



Merchant Shipping Act 1970

1970 CHAPTER 36

Disqualification of seamen, inquiries and investigations

52 Inquiry into fitness or conduct of officer

- (1) If it appears to the Board of Trade that an officer—
 - (a) is unfit to discharge his duties, whether by reason of incompetence or misconduct or for any other reason; or
 - (b) has been seriously negligent in the discharge of his duties; or
 - (c) has failed to comply with the provisions of section 422 of the Merchant Shipping Act 1894 (duty to give assistance and information after collision);the Board of Trade may cause an inquiry to be held by one or more persons appointed by them and, if they do so, may, if they think fit, suspend, pending the outcome of the inquiry, any certificate issued to the officer in pursuance of section 43 of this Act and require the officer to deliver it to them.
- (2) Where a certificate issued to an officer has been suspended under subsection (1) of this section the suspension may, on the application of the officer, be terminated by the High Court or, if the inquiry is held in Scotland, by the Court of Session, and the decision of the court on such an application shall be final.
- (3) An inquiry under this section shall be conducted in accordance with rules made under section 58(1) of this Act and those rules shall require the persons holding the inquiry to hold it with the assistance of one or more assessors.
- (4) The persons holding an inquiry under this section into the fitness or conduct of an officer—
 - (a) may, if satisfied of any of the matters mentioned in paragraphs (a) to (c) of subsection (1) of this section, cancel or suspend any certificate issued to him under section 43 of this Act or censure him ;
 - (b) may make such order with regard to the costs of the inquiry as they think just; and
 - (c) shall make a report on the case to the Board of Trade ;

and if the certificate is cancelled or suspended the officer (unless he has delivered it to the Board of Trade in pursuance of subsection (1) of this section) shall deliver it forthwith to the persons holding the inquiry or to the Board of Trade.

- (5) Any costs which a person is ordered to pay under subsection (4)(b) of this section may be recovered from him by the Board of Trade.

53 Disqualification of holder of certificate other than officer's

- (1) Where it appears to the Board of Trade that a person who is the holder of a certificate to which this section applies is unfit to be the holder of such a certificate, whether by reason of incompetence or misconduct or for any other reason, they may give him notice in writing that they are considering the suspension or cancellation of the certificate.
- (2) The notice must state the reasons why it appears to the Board of Trade that that person is unfit to be the holder of such a certificate and must state that within a period specified in the notice, or such longer period as the Board of Trade may allow, he may make written representations to the Board or claim to make oral representations to the Board.
- (3) After considering any representations made in pursuance of the preceding subsection the Board shall decide whether or not to suspend or cancel the certificate and shall give the holder of it written notice of their decision.
- (4) Where the decision is to suspend or cancel the certificate the notice shall state the date from which the cancellation is to take effect, or the date from which and the period for which the suspension is to take effect, and shall require the holder to deliver the certificate to the Board not later than the date so specified unless before that date he has required the case to be dealt with by an inquiry under section 54 of this Act.
- (5) Where, before the date specified in the notice, he requires the case to be dealt with by such an inquiry, then, unless he withdraws the requirement, the suspension or cancellation shall not take effect except as ordered in pursuance of the inquiry.
- (6) The Board of Trade may make regulations prescribing the procedure to be followed with respect to the making and consideration of representations in pursuance of this section, the form of any notice to be given under this section and the period to be specified in any such notice as the period within which any steps are to be taken.
- (7) This section applies to every certificate issued under section 50 of this Act and to any certificate issued under section 43 of this Act other than one certifying that a person is qualified as an officer.

