

SHIPPING (FORMAL INVESTIGATIONS) REGULATIONS, 2001

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SCHEDULE

QUALIFICATIONS OF ASSESSORS

S.I. 2001 No. 43

Shipping
CAP. 296

SHIPPING (FORMAL INVESTIGATIONS) REGULATIONS, 2001

Authority : These Regulations were made on 26th April, 2001 by the Minister under section 349 of the *Shipping Act*.

Commencement: 26th April, 2001.

Short title

1. These Regulations may be cited as the *Shipping (Formal Investigations) Regulations, 2001*.

Interpretation

2.(1) In these Regulations,

“formal investigation” means a formal investigation into a shipping casualty or incident conducted under section 293(2) of the Act;

“officer” means an officer qualified for the purposes of section 90 of the Act, and includes a master, mate, deck officer, marine engineer, officer and radio officer;

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

“shipping casualty” means a casualty of the kind described in section 293(1) of the Act;

“wreck commissioner” means a wreck commissioner appointed under section 295(1) of the Act to hold formal investigations.

(2) For the purposes of these Regulations, the definitions specified in Article II and regulation 1/1 of the Standards of Training, Certification and

Watchkeeping for Seafarers Convention and section A-1/1 of the Standards of Training, Certification and Watchkeeping of Seafarers Code shall form part of these Regulations.

Application

3. These Regulations shall apply to any formal investigation and to any re-hearing of a formal investigation held under section 295 and section 298 of the Act.

Wreck commissioners

4.(1) Where it appears to the Minister that a formal investigation should be held

- (a) into the circumstances or causes of; or
- (b) into any particular matter relating to,

a shipping casualty or incident, the Minister may direct that a formal investigation be held by a wreck commissioner and conducted in accordance with these Regulations.

(2) A wreck commissioner shall be assisted by one or more assessors appointed by the Minister.

(3) Where during a formal investigation any question as to the cancellation or suspension of an officer's certificate is likely to arise, the wreck commissioners shall be assisted by not fewer than 2 assessors,

- (a) 2 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 or a mercantile marine master.

(4) The qualifications of the assessors are set out in the *Schedule* to these Regulations.

(5) Where the circumstances set out in sub-paragraph (3) apply, wherever possible at least one of the assessors appointed must have had experience in the same capacity, and in the same type of ship, as the officer concerned.

Notice of, and parties to, investigation

5.(1) Where a Minister causes a formal investigation to be held, the Minister shall cause a notice, in these Regulations referred to as a “notice of investigation” to be served on any person, including the Barbados Ships’ Registry, who in the opinion of the Minister ought to be made a party to the formal investigation.

(2) The Minister shall be a party to the formal investigation.

(3) The notice of investigation shall contain

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

(4) The Minister may, at any time before or during the hearing of a formal investigation,

- (a) amend;
- (b) add to; or
- (c) omit,

any of the questions contained in the notice of investigation.

(5) The Minister shall as far as practicable cause every party to a formal investigation to be given not less than 30 days’ notice of the time, date and place of the hearing of the formal investigation.

(6) The notice given pursuant to paragraph (5) shall not be required to be given to any person to whom regulation 6 applies and who is made a party to the formal investigation after the date of the hearing has been fixed.

(7) Where at any time during the preparation for the formal investigation it appears to the Minister that the conduct of any party will be in issue, the Minister shall cause that party to be notified to that effect.

(8) The service of any notice or other document issued under this regulation may be effected personally, by registered post or by the recorded delivery service to the person's last-known address.

Application for leave

6. Any person who is not already a party to a formal investigation may apply to the wreck commissioner to become a party to the formal investigation, and the application may be made at any time before or during the formal investigation.

Evidence etc.

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, and in a 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 the opinion that refusal to admit was reasonable.

(3) The cost of proving any document shall not be allowed unless the notice stated in paragraph (2) is 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.

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

(5) The wreck commissioner may, at the time and place appointed for the commencement of the formal investigation, proceed with the formal investigation whether or not

- (a) a party upon whom a notice of investigation has been served; or
- (b) a person who has applied to become a party,

is or is not present:

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 he is satisfied that the party has been served in accordance with regulation 5(8).

