



**SHIPPING CASUALTIES
(INQUIRIES, INVESTIGATIONS AND REPORTS) ACT 1979**

**MERCHANT SHIPPING (ACCIDENT REPORTING AND
INVESTIGATION) REGULATIONS 2001**

Approved by Tynwald *15th January 2002*

Coming into operation *1st February 2002*

In exercise of the powers conferred on the Department of Trade and Industry by section 1(3) of the Shipping Casualties (Inquiries, Investigations and Reports) Act 1979 ^(a) and of all other powers enabling it in that behalf, the following Regulations are hereby made :-

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Accident Reporting and Investigation) Regulations 2001 and, subject to section 9 of the 1979 Act, shall come into operation on the 1st. February 2002

Interpretation

2. (1) For the purposes of these Regulations and of section 1 of the 1979 Act -
- “accident” means any occurrence of the following type provided that it caused material damage to any ship or structure, or damage to the health of any person, or serious injury:-
- (a) the fall of any person overboard;
 - (b) any fire or explosion resulting in material damage to a ship;
 - (c) the collapse or bursting of any pressure vessel, pipeline or valve or the accidental ignition of anything in a pipeline;

(a) 1979 c. 18. Section 1 is substituted by section 11 of the Merchant Shipping (Miscellaneous Provisions) Act 1996 c. 20.

- (d) the collapse or failure of any lifting equipment, access equipment, hatchcover, staging or bosun's chair or any associated load-bearing parts;
- (e) the uncontrolled release or escape of any harmful substance or agent;
- (f) any collapse of cargo, unintended movement of cargo sufficient to cause a list, or loss of cargo overboard;
- (g) any snagging of fishing gear which results in the vessel heeling to a dangerous angle; or
- (h) any contact by a person with loose asbestos fibre except when full protective clothing is worn.

(2) In these regulations -

“the 1979 Act” means the Shipping Casualties (Inquiries, Investigations and Reports) Act 1979 ;

“the 1985 Act” means the Merchant Shipping Act 1985 ^(b) ;

“casualty” means any contingency which results in:-

- (a) loss of life or major injury to any person on board, or the loss of any person from, a ship or a ship's boat;
- (b) the loss or presumed loss of any ship or the abandonment of any ship or a ship suffers material damage;
- (c) a ship goes aground, is disabled or is in collision;
- (d) any loss of life or major injury, or serious harm to the environment, is caused by a ship; or
- (e) any major damage to the environment brought about by damage to a ship and caused by, or in connection with, the operation of the ship.

“collision” means contact between ships causing material damage to one or more ships;

“Department” means the Department of Trade and Industry;

“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;

“grounding” means making involuntary contact with the ground, except for touching briefly so that no material damage is caused, and “goes aground” shall be construed accordingly;

(b) 1985 c. 3

“incident” means any occurrence, not being a casualty or an accident as a consequence of which the safety of a ship or any person is imperilled, or as a

result of which material damage to any ship or structure or damage to the environment might be caused;

“incapacity” means inability to undertake any of the range of activities normally undertaken;

“inspector” means a person appointed by the Department under section 1(1) of the 1979 Act and in the context of the investigation of a particular accident includes any person appointed to investigate that accident under regulation 9;

“investigation” means any investigation carried out by an inspector;

“major injury” means -

- (a) any fracture, other than to the fingers or toes;
- (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; or
 - (ii) requiring resuscitation; or
 - (iii) requiring admittance to hospital or to an offshore sick-bay for more than 72 hours or if at sea requiring confinement to bed for more than 72 hours;

“Manx ship” has the same meaning as in section 1 of the Merchant Shipping Registration Act 1991 ^(c), and includes any ship registered by demise under section 60 of that Act;

“material damage” means damage to the structure, equipment or fittings of the ship which -

- (a) requires immediate repair before the ship is able to continue in service;
- (b) involves a breach of the vessel’s hull, or cracking or other defects affecting the ship’s structural integrity;

