

**2005 No. 881**

**MERCHANT SHIPPING**

**The Merchant Shipping (Accident Reporting and  
Investigation) Regulations 2005**

*Made - - - - - 22nd March 2005*

*Laid before Parliament 24th March 2005*

*Coming into force - - 18th April 2005*

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The Secretary of State, in exercise of the powers conferred by section 267 of the Merchant Shipping Act 1995(a), hereby makes the following Regulations:

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(a) 1995 c. 21.

### Citation, commencement and revocation

1.—(1) These Regulations may be cited as the Merchant Shipping (Accident Reporting and Investigation) Regulations 2005 and shall come into force on 18th April 2005, save that the references to “civil partner” in the definition of “pleasure vessel” in paragraph (1) of regulation 2 shall not apply in relation to any time before section 1 of the Civil Partnership Act 2004<sup>(a)</sup> comes into force.

(2) The Merchant Shipping (Accident Reporting and Investigation) Regulations 1999<sup>(b)</sup> are hereby revoked and any investigation commenced under those Regulations which has not been completed shall continue as if it had been commenced under these Regulations.

### Interpretation

2.—(1) In these Regulations—

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

“accident” has the meaning given in regulation 3;

“the Act” means the Merchant Shipping Act 1995;

“Chief Inspector” means the Chief Inspector of Marine Accidents appointed by the Secretary of State under section 267(1) of the Act, and any Deputy Chief Inspector;

“Council Directive 1999/35/EC” means Council Directive 1999/35/EC of 29th April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferries and high-speed passenger craft services<sup>(c)</sup>, as amended by Directive 2002/84/EC of the European Parliament and of the Council of 5th November 2002 amending the Directives on maritime safety and the prevention of pollution from ships<sup>(d)</sup>

“Court”, in the case of judicial proceedings or an application for disclosure made in England, Wales or Northern Ireland means the High Court, or in the case of judicial proceedings or an application for disclosure made in Scotland means the Court of Session;

“hazardous incident” means any event, other than an accident, associated with the operation of a ship which involves circumstances indicating that an accident nearly occurred;

“IMO” means the International Maritime Organization;

“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 267(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 10(2);

“major injury” means

(a) any fracture, other than to a finger, thumb or toe;

(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,

(ii) requiring resuscitation, or

(iii) requiring admittance to a hospital or other medical facility as an in-patient for more than 24 hours;

“MCA” means the Maritime and Coastguard Agency, an executive agency of the Department for Transport;

“pleasure vessel” means—

(a) any vessel which is—

(i) wholly owned by an individual or individuals and used only for the sport or pleasure of the owner or the immediate family or friends of the owner, or

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(a) 2004 c. 33.

(b) S.I. 1999/2567.

(c) O.J. L138, 1.6.1999, p.1.

(d) O.J. L324, 29.11.2002, p.55.

- (ii) owned by a body corporate and used only for the sport or pleasure of employees or officers of the body corporate, or their immediate family or friends, and is on a voyage or excursion which is one for which the owner is not paid for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion, or
- (b) any vessel which is wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club;

and no payments other than those mentioned above are made by or on behalf of the users of the vessel, other than by the owner, and in this definition, "immediate family" means, in relation to an individual, the husband, wife or civil partner of the individual, and a brother, sister, ancestor or lineal descendant of that individual or of that individual's husband, wife or civil partner;

"preliminary examination" means the initial part of an investigation which may be held to establish the causes and circumstances of an accident with a view to deciding whether any further investigation is warranted;

"senior surviving officer" means the senior surviving officer in the deck department and if there is no surviving officer in the deck department, the senior surviving engineer officer;

"serious injury" means any injury, other than a major injury, to a person employed or carried in a 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 that person, 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;

"United Kingdom ship" means a ship registered in the United Kingdom or a ship that is not registered under the law of any State but is eligible for registration in the United Kingdom under the Act;

"United Kingdom waters" means the sea or other waters within the seaward limits of the territorial sea of the United Kingdom;

"voyage data recorder" means the electronic or mechanical equipment which may be installed on a ship to record key navigational and control information.

