
STATUTORY INSTRUMENTS

1994 No. 2013

MERCHANT SHIPPING

**The Merchant Shipping (Accident Reporting
and Investigation) Regulations 1994**

<i>Made</i>	- - - -	<i>28th July 1994</i>
<i>Laid before Parliament</i>		<i>5th August 1994</i>
<i>Coming into force</i>	- -	<i>26th August 1994</i>

The Secretary of State, after consulting the persons referred to in section 22(2) of the Merchant Shipping Act 1979⁽¹⁾ and in exercise of the powers conferred on him by section 21(1)(a) of that Act and by sections 33 and 53 of the Merchant Shipping Act 1988⁽²⁾ and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the Merchant Shipping (Accident Reporting and Investigation) Regulations 1994 and shall come into force on 26th August 1994.

(2) The Merchant Shipping (Accident Investigation) Regulations 1989⁽³⁾ and the Fishing Vessels (Reporting of Accidents) Regulations 1985⁽⁴⁾ are hereby revoked.

Interpretation

2.—(1) For the purposes of these Regulations and of section 33 of the Act, “accident” means any contingency whereby—

- (a) there is loss of life or major injury to any person on board, or any person is lost from, a ship or a ship’s boat; or
- (b) a ship is lost or presumed to be lost, or is abandoned or materially damaged; or
- (c) a ship strands or is in collision; or
- (d) a ship is disabled; or
- (e) any loss of life or major injury or material damage, or serious harm to the environment, is caused by a ship.

(2) In these Regulations—

(1) 1979 c. 39.
(2) 1988 c. 12.
(3) S.I.1989/1172.
(4) S.I. 1985/855.

“access” means the process of embarking on or disembarking from a ship, by whatever means employed;

“Chief Inspector” means the Chief Inspector of Marine Accidents appointed by the Secretary of State under section 33(1) of the Act, and any deputy Chief Inspector;

“dangerous occurrence” means any occurrence of a kind specified in the Schedule hereto;

“disabled” means not under command for a period of more than 12 hours, or for any lesser period if, as a result, the vessel needs assistance to reach port;

“grounding” means making involuntary contact with the ground, except for touching briefly so that no damage is caused, and “goes aground” shall be construed accordingly;

“hazardous incident” means any incident or event, not being an accident or a dangerous occurrence, by which the safety of a ship or any person is imperilled, or as a result of which serious damage to any ship or structure or damage to the environment might be caused;

“incapacity” means inability to undertake the full range of activities normally undertaken;

“inspector” means an inspector of marine accidents appointed by the Secretary of State under section 33(1) of the Act and in the context of the investigation of a particular accident includes any person appointed to investigate that accident under regulation 6 below;

“Inspector’s Inquiry” means an investigation ordered under regulation 6(3);

“investigation” means any investigation carried out by an inspector, including but not limited to an Inspector’s Inquiry;

“major injury” means—

- (a) any fracture, other than to the fingers or toes;
- (b) any loss of a limb or part of a limb;
- (c) dislocation of the shoulder, hip, knee or spine;
- (d) loss of sight (whether temporary or permanent);
- (e) penetrating injury to the eye; or
- (f) any other injury—
 - (i) leading to hypothermia or to unconsciousness, or
 - (ii) requiring resuscitation, or
 - (iii) requiring admittance to hospital or to an offshore sick-bay for more than 24 hours or if at sea requiring confinement to bed for more than 24 hours;

“pleasure vessel” has the meaning given to it by the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1993(5);

“serious casualty” means an accident to a ship causing loss of life, or total loss of a ship of more than 50 metres registered length;

“serious injury” means any injury, other than a major injury, to a person employed or carried in a United Kingdom ship which occurs on board or during access which results in incapacity for more than three consecutive days excluding the day of the accident, or as a result of which the person concerned is put ashore and the ship sails without him, unless the incapacity is known or advised to be of three consecutive days or less, excluding the day of the accident;

“ship’s boat” includes a liferaft, painting punt and any boat normally carried by a ship;

“strands” means goes aground and cannot immediately re-float;

“United Kingdom ship” means a ship registered in the United Kingdom.

(3) Where a ship is managed by a person other than her owner (whether on behalf of the owner or some other person, or on his own behalf), a reference in these Regulations to the owner shall be construed as including a reference to that person.

(4) Any notice or other document required or authorised by any provision of these Regulations to be served on or given to any person may be served or given:

- (a) by delivering it to that person;
- (b) by leaving it at his usual or last-known residence or place of business, whether in the United Kingdom or elsewhere;
- (c) by sending it to him by post at that address; or
- (d) by sending it to him at that address by telex or other means which produce a document containing a text of the communication.

