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STATUTORY INSTRUMENTS

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**1985 No. 1001**

**MERCHANT SHIPPING**

**The Merchant Shipping (Formal Investigations) Rules 1985**

<i>Made</i>	- - - -	<i>1st July 1985</i>
<i>Laid before Parliament</i>		<i>10th July 1985</i>
<i>Coming into Operation</i>		<i>1st August 1985</i>

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

*Commencement and interpretation*

1. These Rules may be cited as the Merchant Shipping (Formal Investigations) Rules 1985 and shall come into operation on 1st August 1985.

2.—(1) In these Rules, unless the context otherwise requires:—

“the Act of 1970” means the Merchant Shipping Act 1970;

“a formal investigation” means a formal investigation into a shipping casualty or incident under section 55 of the Act of 1970;

“an incident” means an incident of the kind described in section 55(1A) of the Act of 1970<sup>(2)</sup>;

“officer” means an officer qualified for the purposes of section 43 of the Act of 1970<sup>(3)</sup> and includes a master, skipper, mate, second hand, deck officer, marine engineer officer and radio officer;

“re-hearing” means a re-hearing of a formal investigation;

“a shipping casualty” means a casualty of the kind described in section 55(1) of the Act of 1970<sup>(4)</sup>;

“substantial criticism” means criticism which in the opinion of the wreck commissioner is substantial criticism;

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

(2) Section 55(1A) of the Merchant Shipping Act 1970 was inserted by section 32(2)(b) of the Merchant Shipping Act 1979 (c. 39).

(3) Section 43 was amended by section 37(2) and (3) of the Merchant Shipping Act 1979.

(4) Section 55(1)(b) was amended by section 32(2)(a) of the Merchant Shipping Act 1979.

“wreck commissioner” means, in the case of a formal investigation to be held in England, Wales or Northern Ireland, a wreck commissioner appointed for that purpose by the Lord Chancellor and in the case of a formal investigation to be held in Scotland a sheriff.

(2) Any period of time specified in these Rules by reference to days shall be exclusive of the first day and inclusive of the last day unless the last day falls on a Saturday, Sunday, Christmas Day, Good Friday or any day appointed by law to be a bank holiday in that part of the United Kingdom where the formal investigation is to be held, in which case the time shall be reckoned exclusively of that day also.

#### *Application*

3. These Rules apply to any formal investigation and to any re-hearing of such a formal investigation under section 57 of the Act of 1970 which is not held by the High Court or the Court of Session.

#### *Wreck Commissioner and Assessors*

4.—(1) Where it appears to the Secretary of State that a formal investigation should be held into the circumstances or causes of, or into any particular matter relating to, a shipping casualty or incident, he may direct that a formal investigation be held and conducted in accordance with these Rules by a wreck commissioner. The wreck commissioner shall be assisted by one or more assessors appointed by the Lord Chancellor if the formal investigation is to be held in England, Wales or Northern Ireland or, if the formal investigation is to be held in Scotland, by the Lord Advocate.

(2) The Lord Chancellor shall maintain a list of assessors who have the qualifications set out in the Schedule hereto and may, at any time, add or withdraw the name of any person to or from the list.

(3) If any question as to the cancellation or suspension of an officer's certificate is likely to arise, the wreck commissioner shall be assisted by not less than two assessors:—

- (a) two of whom shall be, in the case of a master or deck officer, mercantile marine masters;
- (b) one of whom shall be, in the case of a marine engineer officer, a mercantile marine engineer, and one a mercantile marine master;
- (c) one of whom shall be, in the case of a fishing vessel officer, a mercantile marine master and one a fishing vessel skipper.

(4) In any case in which paragraph (3) above applies, wherever possible at least one of the assessors appointed shall have had experience in the same capacity and in the same type of ship as the officer concerned.

#### *Notice of Investigation and Parties to the Investigation*

5.—(1) When the Secretary of State causes a formal investigation to be held, he shall cause a notice, in these Rules called a “notice of investigation” to be served on any persons, including the Department of Transport, who in the opinion of the Secretary of State ought to be made a party; and any such person upon whom a notice of investigation has been served shall be a party to the formal investigation. The Secretary of State shall be a party to the formal investigation.

(2) The notice of investigation shall contain:—

- (a) a statement of the facts giving rise to the formal investigation;
- (b) a statement of the questions which the Secretary of State intends to raise at the formal investigation.

At any time before or during the hearing of the formal investigation the Secretary of State may amend, add to or omit any of the questions contained in the notice of investigation.