54 Inquiry into fitness or conduct of person other than officer

- (1) Where a person has, before the date mentioned in section 53(4) of this Act, required his case to be dealt with by an inquiry under this section the Board of Trade shall cause an inquiry to be held by one or more persons appointed by them
- (2) An inquiry under this section shall be conducted in accordance with rules made under section 58(1) of this Act and those rules shall require the persons holding the inquiry to hold it with the assistance of one or more assessors.
- (3) The persons holding an inquiry under this section—

- (a) may confirm the decision of the Board of Trade and cancel or suspend the certificate accordingly;
 - (b) may, where the decision was to cancel the certificate, suspend it instead;
 - (c) may, where the decision was to suspend the certificate, suspend it for a different period ;
 - (d) may, instead of confirming the decision of the Board of Trade, censure the holder of the certificate or take no further action;
 - (e) may make such order with regard to the costs of the inquiry as they think just; and
 - (f) shall make a report on the case to the Board of Trade;
- and if the certificate is cancelled or suspended it shall be delivered forthwith to the persons holding the inquiry or to the Board of Trade.

- (4) Any costs which a person is ordered to pay under subsection (3)(e) of this section may be recovered from him by the Board of Trade.

55 Inquiries and investigations into shipping casualties

- (1) Where any of the following casualties has occurred, that is to say.—
- (a) the loss or presumed loss, stranding, grounding, abandonment of or damage to a ship ; or
 - (b) a loss of life caused by fire on board or by any accident to a ship or ship's boat, or by any accident occurring on board a ship or ship's boat; or
 - (c) any damage caused by a ship ;
- and, at the time it occurred, the ship was registered in the United Kingdom or the ship or boat was in the United Kingdom or the territorial waters thereof, the Board of Trade—
- (i) may cause a preliminary inquiry into the casualty to be held by a person appointed for the purpose by the Board; and
 - (ii) may (whether or not a preliminary inquiry into the casualty has been held) cause a formal investigation into the casualty to be held, if in England, Wales or Northern Ireland, by a wreck commissioner and, if in Scotland, by the sheriff.
- (2) A person appointed under this section to hold a preliminary inquiry shall for the purpose of the inquiry have the powers conferred on an inspector by section 729 of the Merchant Shipping Act 1894.

56 Formal investigation into shipping casualty

- (1) A wreck commissioner or sheriff holding a formal investigation into a casualty under section 55 of this Act shall conduct it in accordance with rules under section 58(1) of this Act, and those rules shall require the assistance of one or more assessors and, if any question as to the cancellation or suspension of an officer's certificate is likely to arise, the assistance of not less than two assessors.
- (2) Subsections (1), (3) and (4) of section 77 of the Magistrates' Courts Act 1952 (which provide for the attendance of witnesses and the production of evidence) shall apply in relation to a formal investigation held by a wreck commissioner as if the wreck commissioner were a magistrates' court and the investigation a complaint; and the

wreck commissioner shall have power to administer oaths for the purposes of the investigation.

- (3) Where a formal investigation is held in Scotland the sheriff shall, subject to any rules made under section 58(1) of this Act, dispose of it as a summary application, and, subject to section 57 of this Act, his decision on the investigation shall be final.
- (4) If as a result of the investigation the wreck commissioner or sheriff is satisfied, with respect to any officer, of any of the matters mentioned in paragraphs (a) to (c) of section 52(1) of this Act and, if it is a matter mentioned in paragraph (a) or (b) of that section, is further satisfied that it caused or contributed to the casualty, he may cancel or suspend any certificate issued to the officer under section 43 of this Act or censure him; and if he cancels or suspends the certificate the officer shall deliver it forthwith to him or to the Board of Trade.
- (5) The wreck commissioner or sheriff may make such order with regard to the costs of the investigation as he thinks just and shall make a report on the case to the Board of Trade.
- (6) Any costs which a person is ordered to pay under the preceding subsection may be recovered from him by the Board of Trade.
- (7) In its application to Northern Ireland this section shall have effect as if in subsection (2) for the references to subsections (1), (3) and (4) of section 77 of the Magistrates' Courts Act 1952 there were substituted references to subsections (1) and (3) of section 120 and subsection (1) of section 122 of the Magistrates' Courts Act (Northern Ireland) 1964.

