



# Merchant Shipping Act 1995

## 1995 CHAPTER 21

### PART XI **U.K.**

#### ACCIDENT INVESTIGATIONS AND INQUIRIES

##### **Modifications etc. (not altering text)**

**C1** Pt. XI applied (with modifications) (1.9.2002) by [S.I. 2002/1587](#), [reg. 17\(1\)](#)

#### *Marine accident investigations*

#### **267 Investigation of marine accidents. **U.K.****

- (1) The Secretary of State shall, for the purpose of the investigation of any such accidents as are mentioned in subsection (2) below, appoint such number of persons as he may determine to be inspectors of marine accidents, and he shall appoint one of those persons to be Chief Inspector of Marine Accidents.
- (2) The accidents referred to in subsection (1) above are—
  - (a) any accident involving a ship or ship's boat where, at the time of the accident—
    - (i) the ship is a United Kingdom ship, or
    - (ii) the ship, or (in the case of an accident involving a ship's boat) that boat, is within United Kingdom waters, and
  - (b) such other accidents involving ships or ships' boats as the Secretary of State may determine.
- (3) The Secretary of State may by regulations make such provision as he considers appropriate with respect to the investigation of any such accidents as are mentioned in subsection (2) above.
- (4) Any such regulations may, in particular, make provision—

*Status: Point in time view as at 01/01/1996.*

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- (a) with respect to the definition of “accident” for the purposes of this section and the regulations;
  - (b) imposing requirements as to the reporting of accidents;
  - (c) prohibiting, pending investigation, access to or interference with any ship or ship’s boat involved in an accident;
  - (d) authorising any person, so far as may be necessary for the purpose of determining whether an investigation should be carried out, to have access to, examine, remove, test, take measures for the preservation of, or otherwise deal with, any such ship or boat or any other ship or ship’s boat;
  - (e) specifying, with respect to the investigation of accidents, the functions of the Chief Inspector of Marine Accidents (which may include the function of determining whether, and if so by whom, particular accidents should be investigated), the functions of other inspectors of marine accidents, and the manner in which any such functions are to be discharged;
  - (f) for the appointment by the Chief Inspector of Marine Accidents, in such circumstances as may be specified in the regulations, of persons to carry out investigations under this section who are not inspectors of marine accidents;
  - (g) for the appointment by any Minister of the Crown of persons to review any findings or conclusions of a person carrying out an investigation under this section;
  - (h) for the procedure to be followed in connection with investigations or reviews under this section;
  - (i) for conferring on persons discharging functions under the regulations who are not inspectors of marine accidents all or any of the powers conferred on an inspector by section 259;
  - (j) for the submission to the Secretary of State, and the publication by him, of reports of investigations or reviews under this section;
  - (k) for the publication by the Chief Inspector of Marine Accidents of reports and other information relating to accidents.
- (5) Regulations under this section may provide for any provisions of the regulations to apply to any specified class or description of incidents or situations which involve, or occur on board, ships or ships’ boats but are not accidents for the purposes of the regulations, being a class or description framed by reference to any of the following, namely—
- (a) the loss or destruction of or serious damage to any ship or structure,
  - (b) the death of or serious injury to any person, or
  - (c) environmental damage,
- whether actually occurring or not, and (subject to such modifications as may be specified in the regulations) for those provisions to apply in relation to any such incidents or situations as they apply in relation to accidents.
- (6) Regulations under this section may provide that a contravention of the regulations shall be an offence punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by a fine.
- (7) The Chief Inspector of Marine Accidents, or (as the case may be) inspectors of marine accidents generally, shall discharge such functions in addition to those conferred by or under the preceding provisions of this section as the Secretary of State may determine.

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- (8) Any inspector of marine accidents shall, for the purpose of discharging any functions conferred on him by or under this section, have the powers conferred on an inspector by section 259.
- (9) Nothing in this section shall limit the powers of any authority under sections 252, 253 and 254.
- (10) In this section—
  - (a) references to an accident involving a ship or ship’s boat include references to an accident occurring on board a ship or ship’s boat (and any reference to a ship or ship’s boat involved in an accident shall be construed accordingly); and
  - (b) “ship’s boat” includes a life-raft.

