of a similar nature.

Then UK also has international obligations to investigate marine accidents. In May 2008, the International Maritime Organisation (IMO) passed Resolution MSC.255(84), Adoption of the Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code). As a signatory to the Safety of Life at Sea Convention (SOLAS), the Casualty Investigation Code became binding on the UK on 1 January 2010. In 2009, the EC published Directive 2009/18/EC (the Directive), which expanded on the mandatory requirements of the Casualty Investigation Code and required European Maritime Administrations to establish independent investigation bodies. Directive 2009/18/EC came into force on 17 June 2011.

The objective of the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012, as amended (2012 Regulations) was to update existing secondary legislation dating from 2005 to accommodate the requirements both of the Casualty Investigation Code and the Directive. The policy objective of the 2012 Regulations was to continue with the MAIB's work, while harmonising the reporting and investigation of marine accidents and incidents in the UK with the new EU-wide regime.

When the 2012 Regulations were being drafted, concerns were raised that they represented 'gold-plating' of the Directive. The Directive did not require the investigation

of accidents involving inland waterways vessels or fishing vessels under 15 metres in length. However, since the Marchioness disaster (1989) the UK public remains concerned about the safety of inland waterways passenger vessels. Additionally, approximately 80 per cent of the UK's commercial fishing vessels are less than 15 metres in length and the industry has a very poor safety record (forming approximately one third of MAIB investigations). Given the scope of the MAIB's investigation duties pre-dated the Directive and were in response to specific domestic circumstances, ministers were content that the Directive did not fully capture the extant national requirement for marine accident investigation, and the gold-plating to include additional categories of vessels was justified. It is considered that the rationale for gold-plating continues to exist as, while safety standards have improved, commercial fishing continues to have a very poor safety record, and accidents involving domestic passenger vessels receive significant media attention.

When the UK left the European Union in 2020, amendments were made to the 2012 Regulations to remove inoperabilities. The 2012 Regulations therefore remain fit for purpose, but the intention is to renew them to better align with the mandatory requirements of the Casualty Investigation Code instead of the wider requirements of the Directive. This work was due to run in parallel with this PIR but has been delayed due to higher legislative priorities.

Finally, Regulation 20 of the 2012 Regulations established the requirement that they be reviewed after five years and after each successive period of five years thereafter. The 2012 Regulations were reviewed in 2017, and the second review is due in 2022.

## **2. What evidence has informed the PIR?**

Based on the cross-governmental PIR guidance the MAIB identified three primary points to support the view that a low-evidence review was most appropriate for these regulations:

- 1) The estimated economic net impact of the 2012 Regulations pertaining to the MAIB's work is below £50m (the MAIB's annual budget is c.£4m per year and the Impact Assessment estimated net costs of £6.08m). The cost of the 2012 Regulations on business were expected to be minimal beyond reporting requirements in the event of an accident. The stakeholder evidence supported the view (with no one strongly disagreeing or disagreeing) that the time and effort required in reporting an accident was reasonable. With regards to the cost to business of engaging with an investigation there is an expectation and, for internationally trading vessels an obligation on vessel owners to investigate accidents. MAIB investigation actions largely run in parallel with company investigations and are typically conducted during the post-accident recuperation period (lost time). The costs of additional analysis are borne by the branch. As a result, the costs to business of participating in an MAIB investigation are considered to be minimal.

- 2) The profile of the 2012 Regulations is relatively low; they are of interest to a limited number of people (primarily industry experts), and outside this select group the potential level of regulation scrutiny is also fairly limited.
- 3) Linked to this, the 2012 Regulations that frame the Branch's activities are neither contentious nor risky. The MAIB has been in existence since 1989, when its duty to investigate maritime accidents was first established. The Directive, which led to the 2012 Regulations, established a similar regime across other European maritime administrations that previously did not have a state body with an investigatory function. Consequently, given the UK's pre-existing regime, the substance of the MAIB's enabling regulations did not change significantly as a result either of the Casualty Investigation Code or the Directive; the majority of the changes were there to ensure member states were able to benefit from each other's investigations.