Application

3.—(1) Subject to regulation 5(3) below, these Regulations shall apply in respect of serious injuries, dangerous occurrences and hazardous incidents as they apply in respect of accidents, except that regulations 5 and 7 shall not apply to hazardous incidents.

(2) These Regulations apply to accidents involving or occurring on board—

- (a) any United Kingdom ship, except that regulation 5 shall not apply to pleasure vessels or to lifeboats operated by the Royal National Lifeboat Institution; and
- (b) any other ship within the United Kingdom or the territorial waters thereof, save that regulations 5 and 7 shall not apply to such a ship unless she is within a port in the United Kingdom or is employed in carrying passengers to or from a port in the United Kingdom.

(3) An investigation may be held under regulation 6 into an accident involving or occurring on board a ship which is not a United Kingdom ship and which at the time of the accident was not within the United Kingdom or the territorial waters thereof, if the Secretary of State so determines.

Purpose of Investigation

4. The fundamental purpose of investigating an accident under these Regulations is to determine its circumstances and the causes with the aim of improving the safety of life at sea and the avoidance of accidents in the future. It is not the purpose to apportion liability, nor, except so far as is necessary to achieve the fundamental purpose, to apportion blame.

Duty to Report Accidents, Dangerous Occurrences and Serious Injuries

5.—(1) Subject to paragraphs (2), (3) and (6) below, when an accident occurs the master shall send a report to the Chief Inspector as soon as is practicable by the quickest means available, and in any case not later than 24 hours after the ship next arrives at a port.

(2) Where a ship is lost or presumed lost or is abandoned, then such a report shall be sent by the owner, the master, or a senior surviving officer as soon as is practicable by the quickest means available.

(3) Subject to paragraph (6) below, the master shall report every serious injury or dangerous occurrence to the Chief Inspector within fourteen days of its happening or, if the ship is at sea, within fourteen days of her arrival at the next port of call.

(4) A report made to a Marine Office of the Department of Transport or to HM Coastguard shall be regarded as complying with this regulation.

(5) The master shall, so far as is reasonably practicable, ensure that the circumstances of every accident involving death or major injury, every serious injury and every dangerous occurrence are

examined. The owner or master shall on request provide the Chief Inspector with a report, in addition to any report made under the preceding paragraphs of this regulation, giving the findings of such examination and stating any measures taken or proposed to prevent a recurrence.

(6) This regulation shall not apply—

- (a) to an accident as defined in regulation 2(1)(a) or a serious injury as defined in regulation 2(2) when the person killed or injured is a stevedore or shore-based worker and the accident or serious injury occurs in a port or shipyard in the United Kingdom; or
- (b) to a dangerous occurrence which occurs in a shipyard in the United Kingdom.

(7) No report made under this regulation shall be admissible in evidence against the maker in any proceedings except proceedings in pursuance of regulation 16(1).

Ordering of Investigation

6.—(1) Any accident may be investigated. Where an accident occurs, the Chief Inspector shall decide whether or not an investigation should be carried out and, where a report has been received under regulation 5(1) or (2), shall cause the master or owner to be notified of his decision. He may cause to be obtained such information concerning the accident as he considers necessary, and the owner or master of the ship concerned shall provide such information to the best of his ability and knowledge.

(2) An investigation may be carried out by one or more inspectors of marine accidents appointed under section 33(1) of the Act, or additionally or alternatively by such other person or persons as the Chief Inspector may appoint specifically for the purpose in circumstances where there are not inspectors appointed under the said Act conveniently available or where such a person has special qualifications or experience. Such other person or persons shall have the powers conferred on an inspector by section 27 of the Merchant Shipping Act 1979.

(3) The Chief Inspector may order that the investigation takes the form of an Inspector's Inquiry.

(4) Public notice that an Inspector's Inquiry has been ordered shall be given in such manner as the Chief Inspector may think fit, and shall invite any persons who so desire to make representations to the Inspector in such a manner and within such a time as is specified in the notice.

Preservation of Evidence

7. The owner and master shall so far as is possible ensure that all charts, log books and other records and documents which might reasonably be considered pertinent to an accident reportable under regulation 5 are kept and that no alteration shall be made to entries therein, and that any equipment which might reasonably be considered pertinent to such an accident is so far as practicable left undisturbed, until either:

- (a) notification is received from the Chief Inspector that no investigation is to take place; or
- (b) if notification is received that an investigation will take place, the Chief Inspector or the Inspector carrying out the investigation indicates that he no longer requires them.