**Modifications etc. (not altering text)**

**C2** S. 267 applied (with modifications) (1.9.2002) by S.I. 2002/1587, reg. 17(2), (with reg. 3)

**268 Formal investigation into marine accidents. U.K.**

- (1) Where any accident has occurred, the Secretary of State may (whether or not an investigation into it has been carried out under section 267) cause a formal investigation into the accident to be held—
  - (a) if in England, Wales or Northern Ireland, by a wreck commissioner, and
  - (b) if in Scotland, by the sheriff;and in this section “accident” means any accident to which regulations under that section apply or any incident or situation to which any such regulations apply by virtue of subsection (5) of that section.
- (2) A wreck commissioner or sheriff holding a formal investigation shall conduct it in accordance with rules under section 270(1); and those rules shall require the assistance of one or more assessors and, if any question as to the cancellation or suspension of an officer’s certificate is likely, the assistance of not less than two assessors.
- (3) Subsections (1), (3) and (4) of section 97 of the<sup>M1</sup>Magistrates’ Courts Act 1980 (which provide for the attendance of witnesses and the production of evidence) shall apply in relation to a formal investigation held by a wreck commissioner as if the wreck commissioner were a magistrates’ court and the investigation a complaint; and the wreck commissioner shall have power to administer oaths for the purposes of the investigation.
- (4) Where a formal investigation is held in Scotland the sheriff shall, subject to any rules made under section 270(1), dispose of it as a summary application, and, subject to section 269, his decision on the investigation shall be final.
- (5) If as a result of the investigation the wreck commissioner or sheriff is satisfied, with respect to any officer, of any of the matters mentioned in paragraphs (a) to (c) of section 61(1) and, if it is a matter mentioned in paragraph (a) or (b) of that section, is further satisfied that it caused or contributed to the accident, he may cancel or suspend any certificate issued to the officer under section 47 or censure him; and if he cancels or suspends the certificate the officer shall deliver it forthwith to him or to the Secretary of State.

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- (6) If a person fails to deliver a certificate as required under subsection (5) above he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Where a certificate has been cancelled or suspended under this section, the Secretary of State, if of the opinion that the justice of the case requires it, may re-issue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate.
- (8) The wreck commissioner or sheriff may make such awards as he thinks just with regard to the costs (or, as the case may be, expenses) of the investigation and of any parties at the investigation, and with regard to the parties by whom those costs or expenses are to be paid; and any such award of the wreck commissioner may, on the application of any party named in it, be made an order of the High Court.
- (9) Any costs or expenses directed by an award to be paid shall be taxable—
- (a) in the High Court, or
  - (b) where the investigation was held in Scotland, by the auditor of the sheriff court in which it was held and in accordance with the table of fees regulating the taxation of solicitors' accounts.
- (10) The wreck commissioner or sheriff shall make a report on the investigation to the Secretary of State.
- (11) In its application to Northern Ireland this section shall have effect as if in subsection (3) above for the references to subsections (1), (3) and (4) of section 97 of the <sup>M2</sup>Magistrates' Courts Act 1980 there were substituted references to paragraphs (1) and (3) of Article 118 and paragraph (1) of Article 120 of the <sup>M3</sup>Magistrates' Courts (Northern Ireland) Order 1981.

#### Modifications etc. (not altering text)

**C3** S. 268 applied (with modifications) (1.9.2002) by S.I. 2002/1587, reg. 17(3), (with reg. 3)

#### Marginal Citations

**M1** 1980 c. 43.

**M2** 1980 c. 43.

**M3** S.I. 1981/1675 (NI 26)

## 269 Re-hearing of and appeal from investigations. **U.K.**

- (1) Where a formal investigation has been held under section 268 the Secretary of State may order the whole or part of the case to be re-heard, and shall do so—
- (a) if new and important evidence which could not be produced at the investigation has been discovered; or
  - (b) if there appear to the Secretary of State to be other grounds for suspecting that a miscarriage of justice may have occurred.
- (2) An order under subsection (1) above may provide for the re-hearing to be as follows—
- (a) if the investigation was held in England, Wales or Northern Ireland, by a wreck commissioner or by the High Court;
  - (b) if it was held in Scotland, by the sheriff or by the Court of Session.