(2) 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.

### **Meaning of "accident"**

3.—(1) For the purpose of these Regulations and of section 267 of the Act, "accident" means any occurrence on board a ship or involving a ship whereby—

- (a) there is loss of life or major injury to any person on board, or any person is lost or falls overboard from, the ship or one of its ship's boats;
- (b) the ship—
  - (i) causes any loss of life, major injury or material damage,
  - (ii) is lost or is presumed to be lost,
  - (iii) is abandoned,
  - (iv) is materially damaged by fire, explosion, weather or other cause,
  - (v) grounds,
  - (vi) is in collision,
  - (vii) is disabled, or
  - (viii) causes significant harm to the environment; or
- (c) any of the following occur—
  - (i) a collapse or bursting of any pressure vessel, pipeline or valve,
  - (ii) a collapse or failure of any lifting equipment, access equipment, hatch-cover, staging or boatswain's chair or any associated load-bearing parts,

- (iii) a collapse of cargo, unintended movement of cargo or ballast sufficient to cause a list, or loss of cargo overboard,
  - (iv) a snagging of fishing gear which results in the vessel heeling to a dangerous angle,
  - (v) a contact by a person with loose asbestos fibre except when full protective clothing is worn, or
  - (vi) an escape of any harmful substance or agent,
- if the occurrence might have caused serious injury or damage to the health of any person.

(2) In this regulation—

“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; and

“grounds” means making involuntary contact with the ground, except for touching briefly so that no damage is caused.

### **Application**

4.—(1) These Regulations shall apply to accidents involving or occurring on board—

(a) any United Kingdom ship, except that regulation 6 shall not apply in relation to:

- (i) a pleasure vessel,
- (ii) a recreational craft which is hired on a bareboat basis, or
- (iii) any other craft or boat, other than one carrying passengers, which is in commercial use in a harbour or on an inland waterway and is less than 8 metres overall in length,

unless, in the case of a craft or boat mentioned in sub-paragraphs (ii) or (iii), the accident involves any of the following—

- (aa) explosion,
- (bb) fire,
- (cc) death,
- (dd) major injury,
- (ee) capsize of a power-driven craft or boat, or
- (ff) pollution causing significant harm to the environment; and

(b) any other ship within the United Kingdom or United Kingdom waters, save that regulations 6 and 9(1) to (3) shall only apply in relation to such a ship if—

- (i) the ship is within the jurisdiction of a harbour master or Queen’s harbour master appointed, or required to be appointed, under any enactment;
- (ii) the ship is employed in carrying passengers to or from a port in the United Kingdom or a place mentioned in sub-paragraph (i); or
- (iii) an inspector, or other person acting on behalf of the Chief Inspector, requires that any of the evidence mentioned in regulation 9(1) or (2) be preserved.

(2) These Regulations apply to serious injuries and hazardous incidents as they apply to accidents, except that—

(a) regulation 6 (with the exception of paragraph (5)) and regulation 9 shall not apply to serious injuries; and

(b) regulations 6 and 9 shall not apply to hazardous incidents.

(3) An investigation may also be held under regulation 7 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 United Kingdom waters, if the Secretary of State so determines.

(4) For the purpose of this regulation, “hired on a bareboat basis” means hired without a professional master, skipper or crew.

### **Objective of investigation**

5.—(1) The sole objective of the investigation of an accident under these Regulations shall be the prevention of future accidents through the ascertainment of its causes and circumstances.

(2) It shall not be the purpose of an investigation to determine liability nor, except so far as is necessary to achieve its objective, to apportion blame.

### **Duty to report accidents and serious injuries**

6.—(1) When an accident occurs the following persons associated with the ship shall send a report to the Chief Inspector as soon as is practicable following the accident and by the quickest means available—

- (a) the master or, if he has not survived, the senior surviving officer, and
- (b) the ship's owner, unless he has ascertained to his satisfaction that the master or senior surviving officer has reported the accident in accordance with paragraph (a).