(3) The Secretary of State shall as far as practicable cause every party to the formal investigation to be given not less than 30 days notice of the time of and the date when and the place where the hearing of the formal investigation will commence;

provided that such notice shall not be required to be given to any person who is made a party pursuant to Rule 6 of these Rules after the date of the hearing has been fixed.

(4) If at any time during the preparation for the formal investigation it appears likely to the Secretary of State that the conduct of any person will be in issue, the Secretary of State shall cause that person to be notified to that effect.

(5) Service of any notice or other document issued under this Rule may be effected either personally or by registered post or by the recorded delivery service to the person's last known address.

6. Any person who is not already a party to a formal investigation may, with the leave of the wreck commissioner, become a party to the formal investigation. Application for such leave may be made to the wreck commissioner at any time before or during the formal investigation.

#### *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 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.

#### *Adjournment*

**11.** The wreck commissioner may adjourn the formal investigation from time to time and from place to place, and where an adjournment is asked for by any party to the formal investigation the wreck commissioner may impose such terms as to payment of costs or otherwise as he thinks just as a condition of granting the adjournment.

#### *Result of Formal Investigation*

**12.** At the end of the formal investigation the wreck commissioner shall:—

- (a) in cases where an officer's certificate is cancelled or suspended, give his decision concerning the certificate and a brief summary of his findings in public; and
- (b) whether or not a certificate is in issue, make a report on the case to the Secretary of State including his and the assessor's, or assessors', findings as to the reasons for the shipping casualty or incident or as to any particular matter relating thereto, or as to the conduct or any person implicated therein, and the reasons for suspending or cancelling any officer's certificate.

#### *Report*

**13.** Each assessor shall either sign the report with or without reservations, or state in writing his dissent therefrom and his reasons for such dissent, and such dissent and reasons (if any) shall be forwarded to the Secretary of State with the report. The Secretary of State shall, unless in the interests of justice or otherwise in the public interest there are good reasons to the contrary, cause each party to the formal investigation to be given a copy of the whole or, where appropriate, the relevant part of the report.

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*Costs of the Formal Investigation*

**14.** Where the wreck commissioner orders the costs and expenses of the formal investigation or any part thereof to be paid by a party other than the Secretary of State, he shall state in a report his reasons for making such an order.

*Re-hearings*

**15.** Any re-hearing of a formal investigation pursuant to section 57(1) of the Act of 1970 which is not held by the High Court or the Court of Session shall be conducted in accordance with the provisions of these Rules.

1st July 1985

*Nicholas Ridley*  
Secretary of State for Transport

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## SCHEDULE

Rule 4(2)

### QUALIFICATIONS OF ASSESSORS

#### MERCANTILE MARINE MASTERS

- (a) Must be in possession of a Certificate of Competency (Deck Officer) (Class 1) (Master Mariner) (or its equivalent) and have had command of a United Kingdom registered vessel for at least 2 years.
- (b) Must have a wide knowledge of all modern aids to navigation.
- (c) Must not be more than 70 years of age.

#### MERCANTILE MARINE ENGINEERS

- (a) Must be in possession of a Certificate of Competency (Marine Engineer Officer) (Class 1) (or its equivalent) and have been the Chief Engineer Officer of a United Kingdom registered ship for at least 2 years.
- (b) Must have a wide knowledge of matters relating to marine engineering.
- (c) Must not be more than 70 years of age.

#### FISHING VESSEL SKIPPERS

- (a) Must be in possession of a Skipper's (Full) Certificate and have had command of a fishing vessel for at least 2 years.
- (b) Must have a wide knowledge of fishing vessels and their operation.
- (c) Must not be more than 70 years of age.

#### ROYAL NAVY

- (a) Must have had rank of Admiral or Captain and 2 years service in command of one of Her Majesty's ships at sea; or
- (b) must have had rank of Commander and 2 years service in that rank in one of Her Majesty's ships at sea; or
- (c) must have had rank of Lieutenant-Commander and 2 years service in that rank as an appropriate specialist in one of Her Majesty's ships at sea; and
- (d) must not be more than 70 years of age.

#### PERSONS OF SPECIAL SKILL OR KNOWLEDGE

- (a) Naval architects.
- (b) Persons with special skills or knowledge, including managerial experience.

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### EXPLANATORY NOTE

These rules prescribe the procedure to be followed at any formal investigation into a shipping casualty or incident. The wreck commissioner will be assisted by one or more assessors. Notice of the formal investigation must be served on anyone who in the opinion of the Secretary of State ought to be made a party, though other persons may apply to the wreck commissioner to be made a party. At the end of the formal investigation the wreck commissioner shall give his decision regarding an

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officer's certificate, in cases where it was liable to be cancelled or suspended, and make a report to the Secretary of State. An assessor may sign the report with or without reservations.