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- (3) Any re-hearing under this section which is not held by the High Court or the Court of Session shall be conducted in accordance with rules made under section 270(1); and section 268 shall apply in relation to a re-hearing of an investigation by a wreck commissioner or sheriff as it applies in relation to the holding of an investigation.
- (4) Where the wreck commissioner or sheriff holding the investigation has decided to cancel or suspend the certificate of any person or has found any person at fault, then, if no application for an order under subsection (1) above has been made or such an application has been refused, that person or any other person who, having an interest in the investigation, has appeared at the hearing and is affected by the decision or finding, may appeal—
  - (a) to the High Court if the investigation was held in England, Wales or Northern Ireland;
  - (b) to the Court of Session if it was held in Scotland.
- (5) Section 268(7) applies for the purposes of this section as it applies for the purposes of that section.

## **270 Rules as to investigations and appeals. U.K.**

- (1) The Secretary of State may make rules for the conduct of formal investigations under section 268 and for the conduct of any re-hearing under section 269 which is not held by the High Court or the Court of Session.
- (2) Without prejudice to the generality of subsection (1) above, rules under this section may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected.
- (3) Rules of court made for the purpose of re-hearings under section 269 which are held by the High Court, or of appeals to the High Court, may require the court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a re-hearing or hear such an appeal with the assistance of one or more assessors.

### *Inquiries into and reports on deaths and injuries*

## **271 Inquiries into deaths of crew members and others. U.K.**

- (1) Subject to subsection (6) below, where—
  - (a) any person dies in a United Kingdom ship or in a boat or life-raft from such a ship, or
  - (b) the master of or a seaman employed in such a ship dies in a country outside the United Kingdom,an inquiry into the cause of the death shall be held by a superintendent or proper officer at the next port where the ship calls after the death and where there is a superintendent or proper officer, or at such other place as the Secretary of State may direct.
- (2) Subject to subsection (6) below, where it appears to the Secretary of State that—
  - (a) in consequence of an injury sustained or a disease contracted by a person when he was the master of or a seaman employed in a United Kingdom ship, he ceased to be employed in the ship and subsequently died, and

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- (b) the death occurred in a country outside the United Kingdom during the period of one year beginning with the day on which he so ceased,  
the Secretary of State may arrange for an inquiry into the cause of the death to be held by a superintendent or proper officer.
- (3) Subject to subsection (6) below, where it appears to the Secretary of State that a person may—
- (a) have died in a United Kingdom ship or in a boat or life-raft from such a ship, or
  - (b) have been lost from such a ship, boat or life-raft and have died in consequence of being so lost,
- the Secretary of State may arrange for an inquiry to be held by a superintendent or proper officer into whether the person died as mentioned above and, if the superintendent or officer finds that he did, into the cause of the death.
- (4) The superintendent or proper officer holding the inquiry shall for the purpose of the inquiry have the powers conferred on an inspector by section 259.
- (5) The person holding the inquiry shall make a report of his findings to the Secretary of State who shall make the report available—
- (a) if the person to whom the report relates was employed in the ship and a person was named as his next of kin in the crew agreement or list of the crew in which the name of the person to whom the report relates last appeared, to the person so named;
  - (b) in any case, to any person requesting it who appears to the Secretary of State to be interested.
- (6) No inquiry shall be held under this section where, in England, Wales or Northern Ireland, a coroner's inquest is to be held or, in Scotland, an inquiry is to be held under the <sup>M4</sup>Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

**Marginal Citations**

**M4** 1976 c. 14.

**272 Reports of and inquiries into injuries. U.K.**

- (1) Where the master or a member of the crew of a United Kingdom fishing vessel is injured during a voyage, an inquiry into the cause and nature of the injury may be held by a superintendent or proper officer.
- (2) The superintendent or proper officer holding an inquiry under this section shall, for the purposes of the inquiry, have the powers conferred on a Departmental inspector by section 259 and shall make a report of his findings to the Secretary of State.

**273 Transmission of particulars of certain deaths on ships. U.K.**

Where—

- (a) an inquest is held into a death or a post mortem examination, or a preliminary investigation in Northern Ireland, is made of a dead body as a result of which the coroner is satisfied that an inquest is unnecessary; and

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- (b) it appears to the coroner that the death in question is such as is mentioned in section 108(2) or in that subsection as extended (with or without amendments) by virtue of section 307,

it shall be the duty of the coroner to send to the Registrar General of Shipping and Seamen particulars in respect of the deceased of a kind prescribed by regulations made by the Secretary of State.

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