Conduct of Investigations

8.—(1) Subject to his powers under section 27 of the Merchant Shipping Act 1979 an inspector shall conduct an investigation at such times and places and in such manner as appear to him most conducive to achieving the fundamental purpose set out in regulation 4.

(2) An investigation may extend to cover all events and circumstances preceding the accident which in the opinion of the Inspector may have been relevant to its cause or outcome, and also to cover the consequences of the accident and the Inspector's powers shall apply accordingly.

(3) Every person required to attend before an inspector shall be allowed the reasonable expenses of attending.

(4) Any document or record properly required by an inspector to be produced for the purposes of an investigation (whether on board the ship involved in the subject accident or otherwise) may be retained by him until the investigation is completed.

(5) Upon completion of an investigation the Inspector shall submit to the Chief Inspector his conclusions as to the facts of the accident and, where the facts cannot be certainly established, his opinion as to the most probable facts. He shall clearly distinguish between established facts and conjecture. He shall also submit his analysis and his findings as to cause together with such observations and recommendations as he thinks fit to make.

(6) At any time during the course of an investigation the Chief Inspector may determine that the investigation shall be discontinued, and in that event no submission by the Inspector need be made.

Report of Inspector's Inquiry

- (a) Subject to paragraph (4) below, where an Inspector's Inquiry has taken place, the Chief Inspector shall make a report to the Secretary of State (in the remainder of this regulation referred to as "the Report") which shall include the Inspector's findings as to cause and his own observations thereon and any recommendations which he considers appropriate.
- (b) Subject to paragraphs (2) and (3) below, the Secretary of State unless he orders a formal investigation under section 56 of the Merchant Shipping Act 1970(6), may publish the Report if he thinks fit and shall do so if—
 - (i) it appears to him that to do so will improve the safety of life at sea and help to prevent accidents in the future; or
 - (ii) it relates to a serious casualty to a United Kingdom ship unless in his opinion there is good reason to the contrary.

(2) If the prosecution of any person in connection with the accident is under consideration, the Secretary of State may at his discretion withhold publication until either the prosecution, including any appeal, has been concluded or it has been decided not to prosecute.

(3) Where the Secretary of State has under consideration whether to cause an inquiry to be held under section 52 of the Merchant Shipping Act 1970 into the conduct of a certificated officer, or to take action under section 53 of that Act in respect of the holder of a certificate other than an officer's, then he may at his discretion withhold publication until proceedings under either of the said sections have been completed or it has been decided not to pursue such proceedings.

(4) Except where a formal investigation has been ordered, if in the opinion of the Chief Inspector the reputation of any person is likely to be adversely affected by the Report then it shall not be submitted to the Secretary of State until:

- (a) that person (or if that person be deceased, then such person as appears to the Chief Inspector best to represent that person's interest) has been served with a copy of the Report or that part of it which affects him; and
- (b) that person or his representative has been given a period of 28 days to make representations to the Chief Inspector either in person or in writing; and
- (c) the Chief Inspector has considered any such representations and has notified the person concerned or his representative of his conclusions on them, and of what changes, if any, he intends to make to the Report; and

(d) the person or his representative has been given a further period of 28 days in which he may submit to the Chief Inspector an alternative text for any passages in the Report which are critical of the person and remain in issue.

(5) No person shall disclose any information furnished him pursuant to paragraph (4) above, or permit such information to be disclosed, to any other person, save with the prior consent in writing of the Chief Inspector.

(6) The Chief Inspector on submitting the Report to the Secretary of State shall refer to any service of the Report or part of it under paragraph (4) of this regulation and shall set out the substance of any representations made in response, together with his conclusions and a record of any action he has taken. He shall also quote in full any alternative texts submitted under paragraph (4)(d) above; and if the Secretary of State decides to publish the Report he shall publish any such texts with it as an Appendix, unless in his opinion there is good reason not to do so.

Release of Information during Investigation

10. Notwithstanding the provisions of regulation 9, the Chief Inspector may at any time during the course of any investigation release information as to material facts if in his opinion it is necessary or desirable to do so.

Recommendations

11.—(1) Recommendations may be made at any time during the course of an investigation.

(2) Recommendations may be made by the Chief Inspector at any time.

(3) Recommendations shall be addressed to those persons or bodies who in the opinion of the Chief Inspector are most fitted to implement them, and may be made public if the Chief Inspector considers that to do so is in the interests of safety.

Procedure where an Inquest or Fatal Accident Inquiry is held

12.—(1) Where an inquest or fatal accident inquiry is to be held following an accident which has been subject to investigation, a report of the investigation may be made available to the inquest or fatal accident inquiry by the Chief Inspector.