(c) 1991 c. 15

- (c) involves damage to the ship’s machinery or other equipment which is safety equipment or which is essential to the operation of the ship and is such as to prevent the ship operating as designed;

“operator” means the owner, manager, demise charterer, or any other person other than the master having immediate control over the day to day employment and operation of the ship;

“serious injury” means any injury, other than a major injury, to a person employed or carried in a Manx ship which occurs on board the ship or while embarking or disembarking from the ship and which results in incapacity for more than 24 hours, or as a result of which the person concerned is put ashore and the ship sails without him;

“ship’s boat” includes a lifeboat, liferaft, rescue boat, painting punt and any boat normally carried by a ship;

(3) 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 Island or elsewhere;
- (c) by sending it to him by post at that address; or
- (d) by sending it to him at that address by telex or other means which produces a document containing a text of the communication.

Application

3. (1) These regulations apply to all Manx ships wherever they may be.

(2) Regulation 5 shall apply to any other ship while within the Island or the territorial waters thereof.

Purpose of Investigation

4. The fundamental purpose of investigating a casualty, an accident, or an incident 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 Casualties.

5. (1) Subject to paragraph (2), when a casualty occurs the operator or the Master shall notify the fact to the Department as soon as possible after becoming aware of the casualty and the master shall send a report to the Department as soon as is practicable by the quickest means available.

(2) Where a ship is lost or presumed lost or is abandoned, then such a report shall be sent by the operator, the master, or a senior surviving officer as soon as is practicable and by the quickest means available.

Duty to report Accidents

6. When any accident occurs the master or the operator shall notify the occurrence to the Department as soon as is practicable and by the quickest means available and shall send a report to the Department no later than within 24 hours of the vessel's next arrival in port

Duty to Report Incidents.

7. When any incident occurs the master or the operator shall report the incident to the Department before the vessel departs from the next port.

Other reporting requirements

7A To avoid doubt, a report made in accordance with these Regulations does not discharge the duty to make a report under any other Manx statutory provision relating directly, or indirectly to merchant shipping.

Form of reports.

8. The reports to be made in compliance with regulations 5, 6 and 7 shall be in such form and contain such information as the Department may require.

Duty to examine the circumstances of casualties accidents, and incidents.

9. (1) The operator and the master shall, so far as is reasonably practicable, ensure that the circumstances of every casualty, accident, and incident are examined. The operator or the master shall on request provide the Department with a report, in addition to any reports made under regulations 5, 6, or 7, giving their findings of such examination and stating any measures taken or proposed to prevent a recurrence.

(2) No report made under this regulation shall be admissible in evidence against the maker in any proceedings except proceedings in pursuance of regulation 20(1).

Ordering of an investigation by the Department

10. (1) Any casualty, accident, or incident, occurring on any Manx ship wherever it may be or on any other ship within the territorial waters of the Island or within a port in the Island may be investigated by the Department. Where a casualty, accident, or incident occurs, the Department shall decide whether or not an investigation should be carried out.

(2) An investigation may be carried out by one or more inspectors, and additionally by such other person or persons as the Department may appoint specifically for the purpose. Such other person or persons when appointed shall have the powers conferred on an inspector by section 3 of the 1985 Act.

Preservation of Evidence

11. Whenever any casualty, accident or incident is being investigated by an inspector from the Department -

- (a) The operator and master shall so far as is possible without further endangering the vessel or any person ensure that all charts, log books and any other records and documents which might reasonably be considered pertinent to any casualty, accident or incident are kept until such time as the inspector informs the operator or master that he has no further need of them or until the operator or master has received confirmation from the Department that they are no longer needed.
- (b) No alteration shall be made to any entries or data contained in any such charts, log books, or other records, and any equipment which might reasonably be considered pertinent to any casualty, accident or incident shall so far as practicable be left undisturbed, until the operator or master has received confirmation from the Department or from the inspector or from any other person authorised to conduct an investigation, that the items need no longer be preserved and undisturbed.