The MAIB has used the following sources of evidence to support this view:

1. **A consultation with stakeholders:** A consultation questionnaire containing 19 questions using a 5-point Likert scale was sent to 53 stakeholders including trade bodies, medium to large vessel operators, ferry operators, port authorities, fishing companies, workboat contractors and Certifying Authorities. Of the stakeholders, 96.5% believe that the MAIB helps to improve safety at sea, with no one disagreeing. The consultation also gave stakeholders the opportunity to add comments, all of which were mainly positive. These responses are considered to be representative of the UK marine sector. **Annex A – summary of results.**
2. **Third party evaluation:** Between 14 and 28 October 2021, the UK was audited for its compliance with IMO Resolution A.1070(28) - IMO Instruments Implementation Code (III Code). On 20th October, the UK's marine casualty investigation capability was specifically audited, to the full satisfaction of the audit team with 'no findings' or 'areas for future improvement' recorded. Specific areas audited, that are relevant to this PIR, are recorded in the report of audit, Appendix 2w – Assessment of Areas Related to the III Code (Verification index), Flag State Investigation, lines 38-41. The auditors' comments specific to marine casualty investigation can be found at **Annex B – Summary of results**
3. **Internal monitoring:** in accordance with the original impact assessment (IA) DfT00130, which has confirmed that the MAIB remains an effective body for marine accident investigations; **Annex C – Summary of internal evidence**

**3. To what extent have the policy objectives been achieved?**

### Compliance with Directive and maintaining high standards

The UK is no longer required to comply with the Directive but is required to comply with the IMO Casualty Investigation Code. The recent IMO audit of the UK's compliance with IMO statutory instruments found the UK to be compliant with the Casualty Investigation Code (**see Annex B**).

MAIB statistics for over the last thirteen years illustrate that the number of investigations conducted by the Branch grew after 2011 when the Directive came into force and increased the range of marine casualties that Member States were obligated to investigate. After 2014 the number of investigations per year reduced slightly, but the annual total remains driven by external events. The MAIB's annual spend has remained fairly consistent throughout this period (**Annex C**). Budget growth has been driven by increases in FTE that have, in turn, been driven by the need to grow the Branch's technical expertise to keep pace with industry developments, and an increase in staff to accommodate the additional duty of investigating Red Ensign Group very serious marine casualties.

Throughout the period MAIB has maintained high standards of work, which is evidenced by the results of a consultation with stakeholders relating to the impact of the 2012 Regulations. For example:

- 96.5% responded that the MAIB's work helps to improve safety in the marine industry.
- 84% agreed that the MAIB is effective at identifying and promulgating safety lessons, and
- 72% agreed that MAIB recommendations improve safety.

A copy of the consultation questionnaire results is attached in support of this PIR Report (**Annex A**).

Further evidence of the quality of the Branch's work is in the acceptance of recommendations. Recommendations must result in improved safety and so need to be achievable. A 100% acceptance rate would indicate that recommendations were insufficiently challenging, whereas a low acceptance rate would indicate that recommendations were unrealistic. The Branch has consistently achieved recommendations acceptance rates above 80%, which indicates that an effective balance is being struck.

### Harmonisation of approach

The Directive had the effect of harmonising the approach to marine casualty investigation across EU Member States. Specifically:

- The use of a common database, the European Marine Casualty Information Platform (EMCIP), enhanced the sharing of information and improved identification of common / recurring safety issues;
- the Common Methodology, issued by the EU Commission to underpin the

- Directive, provided for common standards and principles; and,
- the PCF committee oversaw seminars and workshops intended to allow Member States to compare working practices, investigation methods, technical expertise, and share information and knowledge.

Although the UK is no longer a member of the EU, many of the benefits derived from complying with the Directive and applying the Common Methodology are enduring and continue to represent internationally recognised best practice.