(2) In addition to any report made under paragraph (1), the following persons shall report to the Chief Inspector as soon as is practicable and by the quickest means available any accident of which they are aware—

- (a) in the case of an accident within or adjacent to the limits of any harbour, the harbour authority for that harbour;
- (b) in the case of an accident on any inland waterway in the United Kingdom, the person, authority or body having responsibility for that waterway; or
- (c) an official of the MCA in respect of an accident within United Kingdom waters.

(3) A person making a report pursuant to paragraph (1) or (2) shall, in so far as is practicable, include the following information:

- (a) name of ship and IMO, official or fishing vessel number;
- (b) name and address of owner;
- (c) name of the master, skipper or person in charge;
- (d) date and time of the accident;
- (e) where from and where bound;
- (f) latitude and longitude or geographical position in which the accident occurred;
- (g) part of ship where accident occurred if on board;
- (h) weather conditions;
- (i) name and port of registry of any other ship involved;
- (j) number of people killed or injured, together with their names, addresses and gender;
- (k) brief details of the accident, including, where known, the sequence of events leading to the accident, extent of damage and whether the accident caused pollution or a hazard to navigation.
- (l) if the ship is fitted with a voyage data recorder, the make and model of the recorder.

(4) In addition to making a report under the preceding paragraphs, the persons specified in paragraph (1) shall, so far as is reasonably practicable, ensure that the circumstances of every accident are examined and that a report giving the findings of such examination, stating any measures taken or proposed to prevent a recurrence, shall be provided to the Chief Inspector as soon as is practicable.

(5) The master and ship's owner shall, so far as is reasonably practicable, ensure that the circumstances of every serious injury are examined and one of them shall, within 14 days, provide the Chief Inspector with a report 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 when the person killed or injured is a stevedore or shore-based worker and the accident occurs in a port in the United Kingdom; or
- (b) to an accident which occurs in a shipyard in the United Kingdom.

### **Ordering of investigation**

7.—(1) The Chief Inspector may cause any accident to be investigated.

(2) Where a report has been received under paragraphs (1), (2), (4) or (5) of regulation 6, the Chief Inspector shall decide whether or not an investigation, including any preliminary examination, should be carried out and shall notify the parties to the accident of his decision within 28 days following receipt by him of the report.

(3) Before deciding whether an investigation should be carried out and if so, what form it should take, the Chief Inspector may cause to be obtained such information as he considers necessary concerning the accident and any remedial action taken as a result, and any person mentioned in regulation 6(1) or (2), as well as any other person who is in possession of it and has been requested to do so by an inspector, shall provide such information to the best of their ability and knowledge.

(4) In the case of an accident to which regulation 3(a) applies, the Chief Inspector may decide not to carry out an investigation if he is satisfied, or it is otherwise established to his satisfaction, that—

- (a) any loss of life resulted from suicide or natural causes, or
- (b) any major injury resulted from attempted suicide,

and in such circumstances he may discontinue any investigation which has already been commenced.

(5) Public notice that an investigation has been commenced may be given in such manner as the Chief Inspector may think fit, and may invite any persons who so desire to present relevant evidence to the Inspector in such a manner and within such a time as is specified in the notice.

(6) The Secretary of State may require the Chief Inspector to investigate any accident or to expand the scope of an investigation to include any further consequences of an accident, including—

- (a) salvage and pollution aspects; or
- (b) the conduct of search and rescue operations

and in such circumstances the Chief Inspector may conduct an investigation into the further consequences of an accident which may be separate and distinct from the investigation into the initial accident.

#### **Subsequent or reopened investigations**

8.—(1) Notwithstanding a decision by the Chief Inspector under regulation 7(2) not to investigate, he may at any subsequent time cause an investigation to be carried out if he is then satisfied there is good reason in the interests of future safety to do so.

(2) The Chief Inspector may cause any investigation to be re-opened if, following its completion, in his opinion new and important evidence is discovered which could have a material effect on any safety recommendations made.

(3) Any investigation may be re-opened either in whole or as to any part of it and a re-opened investigation shall be subject to and conducted in accordance with the provisions of these Regulations.