Conduct of Investigations

12. (1) Subject to his powers under section 3 of the 1985 Act 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 casualty, accident or incident which in the opinion of the Inspector may have been relevant to its cause or outcome, and also to cover the consequences of the occurrence and the Inspector's powers shall apply accordingly.

(3) Every person required to attend before an inspector shall be allowed the reasonable expenses of attending.

(4) Every person required to attend before an inspector may be accompanied by an advisor, representative or other person of his choice and shall be entitled to receive from the inspector copies of any statements, declarations or other evidence that he may give to the inspector.

(5) Any document, item of equipment, sample, or record properly required by an inspector to be produced for the purposes of an investigation (whether on board the ship involved in the subject accident or otherwise) may be retained by him until the investigation is completed.

(6) Upon completion of an investigation the Inspector shall submit to the Department -

- (a) a summary of the facts of the casualty, accident or incident;
- (b) the identity of the owners, managers, and Classification Society of the ship and details as appropriate of the ship;
- (c) a narrative of the facts of the casualty, accident or incident in so far as they can be determined and where they cannot be determined with certainty he shall include his opinion as to the most probable facts, distinguishing at the same time between established facts and conjecture;
- (d) an analysis of the occurrence and commentary on the circumstances from which it is possible to draw logical conclusions;
- (e) any recommendations which may be appropriate with a view to preventing similar occurrences.

(7) At any time during the course of an investigation the Department may determine that the investigation shall be discontinued, and in that event no submission by the Inspector need be made.

Report of Investigation

13. (1) Subject to paragraph (4), where an investigation under these Regulations has taken place, the Department shall make a report (in this regulation referred to as “the Report”) which shall include the Inspector’s findings as to cause and any conclusions and recommendations which it considers appropriate.

(2) Subject to paragraphs (3) and (4) below, the Department unless it orders a formal investigation under section 2(1) of the 1979 Act, may publish the Report, or a summary of it if it thinks fit and, unless in its opinion there is good reason to the contrary, shall do so, if -

- (a) it appears to it that to do so will improve the safety of life at sea and help to prevent casualties, accidents or incidents in the future; or

(b) it relates to a casualty to a Manx ship.

(3) If the prosecution of any person in connection with the casualty, accident or incident is under consideration, the Department may at its discretion withhold publication until either the prosecution, including any appeal, has been concluded or it has been decided not to prosecute.

(4) Except where a formal investigation has been ordered, if in the opinion of the Department the reputation of any person is likely to be adversely affected by the Report then it shall not be published until -

- (a) that person (or if that person be deceased, then such person as appears to the Department best to represent that person's interest) has been 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 at least 28 days to make representations to the Department either in person or in writing; and
- (c) the Department has considered any such representations and has notified the person concerned or his representative of its conclusions on them, and of what changes, if any, it 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 Department an alternative text for any passages in the Report which are critical of the person and remain in issue.

(5) No person shall disclose any information furnished to him pursuant to paragraph (4), or permit such information to be disclosed, to any other person, save with the prior consent in writing of the Department.

(6) The Department on publishing the Report shall refer to any service of the Report or part of it under paragraph (4) and shall set out the substance of any representations made in response, together with its conclusions and a record of any action it has taken. It shall also either quote in full or quote the relevant parts of the content of any alternative texts submitted under paragraph (4)(d) unless in its opinion there is good reason not to do so or the alternative text has been accepted by the Department and incorporated in the report.

(7). The Department, in respect of the periods of 28 days prescribed in subparagraph (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.

Release of Information during Investigation

14. Notwithstanding the provisions of Regulation 13, the Department may at any time during the course of any investigation release information as to material facts if in its opinion it is necessary or desirable to do so.

Use of investigation evidence in prosecution.