#### Minimising impact on business

No data is available on the monetised costs to businesses in meeting their obligations under the 2012 Regulations. However, the results of a consultation with stakeholders confirmed that 79% believe that the time and effort expended in reporting an accident is reasonable. Also, 81.5% confirmed that they would participate in an investigation that resulted in a publicly available report even if they were not required to do so, indicating that any financial costs involved are outweighed by the importance of the investigation and achieving greater safety. The survey invited stakeholders to add comments to their responses, but no specific comments were received regarding costs to businesses being unreasonable, unwarranted or disproportionate. The survey results indicate that the industry is content with any costs incurred and that improving safety is of sufficient importance to outweigh any such costs.

#### **4. What were the original assumptions?**

The original impact assessment identified the following costs arising from the 2012 Regulations, which were assessed over a 10-year period:

- 1) Transition costs to MAIB and DfT to develop a new database that was compatible with EMCIP (£0.14m, 2011 prices).
- 2) On-going costs to MAIB to undertake extra investigations (£0.69m p.a., 2011 prices).
- 3) An increase in reporting requirements for certain types of accidents and vessel types (not quantified, assumed to be minimal relative to previous requirements).
- 4) Familiarisation costs (not quantified, due to a lack of evidence).

The best estimate outlined in the original IA quoted -£6.08m over the 10-year period. Whilst the MAIB's budget has increased in line with inflation, no other uplifts have been required.

The original impact assessment also referred to costs to business from engaging with MAIB investigations, which were **Not Quantified**. As there was already an expectation that firms would investigate accidents in the case of such an event, and that the MAIB uses its own resource to conduct its investigations, it was assumed that the time cost of

engaging with the MAIB investigation would be negligible. Where there were time costs, it was assumed that this would not significantly impact on the productivity of the firms affected but would be absorbed within non-productive time given such vessels would be out of action regardless.

Assumptions in the original Impact Assessment for the 2012 Regulations were that the legislation would not significantly impact the productivity of many vessels affected but would be absorbed within current levels of non-productive time. It was also assumed that the MAIB faced the budgetary risk of being exposed to unexpected levels of marine incidents in the future.

This situation remains unchanged. Since the regulations have been enforced, no organisations have made representation about the costs or time incurred in participating in an investigation, and the MAIB has been able to carry out its investigation activities remaining within normal tolerance of its set budget. It is therefore concluded that the assumptions made in the IA for SI 2012/1743 have been validated by experience both when sampled in the 2017 PIR and again for this PIR. Stakeholder feedback (Annex A) reinforces this conclusion.

### MAIB Budget

With regard to the assumption relating to the MAIB's budgetary risk, the MAIB has a fixed budget with all business conducted within the budget. No additional costs, relating to normal business under the 2012 Regulations, have been incurred. The MAIB's budget and outturn figures are set out in Annex C and indicate that largely the branch remains on budget. However, where unexpectedly high investigation costs were incurred, such as in 2015/2016, the budget was uplifted in-year to accommodate these. MAIB's budget was uplifted in 2020, to accommodate the additional workload resulting from the branch taking on very serious accident investigation for the Red Ensign Group, which was not anticipated in 2011 and so did not form part of the original Impact Assessment.

The original IA conducted in 2011, did not anticipate that the UK would vote to leave the EU in 2016, and so no contingency was made for the costs associated with withdrawing from the EU. Specifically, the costs of the UK developing its own database into which it could repatriate UK data following Brexit, were not anticipated. In all other respects the budgetary expectations have been validated.

### Business Impact

With regard to the assumption that the legislation would not significantly impact the productivity of many vessels, in a consultation with stakeholders:

- 58.4% of responders believed that the 2012 Regulations did not have a disproportionate impact on businesses with fewer than 50 employees.

- 72.22% agreed that MAIB recommendations improve safety, whilst 22.22% were neutral and 96.4% percentage agreed that the MAIB's work helps to improve safety within their sector of the marine industry.
- 70.1% agreed that the MAIB's work helps to promote public confidence in the marine industry, which indicates that this is beneficial for their businesses.

It remains the case that the costs of any additional analysis required as a result of an MAIB investigation are borne by the branch. When an investigation is complete, industry stakeholders are invited to suggest options for preventing such accidents in future, though these events are voluntary and travel costs are reimbursed.

