

1990 No. 123

MERCHANT SHIPPING

The Merchant Shipping (Formal Investigations)
(Amendment) Rules 1990

<i>Made</i>	- - - -	<i>25th January 1990</i>
<i>Laid before Parliament</i>		<i>5th February 1990</i>
<i>Coming into force</i>		<i>26th February 1990</i>

The Secretary of State for Transport, in exercise of powers conferred by section 58(1) and (2) of the Merchant Shipping Act 1970(a) and now vested in him(b), and of all other powers enabling him in that behalf, hereby makes the following Rules:-

1.—(1) These Rules may be cited as the Merchant Shipping (Formal Investigations) (Amendment) Rules 1990 and shall come into force on 26th February 1990.

(2) These Rules apply to any formal investigation held after they come into force, regardless of whether the accident occurred before then.

2. The Merchant Shipping (Formal Investigations) Rules 1985(c) shall be amended as follows:-

(a) in regulation 2(1):-

(i) the following definition shall be inserted before the definition of "the Act of 1970":

““accident” means any accident to which section 56 of the Act of 1970(d) applies”;

(ii) in the definition of “a formal investigation” for “a shipping casualty or incident under section 55 of the Act of 1970” there shall be substituted “an accident under section 56 of the Act of 1970”;

(iii) the definitions of “an incident” and “a shipping casualty” shall be omitted;

(b) in regulations 4(1) and 7(6), for “a shipping casualty or incident” there shall be substituted “an accident”;

(c) in regulation 4(1) all words after “Lord Chancellor” shall be deleted;

(d) there shall be inserted after rule 4 the following new rule:-

“4A Where the Secretary of State has directed a formal investigation to be held, he shall remit the case to the Attorney General, and thereafter the preparation and presentation of the case shall be conducted by the Treasury Solicitor under the direction of the Attorney General; the Chief Inspector

(a) 1970 c.36; section 58(1) was amended by Schedule 6 to the Merchant Shipping Act 1988 (c.12).

(b) See S.I. 1970/1537.

(c) 1985/1001.

(d) Section 56 was amended by Schedules 5 and 6 to the Merchant Shipping Act 1988.

of Marine Accidents(a) shall render such assistance to the wreck commissioner and to the Attorney General as is in his power.”;

- (e) in rule 5(1):-
 - (i) for “he shall cause a notice” there shall be substituted “the Attorney General shall cause a notice”;
 - (ii) for “the Secretary of State”, where it secondly and thirdly appears, there shall be substituted “the Attorney General”;
- (f) in rules 5(2), 5(3), 5(4), 7(6), 8(1), and 10 for “the Secretary of State”, wherever it appears, there shall be substituted “the Attorney General”;
- (g) in rule 7(1), after “statutory declarations” there shall be inserted “, any report of an investigation into the accident the subject of the formal investigation conducted by an inspector pursuant to section 33 of the Merchant Shipping Act 1988”;
- (h) for paragraph (a) in rule 12 the following shall be substituted:-
 - “(a) in any case where an officer’s certificate is in issue, give his decision concerning the certificate in public”;
- (i) the following shall be added at the end of rule 13:-
 - “Further copies of the Report shall not be released until the Secretary of State is satisfied that the Parties have had reasonable time to receive and read their copies”;
- (j) for rule 14 the following shall be substituted:-
 - “Where the wreck commissioner makes any award as to the costs of the investigation and of any of the parties at the investigation, or with regard to the parties by whom those costs are to be paid, he shall state in a report his reasons for making such an award”;
- (k) there shall be added as rules 16 and 17 the following:-
 - “16. In the application of these Rules to Scotland and to any formal investigation held there-
 - (a) for the reference to the Lord Chancellor in rule 4(1) there shall be substituted a reference to the Lord President of the Court of Session;
 - (b) for any reference to the Attorney General there shall be substituted a reference to the Lord Advocate;
 - (c) in rule 4A above the words “by the Treasury Solicitor” shall be omitted;
 - 17. In the application of these Rules to Northern Ireland and to any formal investigation held there-
 - (a) for any reference to the Lord Chancellor (other than that in rule 4(2)), there shall be substituted a reference to the Lord Chief Justice of Northern Ireland;
 - (b) for any reference to the Attorney General, there shall be substituted a reference to the Attorney General for Northern Ireland;
 - (c) for any reference to the Treasury Solicitor, there shall be substituted a reference to the Crown Solicitor for Northern Ireland.”.

Signed by authority of the Secretary of State for Transport

25th January 1990

Patrick McLoughlin
Parliamentary Under Secretary of State for Transport

(a) The Chief Inspector of Marine Accidents is appointed pursuant to section 33(1) of the Merchant Shipping Act 1988 (c.12).

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Merchant Shipping (Formal Investigations) Rules 1985. The changes—

- (a) provide for the preparation and presentation of the case to the formal investigation to be done by the Attorney General (instead of, as previously, by the Secretary of State for Transport) in England and Wales, by the Lord Advocate in Scotland and, in Northern Ireland, by the Attorney General for Northern Ireland;
- (b) make consequential changes as a result of the repeal of section 55 of the Merchant Shipping Act 1970, and the implementation of section 33 of the Merchant Shipping Act 1988;
- (c) amend the rule on awards of costs, as a consequence of changes to section 56 of the Merchant Shipping Act 1970 made in Schedule 5 to the 1988 Act;
- (d) alter the rules on the publication of the Report of the wreck commissioner.