#### **Preservation of evidence**

9.—(1) Following an accident involving a United Kingdom ship which is reportable under regulation 6, the persons mentioned in paragraph (3) shall so far as is practicable ensure that all—

- (a) charts;
- (b) log books;
- (c) electronic and magnetic recording and video tapes, including information from a voyage data recorder or recording system relating to the period preceding, during and after the accident; and
- (d) all documents or other records which might reasonably be considered pertinent to the accident,

are kept and that no alteration is made to any recordings or entries in them.

(2) In the case of an accident involving a United Kingdom ship, the persons mentioned in paragraph (3) shall also ensure that—

- (a) all information from a voyage data recorder or recording system relating to the circumstances of an accident is saved and preserved, in particular by taking steps, where necessary, to prevent such information from being overwritten; and
- (b) any other equipment which might reasonably be considered pertinent to the investigation of the accident is so far as practicable left undisturbed.

- (3) The persons referred to in paragraphs (1) and (2) are—
- (a) the master or, if he has not survived, the senior surviving officer, and
  - (b) the ship's owner, unless he has ascertained to his satisfaction that the master or senior surviving officer has taken the action in question.
- (4) The duty under paragraph (1) to ensure that documents, information or records are kept and not altered and to ensure under paragraph (2) that information is saved and preserved, or that equipment is left undisturbed, shall continue until—
- (a) notification is received from the Chief Inspector that no investigation is to take place or that the investigation has been completed;
  - (b) 28 days have passed since the Chief Inspector received the report referred to in regulation 6(1) and no notice has been sent by the Chief Inspector that he has decided to investigate the matter; or
  - (c) the Chief Inspector or an inspector carrying out the investigation gives written notification that he no longer requires them.
- (5) Following an accident in United Kingdom waters involving a ship which is not a United Kingdom ship, the persons mentioned in paragraph (3) shall comply with the requirements of paragraphs (1) and (2) if requested to do so by or on behalf of the Chief Inspector.
- (6) An inspector may, pending investigation, prohibit persons from gaining access to, or interfering with, any ship, ship's boat or other equipment involved in an accident.
- (7) Following an accident, the Chief Inspector may, if he considers it reasonably necessary for the collection or preservation of evidence in connection with any investigation, including preliminary examination, relating to the accident, require any of the master or, if he has not survived, the senior surviving officer and the ship's owner to ensure that a ship is accessible within United Kingdom waters to any inspector engaged in the investigation of such accident, until the process of collecting or preserving the evidence has been completed to the inspector's satisfaction.
- (8) The Chief Inspector shall not require a ship to remain in United Kingdom waters any longer than is necessary for the collection or preservation, as the case may be, of the evidence mentioned in paragraph (7) and shall take all reasonable steps to ensure that such evidence is collected or preserved expeditiously.
- (9) No requirement under paragraph (7) shall be made unless the Chief Inspector has reasonable grounds for concern that if the ship leaves United Kingdom waters, access to it, to any member of the crew, or to any evidence on board relating to the investigation may subsequently be denied to him or any inspector conducting such investigation.

### **Conduct of investigations**

**10.**—(1) If the Chief Inspector decides pursuant to regulation 7(1) that an investigation shall be carried out, it shall be undertaken by one or more inspectors at such times and places and in such manner as appear to them most conducive to achieving the objective set out in regulation 5.

(2) The Chief Inspector may also appoint one or more persons who are not inspectors appointed under the Act for the purpose of carrying out an investigation in circumstances where inspectors appointed under the Act are not conveniently available or where the persons appointed have special qualifications or experience, and such persons shall have the powers conferred on an inspector by section 259 and 267(8) of the Act.

(3) An investigation may extend to cover all events and circumstances preceding the accident together with subsequent events and circumstances which in the opinion of an inspector may have been relevant to its cause or outcome.

(4) Every person required to attend before an inspector shall be allowed the reasonable expenses of attending, payable by the Secretary of State.

