
STATUTORY INSTRUMENTS

1985 No. 1001

The Merchant Shipping (Formal Investigations) Rules 1985

Evidence and Procedure

7.—(1) Without prejudice to the admission of documents as secondary evidence allowed by statute or otherwise, affidavits, statutory declarations and other written evidence shall, unless the wreck commissioner considers it unjust, be admitted as evidence at the formal investigation.

(2) A party may give to any other party notice in writing to admit any documents (saving all just exceptions), and in case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all the costs of proving the documents, whatever may be the result, unless the wreck commissioner is of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice has been given, except where the omission to give the notice has, in the opinion of an officer by whom the costs are taxed, caused a saving of expense.

(3) At any time before the date appointed for the commencement of the formal investigation the wreck commissioner may hold a preliminary meeting at which any direction may be given or any preliminary or interlocutory order as to the procedure may be made.

(4) At the time and place appointed for the commencement of the formal investigation the wreck commissioner may proceed with the formal investigation whether the parties upon whom a notice of investigation has been served, or a person who has applied to become a party, or any of them, are present or not, provided that where the party concerned has been served with the notice of investigation by post the wreck commissioner shall not proceed with the formal investigation in his absence unless satisfied that the party has been served in accordance with the requirements of Rule 5(5).

(5) The wreck commissioner shall hold the formal investigation in public save to the extent to which he is of opinion that, in the interest of justice or for other good and sufficient reason in the public interest, any part of the evidence, or any argument relating thereto, should be heard in private.

(6) The formal investigation shall commence with an opening statement by the Secretary of State, followed at the discretion of the wreck commissioner with brief speeches on behalf of the other parties. The proceedings shall continue with the production and examination of witnesses on behalf of the Secretary of State; and the Secretary of State may adduce documentary evidence. These witnesses may be cross-examined by the parties in such order as the wreck commissioner may direct and then be re-examined on behalf of the Secretary of State. The Secretary of State shall then cause to be stated the questions relating to the shipping casualty or incident and to the conduct of persons connected with the shipping casualty or incident upon which the opinion of the wreck commissioner is desired. In framing the questions for the opinion of the wreck commissioner the Secretary of State may make such modifications in, additions to, or omissions from, the questions as set out in the notice of investigation or subsequent notices referred to in Rule 5(2) of these Rules as, having regard to the evidence which has been given, the Secretary of State may think fit.

8.—(1) Any other party to the formal investigation shall be entitled to make a further opening statement, to give evidence to adduce documentary evidence, to call witnesses, to cross-examine any witnesses called by any other party and to address the wreck commissioner in such order as

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the wreck commissioner may direct. The Secretary of State may also produce and examine further witnesses who may be cross-examined by the parties and re-examined by the Secretary of State.

(2) A party who does not appear in person at a formal investigation and is not represented may make representations in writing to the wreck commissioner and such written representations may be read out at the formal investigation by or on behalf of the wreck commissioner.

9. Every formal investigation shall be conducted in such manner that if substantial criticism is made against any person that person shall have an opportunity of making his defence either in person or otherwise.

10. Any of the parties who desires so to do may, after completion of the taking of evidence, address the wreck commissioner upon the evidence and the Secretary of State may address the wreck commissioner in reply upon the whole case. After this address in reply upon the whole case, at the discretion of the wreck commissioner, an officer of whose conduct substantial criticism has been made during the formal investigation may be permitted or invited to make a final statement as to why, in the event of a finding that his conduct caused or contributed to the casualty, his certificate of competency should not be cancelled or suspended, or as to why he should not be censured.