

1999 No. 2567

MERCHANT SHIPPING

**The Merchant Shipping (Accident Reporting and
Investigation) Regulations 1999**

<i>Made - - - -</i>	<i>13th September 1999</i>
<i>Laid before Parliament</i>	<i>21st September 1999</i>
<i>Coming into force</i>	<i>12th October 1999</i>

The Secretary of State, in exercise of the powers conferred by section 267 of the Merchant Shipping Act 1995^(a), and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the Merchant Shipping Accident Reporting and Investigation) Regulations 1999 and shall come into force on 12th October 1999.

(2) The Merchant Shipping (Accident Reporting and Investigation) Regulations 1994^(b) are hereby revoked. Any investigation commenced under those Regulations which has not been completed or, in the case of an Inspector’s Inquiry has not been the subject of a report submitted to the Secretary of State, shall continue as if it had been commenced under these Regulations.

Interpretation

2.—(1) For the purposes of these Regulations and of section 267 of the Act, “accident” means any contingency caused by an event on board a ship or involving a ship whereby—

- (a) there is loss of life or major injury to any person on board, or any person is lost or falls overboard from, a ship or a ship’s boat;
- (b) a ship—
 - (i) causes any loss of life, major injury or material damage;
 - (ii) is lost or is presumed to be lost;
 - (iii) is abandoned;
 - (iv) is materially damaged by fire, explosion, weather or other cause;
 - (v) grounds;
 - (vi) is in collision;
 - (vii) is disabled; or
 - (viii) causes serious harm to the environment;
- (c) any of the following occur—
 - (i) a collapse or bursting of any pressure vessel, pipeline or valve;
 - (ii) a collapse or failure of any lifting equipment, access equipment, hatch-cover, staging or boatswain’s chair or any associated load-bearing parts;

^(a) 1995 c. 21.
^(b) S.I. 1994/2013.

- (iii) a collapse of cargo, unintended movement of cargo or ballast sufficient to cause a list, or loss of cargo overboard;
- (iv) a snagging of fishing gear which results in the vessel heeling to a dangerous angle;
- (v) a contact by a person with loose asbestos fibre except when full protective clothing is worn; or
- (vi) an escape of any harmful substance or agent;

if the occurrence, taking into account its circumstances, might have been liable to cause serious injury or to cause damage to the health of any person.

(2) In these Regulations—

“access” means the process of embarking on or disembarking from a ship, by whatever means employed;

“the Act” means the Merchant Shipping Act 1995;

“Chief Inspector” means the Chief Inspector of Marine Accidents appointed by the Secretary of State under section 267(1) of the Act, and any Deputy Chief Inspector;

“Court”, in the case of judicial proceedings or an application for disclosure made in England, Wales or Northern Ireland means the High Court; in the case of judicial proceedings or an application for disclosure made in Scotland means the Court of Session;

“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;

“grounds” means making involuntary contact with the ground, except for touching briefly so that no damage is caused;

“hazardous incident” means any event, other than an accident, associated with the operation of a ship which involves circumstances indicating that an accident nearly occurred;

“IMO” means the International Maritime Organization;

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

“inspector” means an inspector of marine accidents appointed by the Secretary of State under section 267(1) of the Act and in the context of the investigation of a particular accident includes any person appointed to investigate that accident under regulation 6;

“major injury” means

- (a) any fracture, other than to the fingers, thumbs 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,
 - (ii) requiring resuscitation, or
 - (iii) requiring admittance to hospital or similar for more than 24 hours or if at sea requiring confinement to bed for more than 24 hours;

“pleasure vessel” has the meaning given to it by the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998(a);

(a) S.I. 1998/2771.

“serious injury” means any injury, other than a major injury, to a person employed or carried in a ship which occurs on board or during access which results in incapacity for more than three consecutive days excluding the day of the accident, or as a result of which the person concerned is put ashore and the ship sails without that person, unless the incapacity is known or advised to be of three consecutive days or less, excluding the day of the accident;

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

“United Kingdom ship” means ship registered in the United Kingdom or a ship that is not registered under the law of any State but is eligible for registration in the United Kingdom under the Act.

(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.

(4) 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 United Kingdom 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, facsimile, or other means which produces a document containing a text of the communication, or by electronic mail.