(5) Any person, not being a solicitor or other professional legal adviser acting solely on behalf of the person required to attend, who—

- (a) has been allowed by an inspector to be present; or
- (b) has been nominated to be present by a person required to attend

at an oral examination before an inspector, may at any time be excluded from being present by the inspector with the agreement of the Chief Inspector, if—

- (i) both the inspector and Chief Inspector have substantial reason to believe that his presence would hamper the investigation with the result that the objective in regulation 5 is likely to be hindered and future safety thereby endangered; and
- (ii) the Chief inspector is satisfied, having regard to all the circumstances, that it is proper to exclude that person.

(6) Where a person nominated to be present has been excluded in accordance with paragraph (5), the person required to attend shall be entitled to nominate another person to be present at the oral examination in place of the excluded person and paragraph (5) shall then apply to that other person.

(7) Any document, record or information mentioned in regulation 9, properly required by an inspector to be produced for the purposes of an investigation (whether on board the ship involved or otherwise), may be retained by him until the investigation is completed.

(8) In relation to any investigation—

- (a) where a preliminary examination has been conducted the Chief Inspector shall decide, having regard to the objective set out in regulation 5, whether it is appropriate in all the circumstances to conduct further investigation leading to publication of a report;
- (b) the Chief Inspector may subsequently decide to discontinue the investigation at any time and shall make his reasons for doing so publicly available.

#### **Co-operation with other States**

**11.**—(1) Where an investigation conducted under these Regulations involves a ro-ro ferry or high-speed passenger craft to which Council Directive 1999/35/EC applies, the Chief Inspector shall enable a substantially interested State which is an EEA State to participate or co-operate in the investigation in accordance with the IMO Code.

(2) In paragraph (1)—

“EEA State” means a Member State of the European Communities, Norway, Iceland or Liechtenstein;

“IMO Code” means the Code for the Investigation of Marine Casualties and Incidents adopted by the International Maritime Organization by means of Assembly Resolution A.849(20) of 27th November 1997;

“ro-ro ferry” and “high-speed passenger craft” have the meanings given to them by Council Directive 1999/35/EC; and

“substantially interested State” has the meaning given by the IMO Code.

#### **Disclosure of records**

**12.**—(1) Subject to the following paragraphs, the names, addresses or any other details of anyone who has given evidence to an inspector shall not be disclosed.

(2) The following documents or records shall not be made available for purposes other than the investigation, unless a Court orders otherwise—

- (a) subject to paragraph (3), all declarations or statements taken from persons by an inspector or supplied to him in the course of his investigation, together with any notes or voice recordings of interviews;
- (b) medical or confidential information regarding persons involved in an accident;
- (c) any report made under regulation 6(4) or (5);
- (d) copies of the report other than the final report except as mentioned in regulation 13(3)(a), (4), or (8).

(3) A person who has given a declaration or statement to an inspector in the course of an investigation may make available a copy of his declaration or statement to another person as he sees fit.

(4) Any independent technical analysis commissioned by the Chief Inspector and opinions expressed in such analysis may be made publicly available if he considers it appropriate to do so.

(5) Subject to paragraph (6), no order shall be made under paragraph (2) unless the Court is satisfied, having regard to the views of the Chief Inspector, that the interests of justice in disclosure outweigh any prejudice, or likely prejudice, to—

- (a) the investigation into the accident to which the document or record relates,
- (b) any future accident investigation undertaken in the United Kingdom, or
- (c) relations between the United Kingdom and any other State, or international organisation.

(6) The provisions of this regulation shall be without prejudice to any rule of law which authorises or requires the withholding of any document or record or part thereof on the ground that disclosure of it would be injurious to the public interest.

(7) Copies of information obtained from a voyage data recorder or from other recording systems, pertinent to the accident, including voice recordings (other than any recordings mentioned in paragraph (2)(a)), video recordings and other electronic or magnetic recordings and any transcripts made from such information or recordings, may be provided at the discretion of the Chief Inspector to the police or other official authorities.