(2) Where the investigation has taken the form of an Inspector's Inquiry and the procedure in paragraph (1) is followed and the report has been put before the inquest or fatal accident inquiry then the Chief Inspector need not comply with regulation 9(4) above but if he does not do so he shall not submit his Report to the Secretary of State until after the proceedings of the inquest or fatal accident inquiry and he shall include in his Report the substance of evidence given at those proceedings as it relates to the Inspector's findings.

Summaries of Investigations

13.—(1) A summary report of any investigation may be published.

(2) The Chief Inspector shall prepare and publish from time to time collective summaries of investigations.

(3) A summary of the circumstances of any accident which has been under investigation shall, if not published, be otherwise made available to any person requesting it who satisfies the Chief Inspector of his legitimate interest.

(4) A summary shall not be published or otherwise made available if prosecution against any person in connection with the subject accident has begun, unless the Chief Inspector is satisfied that nothing in its content would prejudice a fair trial.

Reopening of Investigation

14.—(1) The Chief Inspector may cause any investigation to be reopened either generally or as to any part thereof, and he shall do so—

- (a) if after the completion of the investigation in his opinion new and important evidence has been discovered, or
- (b) if for any other reason there is in his opinion ground for suspecting that a miscarriage of justice has occurred.

(2) Any investigation reopened shall be subject to and conducted in accordance with the provisions of these Regulations relating to such an investigation.

Extension of Time

15. The Chief Inspector, in respect of the periods of 28 days prescribed in regulation 9(4)(b) and (d), shall have the power to extend the said periods, and shall not unreasonably refuse to do so, and this power may be exercised notwithstanding that the prescribed period has expired.

Penalties

16.—(1) If a master, owner or officer fails without reasonable cause to report an accident, serious injury or dangerous occurrence, as required by regulation 5, or if a master or owner so fails to provide information as required by regulation 6, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) If any person fails without reasonable cause to comply with regulation 7 above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.

(3) If any person discloses or permits to be disclosed information in contravention of regulation 9(5) above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum.

Signed by authority of the Secretary of State for Transport

28th July 1994

Goschen
Parliamentary Under Secretary of State,
Department of Transport

SCHEDULE

Regulation 2(2)

DANGEROUS OCCURRENCES

1. Subject to paragraph 2 below, the following are dangerous occurrences (required to be reported under regulation 5(3)) provided that they might have been liable, taking into account the circumstances of the occurrence, to cause serious injury or to cause damage to the health of any person:

- (1) the fall of any person overboard;
- (2) any fire or explosion;
- (3) the collapse or bursting of any pressure vessel, pipeline or valve or the accidental ignition of anything in a pipeline;
- (4) the collapse or failure of any lifting equipment, access equipment, hatch-cover, staging or bosun's chair or any associated load-bearing parts;
- (5) the uncontrolled release or escape of any harmful substance or agent;
- (6) any collapse of cargo, unintended movement of cargo sufficient to cause a list, or loss of cargo overboard;
- (7) any snagging of fishing gear which results in the vessel heeling to a dangerous angle;
- (8) the parting of a tow-rope;
- (9) any contact by a person with loose asbestos fibre except when full protective clothing is worn.

2. Occurrences which are accidents (within the meaning of regulation 2(1)) are not dangerous occurrences for the purposes of these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the Merchant Shipping (Accident Investigation) Regulations 1989. They include, with amendments, the provisions for the reporting and investigation of marine accidents contained in those Regulations and also those in the Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulations 1982 and the Fishing Vessels (Reporting of Accidents) Regulations 1985. The latter Regulations are revoked; the former are amended separately by the Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulations 1994 to remove those provisions now covered by these Regulations.

The principal effect is to incorporate the various requirements in one set of Regulations and to remove the differences between the provisions relating to merchant ships and those for fishing vessels. Some revision has been made to the requirements, chiefly for clarification.

The main changes are:

- (a) the requirement for dangerous occurrences to be reported, previously only applicable to merchant ships, is now extended to fishing vessels;

- (b) the exclusion of non-UK ships from certain of the requirements no longer applies if they are within a UK port when the accident occurs or are operating as passenger vessels to or from a port in the UK;
- (c) the previous bar on publication of Reports if a prosecution or Inquiry into Conduct is contemplated is changed to a discretionary provision;
- (d) provision is made for the Inspector's findings to be presented at an inquest or fatal accident inquiry, and in appropriate cases for this procedure to be a substitute for written consultation with criticized parties.