

1989 No. 1172

MERCHANT SHIPPING

**The Merchant Shipping (Accident Investigation)
Regulations 1989**

<i>Made</i> - - - -	<i>6th July 1989</i>
<i>Laid before Parliament</i>	<i>14th July 1989</i>
<i>Coming into force</i>	<i>7th August 1989</i>

The Secretary of State, in exercise of the powers conferred on him by sections 33 and 53 of the Merchant Shipping Act 1988^(a) (hereinafter called “the Act”), and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation and Commencement

1. These Regulations may be cited as the Merchant Shipping (Accident Investigation) Regulations 1989 and shall come into force on 7th August 1989.

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 material damage is caused by a ship.

(2) In these Regulations

“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;

“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 as defined in regulation 2(1), by which the safety of a ship or any person on board is imperilled, or as a result of which serious damage to any ship or structure or damage to the environment might be caused;

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

^(a) 1988 c.12.

“Inspector’s Inquiry” means an investigation ordered under regulation 6(2);
“investigation” means any investigation carried out by an inspector, including but not limited to an Inspector’s Inquiry;

“major injury” has the same meaning as in the Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulations 1982(a);

“pleasure craft” means a vessel primarily used for sport or recreation;

“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;

“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.

Application

3.—(1) These Regulations, except regulations 5 and 7, shall apply to hazardous incidents in the same way as they apply to accidents, and the term “accident” shall be construed accordingly.

(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 craft, 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.

(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

5.—(1) Except as provided in paragraph (2), 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) A report made to a Marine Office of the Department of Transport or to HM Coastguard, or a report made under the Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulations 1982, or the Fishing Vessels (Reporting of Accidents) Regulations 1985(b) shall be regarded as complying with regulation 5(1).

Ordering of Investigation

6.—(1) Any accident to which these Regulations apply may be investigated. Where an accident occurs, the Chief Inspector shall decide whether or not an investigation is required, and where a report has been received under regulation 5 shall cause the master

(a) S.I. 1982/876, amended by S.I. 1984/93.

(b) S.I. 1985/855.

or owner to be notified of his decision. He may before deciding cause to be obtained such further information as he considers necessary. The owner or master of the ship concerned shall upon being so required provide such further information to the best of his ability and knowledge.

(2) The Chief Inspector may order in view of the importance or seriousness of the accident that the investigation takes the form of an Inspector's Inquiry, to 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 whom he may appoint specifically for the purpose; and such other person or persons shall have the powers conferred on an inspector by section 27 of the Merchant Shipping Act 1979(a).

(3) 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 writing within a time to be 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 shall be kept and no alteration shall be made to entries therein, and any equipment which might reasonably be considered pertinent to such an accident shall so far as is practicable be 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 his reasonable expenses of attending.

(4) Upon completion of an investigation the inspector shall submit to the Chief Inspector his findings 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 conclusions together with such observations and recommendations as he thinks fit to make.

(5) 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

9.—(1) 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 and his own observations thereon and any recommendations which he considers appropriate.

(a) 1979 c.39.

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(a), may publish the Report if he thinks fit and shall do so if—

- (a) 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
- (b) it relates to a serious casualty to a United Kingdom ship;

unless in his opinion there is good reason to the contrary.

(2) Where the Report or any investigation indicates that there may have been a breach of the law and that prosecution of the suspected offender should be considered, the Report shall not be published until either prosecution, including any appeal, has been concluded or it has been decided not to prosecute.

(3) Where an Inquiry under section 52 of the Merchant Shipping Act 1970 into the conduct of a Certificated Officer, or action by the Secretary of State under section 53 of that Act in respect of the holder of a certificate other than an officer's, is under consideration then the Report shall not be published until proceedings under either of the said sections have been completed or it has been decided not to pursue such proceedings.

(4) Except when a Formal Investigation has been ordered, or where paragraphs (2) or (3) above apply, 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) is 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 remain in issue.

(5) The Chief Inspector shall on submitting the Report to the Secretary of State in addition shall refer to any service of the Report 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.

(6) The Chief Inspector shall forward any recommendations contained in the Report to those persons or bodies who in his opinion are most fitted to implement them.

(7) Notwithstanding the preceding paragraphs of this regulation, the Chief Inspector may at any time during the course of an investigation release information and recommendations if in his opinion it is necessary or desirable to do so in the interests of safety.

Summaries of Investigations

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

(2) A summary report of any investigation may be published, and if not published shall be otherwise made available to any person requesting it who satisfies the Chief Inspector of his legitimate interest.

(a) 1970 c.36; section 56 was amended by the Merchant Shipping Act 1988, Schedules 5 and 6.

Reopening of Investigation

11. The Chief Inspector may cause any investigation to be reopened either generally or as to any part thereof, and 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

12. 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

13.—(1) If a master, owner or officer fails without reasonable cause to report an accident 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.

6th July 1989

Paul Channon
Secretary of State for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to section 33 of the Merchant Shipping Act 1988, which relates to the investigation of marine accidents. They define the accidents to which they apply; set out the purpose of investigation; lay down requirements for accidents to be reported; and make provisions for the ordering and conduct of investigations.

The more serious accidents (as defined) must be reported to the Chief Inspector of Marine Accidents, either directly or through a Department of Transport Marine Office or HM Coastguard. (A Merchant Shipping Notice will be issued giving further information on reporting). Any accident may be investigated if it involves a ship registered in the United Kingdom or any other ship in UK waters, and provision is made for the investigation of accidents to non-United Kingdom ships, outside UK waters, at the discretion of the Secretary of State. The Regulations apply to fishing vessels as well as to other ships; they also apply to pleasure craft except that such craft are excluded from the reporting requirements, as are lifeboats operated by the Royal National Lifeboat Institution.

Hazardous incidents, defined broadly as incidents having the potential to lead to accidents, may also be investigated.

On learning of an accident or hazardous incident, the Chief Inspector may call for such information as he considers necessary from the owner or master of the ship concerned, who must provide it to the best of his ability, before he decides whether an investigation by an inspector is required. If such an investigation is to be carried out, it shall be conducted as the inspector considers will best assist its aims, subject to his statutory powers which are laid down in section 27 of the Merchant Shipping Act 1979. The inspector's findings, analysis and conclusions are to be submitted to the Chief Inspector, with any recommendations he thinks appropriate.

In serious or important accidents, the Chief Inspector may order an Inspector's Inquiry, at the conclusion of which he is to submit a report to the Secretary of State, which must include the inspector's findings and his own observations. This report may, and in certain cases must, be published but safeguards are provided to prevent publication before any further legal proceedings under the Merchant Shipping Acts (which might be prejudiced by premature release of the report) are taken, or in other cases before a person who is adversely criticized in the report has the opportunity to rebut such criticism.

Provision is also made for the production of summary reports of all investigations.

Penalties are laid down for unreasonable failure to report an accident, to provide information, or to keep relevant documents and equipment for an inspector's scrutiny. Penalties for obstructing an inspector or otherwise impeding his investigation are laid down in section 28 of the Merchant Shipping Act 1979.