### **Reports of investigations**

13.—(1) Subject to paragraph (3), the Chief Inspector shall cause a report of an investigation into an accident conducted pursuant to regulation 10(8)(a), other than an accident the investigation of which is being undertaken on behalf of a State other than the United Kingdom, to be submitted to the Secretary of State and made publicly available in the shortest time possible and in such a manner as he thinks fit.

(2) The report shall set out—

- (a) conclusions relating to the facts of the accident;
- (b) where the facts cannot be clearly established, analysis and professional judgement to determine the probable facts; and
- (c) recommendations for future safety.

(3) The Chief Inspector shall not make the report publicly available until he has—

- (a) served a notice under this regulation upon any person who, or organisation which, could be adversely affected by the report or, if that person is deceased, upon such person or persons as appear to the Chief Inspector, at the time he proposes to serve notice pursuant to this paragraph, as best to represent the interests and reputation of the deceased in the matter, and
- (b) considered the representations relating to the facts or analysis contained in the report which may be made to him in accordance with paragraph (5) by or on behalf of the persons served with such notice, and amend the report in such manner as he thinks fit.

(4) The notice referred to in paragraph (3)(a) shall be accompanied by a draft copy of the report.

(5) The representations referred to in paragraph (3)(b) shall be in writing and shall be served on the Chief Inspector within 28 days of service of the notice referred to in paragraph (3)(a) or within such further period as may be allowed under regulation 16.

(6) Subject to any Court order under regulation 12, no person shall disclose any information—

- (a) which has been furnished to him pursuant to paragraph (4) of this regulation; or
- (b) which has otherwise been furnished to him by or on behalf of the Chief Inspector in advance of the publication of a report and whose confidentiality is protected by regulation 12,

or permit such information to be disclosed, save with the prior consent in writing of the Chief Inspector, to any other person, except to such advisers as are necessary in order to make representations to the Chief Inspector referred to in paragraph (3)(b), and those advisers shall similarly be subject to the duty not to disclose the information or permit it to be disclosed.

(7) A copy of the report when made publicly available shall be given by the Chief Inspector to—

- (a) any person who has been served with a notice pursuant to paragraph (3)(a);
- (b) those persons or bodies to whom recommendations have been addressed in that report;

- (c) the Secretary of State;
- (d) the IMO;
- (e) where regulation 11(1) applies to the investigation, to the European Commission; and
- (f) any person or organisation whom the Chief Inspector considers may find the report useful or of interest.

(8) Where an inquest or fatal accident inquiry is to be held following an accident which has been subject to investigation, a draft report may be made available in confidence to the coroner or procurator fiscal by the Chief Inspector.

(9) If any part of the report or analysis therein is based on information obtained pursuant to an inspector's powers under sections 259 and 267(8) of the Act, the report shall be inadmissible in any judicial proceedings whose purpose or one of whose purposes is to attribute or apportion liability or blame unless a Court or tribunal, having regard to the factors mentioned in regulation 12(5)(b) or (c), determines otherwise.

(10) In this regulation, "judicial proceedings" includes any civil or criminal proceedings before any court, tribunal or person having by law the power to hear, receive and examine evidence on oath.

#### **Publications other than reports of investigations**

**14.—**(1) The Chief Inspector may, at his discretion and to promulgate any lessons learned, from time to time publish collective short reports of accidents which have not been the subject of a report published under regulation 13(1).

(2) The Chief Inspector may, at his discretion, submit a report to the Secretary of State on any matter arising from his analysis of marine accident investigations.

#### **Recommendations**

**15.—**(1) The Chief Inspector may as a result of one or more investigations, whether or not completed, at any time make recommendations as to how future accidents may be prevented.

(2) The actions recommended shall be addressed to those persons or bodies who, in the opinion of the Chief Inspector, are most fitted to implement them.

(3) Recommendations shall be made publicly available if the Chief Inspector considers that to do so is in the interests of safety or preventing pollution.