Application

3.—(1) These Regulations shall apply to accidents involving or occurring on board—

- (a) any United Kingdom ship, except that regulation 5 shall not apply to pleasure vessels; 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 unless she is within the defined limits of a port in the United Kingdom or is employed in carrying passengers to or from a port in the United Kingdom.

(2) These Regulations apply to serious injuries and hazardous incidents as they apply to accidents, except that:

- (a) regulations 5 and 7 shall not apply to hazardous incidents; and
- (b) regulations 5(1) and 5(3)(a) shall not apply to serious injuries.

(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 and serious injuries

5.—(1) Subject to paragraphs (2), (3) and (4) when an accident occurs the master shall send a report to the Chief Inspector by the quickest means available and within 24 hours. Reports shall, in so far as is practicable and possible, include the following information:

- (a) name of ship and IMO, official or fishing vessel number;
- (b) name and address of owners;
- (c) name of the master, skipper or person in charge;
- (d) date and time of the accident;
- (e) where from and where bound;
- (f) latitude and longitude or geographical position in which the accident occurred;
- (g) part of ship where accident occurred if on board;
- (h) weather conditions;
- (i) name and port of registry of any other ship involved;
- (j) number of people killed or injured, together with their names, addresses and gender;
- (k) brief details of the accident, including, where known, the sequence of events leading to the accident, extent of damage and whether accident caused pollution or hazard to navigation.

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

(3) The master shall, so far as is reasonably practicable, ensure that the circumstances of every accident are examined. The master shall

- (a) on request provide the Chief Inspector with a report, in addition to any report made under the preceding paragraphs of this regulation, or

- (b) in the case of serious injuries, within 14 days provide the Chief Inspector with a report giving the findings of such examination and stating any measures taken or proposed to prevent a recurrence.

(4) This regulation shall not apply—

- (a) to an accident when the person killed or injured is a stevedore or shore-based worker and the accident occurs in a port in the United Kingdom; or

- (b) to an accident which occurs in a shipyard in the United Kingdom.

Ordering of investigation

6.—(1) Any accident may be investigated and the Chief Inspector shall decide whether or not an investigation should be carried out and, where a report has been received under regulation 5(1) or 5(3)(b), shall cause the master or owner to be notified of a decision to investigate within 28 days of that accident report or the information referred to in paragraph (2) being received by him.

(2) Before making his decision whether or not to investigate an accident, the Chief Inspector may cause to be obtained such information as he considers necessary concerning the accident and any remedial action taken as a result, and the master or owner of the ship concerned and any other relevant person or corporate body shall provide such information to the best of their ability and knowledge.

(3) Where the Secretary of State causes a formal investigation into an accident to be held pursuant to section 268 of the Act, any investigation conducted under these Regulations relating to the accident shall be discontinued except for the purpose of rendering assistance to the Court and to the Attorney-General or the Secretary of State.

(4) An investigation may be carried out by one or more inspectors of marine accidents appointed under section 267(1) of the Act, or additionally or alternatively by such other person or persons as the Chief Inspector may appoint specifically for the purpose in circumstances where there are not inspectors appointed under the Act conveniently available or where such a person has special qualifications or experience. Such other person or persons shall have the powers conferred on an inspector by section 259 of the Act.

(5) Public notice that an investigation has been ordered may be given in such manner as the Chief Inspector may think fit, and may invite any persons who so desire to present useful evidence to the Inspector in such a manner and within such a time as is specified in the notice.

(6) The Secretary of State may require the Chief Inspector to investigate any accident or to expand the scope of an investigation into further consequences of an accident, including salvage and pollution aspects. In such circumstances the Chief Inspector may conduct an investigation into the further consequences of an accident which is completely separate and distinct from the investigation into the initial accident.

(7) Notwithstanding a decision by the Chief Inspector under paragraph (1) not to investigate an accident, he may at any subsequent time order an investigation if he is satisfied there is good reason to do so.

Preservation of evidence

7.—(1) The master, owner and any other relevant person or corporate body shall so far as is practicable ensure that all charts, log books, voyage data and other records, electronic and magnetic recording and video tapes and all documents which might reasonably be considered pertinent to an accident reportable under regulation 5 are kept and that no alteration is made to recordings or entries therein, and that any equipment which might reasonably be considered pertinent to the investigation of the accident is so far as practicable left undisturbed, until:

- (a) notification is received from the Chief Inspector that no investigation is to take place; or
- (b) unless notified of a decision to investigate, 28 days after receipt by the Chief Inspector of a report referred to in regulation 6(1) or the information referred to in regulation 6(2); or
- (c) the Chief Inspector or the Inspector carrying out the investigation indicates that he no longer requires them.