### Uncertainties

The original IA identified a significant number of uncertainties, these included:

- Lack of repeatable parameters
- Uncertainty surrounding accident costs
- Uncertainty surrounding the cost to industry of investigations
- Uncertainty surrounding the value of time
- Uncertainty surrounding the number of vessels involving the substantial interests of the United Kingdom
- Uncertainty surrounding the impacts on UK businesses
- Uncertainty surrounding the scale of the effects of MAIB investigations

These uncertainties persist. There are clear benefits to industry arising from accident investigation when the safety lessons identified are used to improve processes to prevent a re-occurrence. Tangible benefits include a reduction in time lost due to injuries, improved availability of equipment and an absence of compensation outlays. However, it is almost impossible to measure these in an empirically meaningful manner.

### **5. Were there any unintended consequences?**

None identified. In a consultation with stakeholders on the impact of the 2012 Regulations, the responses to each question have been significantly positive, thereby denoting no unintended effects. Furthermore, stakeholders were given the opportunity to provide comments in the consultation survey and none of the comments pertained to any unintended effects.

The MAIB is not aware of any unintended effects of the 2012 Regulations with regard to the work it carries out under them.

## **6. Has the evidence identified any opportunities for reducing the burden on business?**

No. As outlined in Section 1 above, the 2012 Regulations updated existing national legislation to capture the requirements of the Directive, which itself captured the requirements of the IMO Casualty Investigation Code. The latter obligations remain extant. The UK has discretion to reduce the impact on business, specifically, by removing the obligation on vessel owners to report accidents and on the MAIB to investigate very serious accidents (death / loss of vessel) for those sectors falling outside the scope of the Casualty Investigation Code. The two main areas concerned are inland waterways vessels, and commercial fishing vessels under 15 metres in length. As previously discussed, public interest in the safety standards of the former, and the safety record of the latter do not justify a lighter touch.

The stakeholder survey identified 81.5% as confirming that they would participate in an investigation that resulted in a publicly available report even if they were not required to do so. While this could be read as inferring that regulation is unnecessary, unfortunately the MAIB has ample evidence of marine law firms attempting to restrict their customers participation in Branch investigations for fear of future liability. Unfortunately, this evidence is protected information that cannot be included in this review. Nonetheless, against this backdrop, any attempt to replace the 2012 Regulations with a Code of Practice would likely have negative consequences.

No opportunities have been identified to reduce the cost on businesses through regulation. However, money has been allocated to develop an online reporting tool that once operational, will streamline the process for reporting accidents therefore reducing the time impacts on the business.

## **7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?**

The 2017 PIR evidenced an audit of the UK by the European Maritime Safety Agency for its compliance with the Directive and, as explained above, in October 2021 the IMO audited the UK for compliance with the Casualty Investigation Code. Neither audit identified any shortcomings and neither made any observations with respect to the UK's approach to Marine Casualty Investigation. It can therefore be stated with surety that the UK is fully compliant with similar measures implemented internationally.

## **8. Recommendation**

As outlined in this PIR, our evidence supports the following:

- There has been no adverse impact on the MAIB's budget (13 year comparison).



- Stakeholders have largely felt that the regulatory burden is appropriate (stakeholder consultation survey).
- The legislation has not significantly impacted the productivity of many vessels (stakeholder consultation survey).
- The MAIB has achieved compliance with the 2012 Regulations, which are compliant with international requirements (IMO Code audit).
- The marine industry responded very positively to a consultation survey on the impact of the regulations, and the work of the MAIB. (stakeholder consultation survey).
- The acceptance rate for MAIB recommendations (>80%) is appropriate.

Based on this, the 2012 Regulations should remain as they are, in their current form, as they are effective and are viewed positively by the marine industry.

However, as the process of amending the 2012 Regulations to reflect the UK's obligations post-Brexit are already underway, we recommend this process should continue. Specifically, we propose that the 2012 Regulations should be amended to better align with the mandatory requirements of the Casualty Investigation Code, instead of the broader mandatory requirements of the Directive.

Sign-off for Post Implementation Review:

***I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

Signed:



Date:

08:56, 24 Jul 2022