(4) Any person to whom a recommendation is addressed pursuant to paragraph (2) shall, without delay—

- (a) take that recommendation into consideration;
- (b) send to the Chief Inspector—
  - (i) details of the measures, if any, he has taken or proposes to take to implement the recommendation and, in a case where he proposes to implement measures, the timetable for securing that implementation, or
  - (ii) an explanation as to why the recommendation is not to be the subject of measures to be taken to implement it,
 and any details or timetable pursuant to sub-paragraph (i) or explanation pursuant to sub-paragraph (ii) shall be provided to the Chief Inspector within 28 days following receipt of the recommendation; and
- (c) give notice to the Chief Inspector if at any time any information provided to the Chief Inspector in pursuance of sub-paragraph (4)(b)(i) concerning the measures he proposes to take or the timetable for securing their implementation is rendered inaccurate by any change of circumstances.

(5) Subject to paragraphs (6) and (7) the Chief Inspector shall, annually or at such other intervals as he sees fit, make information publicly available in respect of the matters, including any explanation, mentioned in paragraphs (4)(b) and (c) which have been communicated to him and shall inform the Secretary of State of those matters.

(6) The Chief Inspector shall not publish information under paragraph (5) unless he has first notified any person mentioned in the information and considered any representations relating to the information which may be made to him in accordance with paragraph (7) by or on behalf of any person so notified, and amended the information in such manner as he thinks fit.

(7) Any representations made pursuant to paragraph (6) shall be in writing and shall be served on the Chief Inspector within 28 days of receipt of the notification referred to in that paragraph or within such further period as may be allowed under regulation 16.

#### **Extension of time**

16.—(1) The Chief Inspector shall have the power to extend the period of 28 days prescribed in regulation 13(5), but he shall do so only if he considers that there are good reasons warranting such an extension having regard to the requirement in regulation 13(1) for a report of an investigation to be made available in the shortest time possible.

(2) The Chief Inspector shall have the power to extend the period of 28 days prescribed in regulation 15(4)(b) where he considers it appropriate to do so.

(3) The powers under this regulation may be exercised notwithstanding that the prescribed period has expired.

#### **Service of documents**

17. 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 the address by telex, facsimile, or other means which produces a document containing a text of the communication, or by electronic mail in which event the document shall be regarded as having been served when it is sent.

#### **Penalties**

18.—(1) A person shall be guilty of an offence if—

- (a) being a person mentioned in regulation 6(1), (2)(a) or (b), he fails without reasonable cause to report an accident as required by regulation 6, or
- (b) being a master or ship's owner, he fails without reasonable cause to comply with regulation 6(5), or
- (c) being a person referred to in paragraph (a), he fails without reasonable cause to provide information as required by regulation 7(3), or
- (d) he falsely claims to have any additional information or new evidence pertaining to any accident or serious injury,

and such a person shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If any person fails without reasonable cause to comply with any requirement, duty or prohibition in regulation 9(1), (2) or (5) to (7), 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 without reasonable cause discloses or permits to be disclosed any information in contravention of regulations 12(1) or 13(6), or makes available any documents or records in contravention of regulation 12(2), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Signed by authority of the  
Secretary of State for Transport

*David Jamieson*  
Parliamentary Under Secretary of State,  
Department for Transport

22nd March 2005

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations replace the Merchant Shipping (Accident Reporting and Investigation) Regulations 1999 (S.I. 1999/2567).

The 1999 Regulations have been revised to reflect the current working practices of the Marine Accident Investigation Branch (MAIB) of the Department for Transport and to align them, where possible, with practices applicable to the investigation of accidents in other transport modes.

The main changes are:

Definitions of “preliminary examination”, “senior surviving officer”, “United Kingdom waters” and “voyage data recorder” have been introduced and the definition of “pleasure vessel” has been modified to take account of the concept of civil partners under the Civil Partnership Act 2004 when it comes into force. (*Regulation 2(1)*).

The MAIB’s main concern that safety lessons should be learned is reflected in modification of the regulation relating to the purpose of investigation, which now refers to the sole objective of the investigation of an accident being the prevention of future accidents, whilst recognizing that causes and circumstances will be established in the course of achieving the sole objective. (*Regulation 5*).