57 Rehearing of and appeal from inquiries and investigations

- (1) Where an inquiry or formal investigation has been held under the preceding provisions of this Act the Board of Trade may order the whole or part of the case to be re-heard, and shall do so—
 - (a) if new and important evidence which could not be produced at the inquiry or investigation has been discovered; or
 - (b) if there appear to the Board to be other grounds for suspecting that a miscarriage of justice may have occurred.
- (2) An order under subsection (1) of this section may provide for the re-hearing to be as follows.—
 - (a) if the inquiry or investigation was held in England, Wales or Northern Ireland, by the persons who held it, by a wreck commissioner or by the High Court;
 - (b) if it was held in Scotland, by the persons who held it, by the sheriff or by the Court of Session.
- (3) Any re-hearing under this section which is not held by the High Court or the Court of Session shall be conducted in accordance with rules made under section 58(1) of this Act; and section 56 of this Act shall apply in relation to a re-hearing of an investigation by a wreck commissioner or sheriff as it applies in relation to the holding of an investigation.
- (4) Where the persons holding the inquiry or investigation have decided to cancel or suspend the certificate of any person or have found any person at fault, then, if no

application for an order under subsection (1) of this section has been made or such an application has been refused, that person or any other person who, having an interest in the inquiry or investigation, has appeared at the hearing and is affected by the decision or finding, may appeal to the High Court or the Court of Session, according as the inquiry or investigation was held in England, Wales or Northern Ireland or in Scotland.

58 Rules as to inquiries, investigations and appeals

- (1) The Board of Trade may make rules for the conduct of inquiries under sections 52 and 54 of this Act and of formal investigations under section 55 of this Act and for the conduct of any re-hearing under section 57 of this Act which is not held by the High Court or the Court of Session.
- (2) Without prejudice to the generality of the preceding subsection, rules under this section may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected.
- (3) Rules of court made for the purpose of re-hearings under section 57 of this Act which are held by the High Court, or of appeals to the High Court, may require the court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a rehearing or hear such an appeal with the assistance of one or more assessors.

59 Failure to deliver cancelled or suspended certificate

If a person fails to deliver a certificate as required under section 52 or 56 of this Act he shall be liable on summary conviction to a fine not exceeding £50; and if a person fails to deliver a certificate as required under section 53 or 54 of this Act he shall be liable on summary conviction to a fine not exceeding £10.

60 Power to restore certificate

Where a certificate has been cancelled or suspended under this Act or under section 478 of the Merchant Shipping Act 1894, the Board of Trade, if of opinion that the justice of the case requires it, may re-issue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate.

61 Inquiries into deaths of crew members and others

- (1) Subject to subsection (4) of this section, where—
 - (a) any person dies in a ship registered in the United Kingdom; or
 - (b) the master of or a seaman employed in such a ship dies in a country outside the United Kingdom;an inquiry into the cause of the death shall be held by a superintendent or proper officer at the next port where the ship calls after the death and where there is a superintendent or proper officer, or at such other place as the Board of Trade may direct.
- (2) The superintendent or proper officer holding the inquiry shall for the purpose of the inquiry have the powers conferred on an inspector by section 729 of the Merchant Shipping Act 1894.

Status: This is the original version (as it was originally enacted).

- (3) The person holding the inquiry shall make a report of his findings to the Board of Trade and the Board shall make a copy of the report available—
- (a) if the deceased person was employed in the ship and a person was named as his next of kin in the crew agreement or list of the crew in which the deceased person's name last appeared, to the person so named ;
 - (b) in any case, to any person requesting it who appears to the Board of Trade to be interested.
- (4) No inquiry shall be held under this section in a case where, in England, Wales or Northern Ireland, a coroner's inquest is to be held or, in Scotland, an inquiry is to be held under the Fatal Accidents Inquiry (Scotland) Act 1895 or the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1906.