(6) A formal investigation shall be held in public except where the wreck commissioner is of the opinion that

- (a) in the interests of justice; or
- (b) 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.

Procedure

8.(1) At the commencement of a formal investigation, the Minister shall make an opening statement, which shall be followed at the discretion of the wreck commissioner with a brief speech by each party to the investigation.

(2) Witnesses on behalf of the Minister may be called and examined, and the Minister may adduce documentary evidence.

(3) The witnesses referred to in paragraph (2) 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 Minister.

(4) The Minister shall ask questions relating to

- (a) the shipping casualty or incident; and

- (b) the conduct of persons connected with the shipping casualty or incident,

upon which the opinion of the wreck commissioner is desired.

(5) In framing the questions referred to in paragraph (4) for the opinion of the wreck commissioner, the Minister may make

- (a) modifications in;
- (b) additions to; or
- (c) omissions from,

the questions as set out in the notice of investigation or subsequent notice referred to in regulation 5(3), having regard to the evidence which has been given.

(6) Any other party to the formal investigation shall be entitled to

- (a) make a further opening statement;
- (b) give evidence to adduce documentary evidence;
- (c) call witnesses;
- (d) cross-examine any witnesses called by any other party; and
- (e) address the wreck commissioner in such order as the wreck commissioner may direct.

(7) The Minister may also produce and examine other witnesses, who may be cross-examined by the parties and re-examined by the Minister.

(8) A party to a formal investigation 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.

Opportunity for defence

9. Every formal investigation shall be conducted in such a 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.

Address

10.(1) A party may, after all the evidence is taken, address the wreck commissioner upon the evidence; and the Minister may address the wreck commissioner in reply upon the whole case.

(2) On the conclusion of the Minister's reply, the person whose certificate of competency may be affected may be invited by the wreck commissioner to make a final statement as to why, in the event that his conduct caused or contributed to the casualty, his certificate of competency should not be cancelled or suspended or he should not be censured.

Adjournment

11. The wreck commissioner may adjourn a formal investigation 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 investigation

12. The wreck commissioner shall, at the end of a formal investigation,
(a) give his decision concerning the certificate of competency and a brief summary of his findings in public in cases where an officer's certificate is cancelled or suspended; and

- (b) whether or not a certificate is in issue, make a report on the case to the Minister, and the report shall include
- (i) the wreck commissioner's and the assessors' findings respectively as to the reasons for the shipping casualty or incident;
 - (ii) any particular matter relating to the shipping casualty or incident;
 - (iii) the conduct of any person implicated in the shipping casualty; and
 - (iv) the reasons for suspending or cancelling the officer's certificate of competency.

Report

13.(1) Each assessor shall

- (a) sign the report with or without reservations; or
- (b) state in writing his dissent and the reasons for his dissent,

and the dissent and reasons shall be forwarded to the Minister with the report.

(2) The Minister 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 investigation to be given a copy of the whole or, where appropriate, the relevant part of the report.

Cost of investigation

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

Re-hearing

15. Any re-hearing of a formal investigation pursuant to section 298 of the Act shall be conducted in accordance with these Regulations.

Revocation

16. *[The Merchant Shipping (Formal Investigations) Rules, 1985 (S.I. 1985 No. 1001 (U.K.)) made under section 349(3) of the Shipping Act are hereby revoked.]*

SCHEDULE*(Regulation 4(4))**QUALIFICATIONS OF ASSESSORS*

1. A Mercantile Marine Master must
 - (a) have been awarded a Certificate of Competency (Deck Officer) (Class 1) (Master Mariner) or its equivalent, and have been a Marine Master of a ship for at least 2 years;
 - (b) have a wide knowledge of all modern aids to navigation; and
 - (c) not be more than 70 years of age.

2. A Mercantile Marine Engineer must
 - (a) have been awarded a Certificate of Competency (Marine Engineer Officer) (Class 1) or its equivalent, and have been the Chief Engineer Officer of a ship for at least 2 years;
 - (b) have a wide knowledge of matters relating to marine engineering; and
 - (c) not be more than 70 years of age.

3. A person with special skills or knowledge must
 - (a) be a naval architect; or
 - (b) be a person having relevant managerial experience,and not be more than 70 years of age.