The duty to report accidents has been expanded to fall upon the ship’s owner (including any manager) and senior surviving officer, as well as upon the master or skipper. In addition, a requirement has been introduced for harbour authorities and other responsible authorities, as well as the Maritime and Coastguard Agency (MCA), to report accidents of which they are aware. (*Regulation 6*).

The circumstances in which an investigation may be ordered have been modified specifically to exclude any loss of life resulting from suicide or natural causes, or any serious injury resulting from attempted suicide. The requirement for an investigation to be discontinued where the Secretary of State orders a formal investigation to be held has been removed. (*Regulation 7*).

The duty to preserve evidence has been modified to fall upon the persons having a duty to report accidents under regulation 6. It has also been expanded to provide for the preservation of information from voyage data recorders and to allow a request to be made to personnel concerned with an overseas ship to comply with the requirements relating to the preservation of evidence following an accident in United Kingdom waters. A new power is provided for the Chief Inspector to require a ship to be accessible within United Kingdom waters if he considers this to be necessary for the collection or preservation of evidence and has reasonable grounds for concern that access to the ship or its crew would otherwise subsequently be denied. (*Regulation 9*).

In relation to the conduct of investigations, inspectors have been provided with a new power to exclude any person who has been allowed by an inspector or nominated by a witness to be present at an oral examination if he is not a solicitor or other professional legal adviser acting solely on behalf of the witness and they have substantial reason to believe that the person’s presence would hamper the investigation. Such an exclusion must be sanctioned by the Chief Inspector. If a nominated person is excluded, the witness may nominate an alternative person to be present. Provision has also been made for the Chief Inspector to decide, following a preliminary examination, whether or not a full investigation leading to a published report should take place. (*Regulation 10*).

The regulation relating to disclosure of records has been modified to increase the range of documents or records that may be made available without a Court order and to enable a witness to disclose his own declaration as he sees fit. A new provision has been inserted to ensure that an order is made only where the Court is satisfied that the interests of justice in disclosure outweigh any prejudice to accident investigation or to the United Kingdom’s external relations. Provision is also made for the Chief Inspector, at his discretion, to share certain information or data with the police or other official authorities. (*Regulation 12*).

In relation to investigations which proceed beyond the preliminary examination stage, provision is made about the facts and matters to be set out, including recommendations for future safety. The categories of persons or bodies to whom the Chief Inspector shall send a copy

of a published report are expanded. The provision enabling the Secretary of State to direct that a report should not be made publicly available, or that deletions should be made, on grounds of national security, has been removed. Restrictions are imposed on the disclosure, without the Chief Inspector's consent, of information which has been provided in a draft report or otherwise in advance of publication. A new provision has been added to make a report inadmissible in civil or criminal judicial proceedings unless a court orders otherwise. (*Regulation 13*).

New provision is made introducing a duty upon anyone to whom a recommendation is addressed to consider it and to provide to the Chief Inspector, within 28 days, details of any implementing action or to explain why none has been taken, and allowing the Chief Inspector to publish information concerning these matters. (*Regulation 15*).

In relation to the service of documents, provision is made to allow for service by e-mail. (*Regulation 17*).

The Regulations create new offences whereby it will be an offence for harbour authorities and inland waterway authorities to fail without reasonable cause to report accidents of which they are aware, or to provide any information required by the Chief Inspector under regulation 7.

It will also be an offence for any person to fail without reasonable cause to comply with a prohibition of access to, or interference with, any ship involved in an accident, or with a requirement to ensure that a ship is accessible in United Kingdom waters for the collection or preservation of evidence. (*Regulation 18*).

A Regulatory Impact Assessment has been prepared and copies can be obtained from the Marine Accident Investigation Branch, Carlton House, Carlton Place, Southampton SO15 2DZ. A copy has been placed in the Library of each House of Parliament.

Copies of the IMO Code for the Investigation of Marine Casualties and Incidents may be obtained from the International Maritime Organization at 4 Albert Embankment, London SE1 7SR.





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STATUTORY INSTRUMENTS

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