15. No statement, declaration or other information from any witness which is provided to an inspector in the course of an investigation shall be revealed or used in any prosecution which may arise in connection with the casualty, accident or incident.

Recommendations

16. (1) Recommendations may be made by the Department at any time and if during the course of an investigation it appears to the Department that the circumstances of the occurrence under investigation warrant preliminary recommendations either to a particular person or organisation or generally in order to prevent further occurrences it may make them.

(2) Recommendations shall be addressed to those persons or bodies who in the opinion of the Department are most fitted to implement them, and may be made public if the Department considers that to do so is in the interests of safety.

Procedure where an Inquest or Fatal Accident Inquiry is held

17. (1) Where an inquest or fatal accident inquiry is to be held following an accident which has been subject to investigation, a report of the investigation may be made available to the inquest or fatal accident inquiry by the Department.

(2) Where the procedure in paragraph (1) is followed and the report has been put before the inquest or fatal accident inquiry then the Department need not comply with regulation 13(4) but if it does not do so it shall not publish the Report until after the proceedings of the inquest or fatal accident inquiry and it shall include in its Report the substance of evidence given at those proceedings as it relates to the Inspector's findings.

Summaries of Investigations

18. (1) A summary report of any investigation may be published.

(2) The Department may prepare and publish from time to time collective summaries of investigations.

(3) A summary of the circumstances of any accident which has been under investigation shall, if not published, be otherwise made available to any person requesting it who satisfies the Department of his legitimate interest.

(4) A summary shall not be published or otherwise made available if prosecution against any person in connection with the subject accident has begun, unless the Department is satisfied that nothing in its content would prejudice a fair trial.

Reopening of Investigation

19. (1) The Department may cause any investigation to be reopened either generally or as to any part thereof, and it shall do so :-

- (a) if after the completion of the investigation in its opinion new and important evidence has been discovered; or
- (b) if for any other reason there is in its 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.

Penalties

20. (1) If a master, operator or officer fails without reasonable cause to report a casualty, accident, or incident, as required by regulations 5, 6, or 7 or if a master or operator fails without reasonable cause to provide a report as required by regulation 9, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

(2) If any person discloses or permits to be disclosed information in contravention of regulation 13(5) above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

Made :12th December, 2001

Alex F. Downie,

Minister for Trade and Industry.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the reporting and investigation of marine accidents. Previous United Kingdom statutory instruments which applied to the Isle of Man by Government Circular are superseded by these regulations and the applicable parts are cancelled.

The Regulations extend the reporting of accidents requirements to fishing vessels and registered pleasure vessels and incorporate essential parts of IMO resolution A.849(20), the Code for the Investigation of Marine Casualties and Incidents.

The Regulations incorporate all the provisions relating to reporting of accidents and the conduct of investigations and replace the provisions previously in the Merchant Shipping (Safety Officials and reporting of Accidents and Dangerous Occurrences) Regulations 1982 as those Regulations had effect in the Isle of Man.

The main changes from previous provisions are -

- (a) an amendment to the definitions to provide for three categories of occurrence;
 - (a) casualties, the most serious occurrences.
 - (b) accidents, less serious occurrences including those which did not but which could have caused serious injury or damage to health, and
 - (c) incidents, the least serious occurrences, including “near misses” which might have otherwise caused damage or pollution or put a person in jeopardy.
- (b) the inclusion of fishing vessels and registered pleasure vessels within the reporting structure.
- (c) clarification of the requirements for the making of and publishing of reports by the Department.
- (d) provisions for consultation with interested parties prior to publication of any report.
- (e) Provisions for an inspector’s findings to be presented to an inquest or fatal accident inquiry and for this to be a substitute for consultation with interested parties.

This document is marked with amendments made to these Regulations by:

SD2015/0232 Merchant Shipping (MARPOL Protocol I – Reports on Incidents Involving Harmful Substances) Order 2015