(2) An inspector may prohibit, pending investigation, access or interference with any ship, ship's boat or other equipment involved in an accident.

Conduct of investigations

8.—(1) 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 the reasonable expenses of attending.

(4) Any document or record as defined in regulation 7(1), properly required by an inspector to be produced for the purposes of an investigation (whether on board the ship involved or otherwise), may be retained by him until the investigation is completed.

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

(6) At any time during the course of an investigation the Chief Inspector may determine that the investigation shall be discontinued, and his reasons for doing so shall be made publicly available.

Disclosure of records

9.—(1) Except within the context of a report of an investigation, the names, addresses or any other details of anyone who has given evidence to an inspector shall not be disclosed. Neither shall the following records be made available for purposes other than the investigation, unless a Court determines otherwise—

- (a) all declarations or statements taken from persons by the inspector or supplied to him in the course of his investigation, except as in paragraph (2), together with any notes, tape recordings and photographs;
- (b) all communications between persons having been involved in the operation of the ship or ships;

- (c) medical or confidential information regarding persons involved in the accident or hazardous incident;
- (d) all voyage data and other records, electronic and magnetic recordings, including voice recordings, and video tapes and transcripts from such recordings;
- (e) any report made under regulation 5;
- (f) opinions expressed in the analysis of information; and
- (g) copies of the report other than the final report except as in regulations 10(2)(a) and 10(9).

(2) A declaration or statement taken from a person by an inspector in the course of his investigation may be released with the written approval of that person.

Reports of investigations

10.—(1) Subject to paragraphs (2) and (7), the Chief Inspector shall cause a report of an investigation into an accident conducted pursuant to regulation 6(1), other than an accident the investigation of which is being undertaken on behalf of a State other than the United Kingdom, to be made publicly available in the shortest time possible and in such a manner as he thinks fit.

(2) The Chief Inspector shall not make the report publicly available until he has—

- (a) served a notice under this regulation upon any person or organisation whose reputation is, in the Chief Inspector's opinion, likely to be adversely affected by the report or, if that person is deceased, upon such person or persons as appear to the Chief Inspector, at the time he proposes to serve notice pursuant to this paragraph, as best to represent the interests and reputation of the deceased in the matter, and
- (b) considered the representations relating to the report which may be made to him in accordance with paragraph (5) by or on behalf of the persons served with such notice, and amended the report in any manner that he thinks appropriate.

(3) The notice referred to in paragraph (2)(a) shall include particulars of any proposed analysis of facts and conclusions as to the cause or causes of the accident which may affect the person on whom or in respect of whom the notice is served.

(4) In the event that, in the opinion of the Chief Inspector, no person is likely to be adversely affected by the report, the Chief Inspector is not required to serve notice on anyone.

(5) Any representations made pursuant to paragraph (2) shall be in writing and shall be served on the Chief Inspector within 28 days of service of the notice referred to in that paragraph or within such further period as may be allowed under regulation 13.

(6) No person shall disclose any information furnished him pursuant to paragraph (2), or permit such information to be disclosed, to any other person, except such legal advisors as are necessary in order to make representations to the Chief Inspector in terms of that paragraph, save with the prior consent in writing of the Chief Inspector.

(7) The Secretary of State may direct that the report shall not be made publicly available if he considers that issues relating to national security may be disclosed. The Secretary of State may also direct that deletions are to be made from the report to be made publicly available to protect national security. In such cases the report shall indicate that deletions have been made following a direction given by the Secretary of State.

(8) A copy of the report when made publicly available shall be given or sent by the Chief Inspector to:

- (a) any person who has been served with a notice pursuant to paragraph (2); and
- (b) those persons or bodies to whom recommendations have been addressed in that report; and
- (c) the Secretary of State.

(9) Where an inquest or fatal accident inquiry is to be held following an accident which has been subject to investigation, a report, which, if it is not the final report of the investigation, may be made available in confidence to the coroner or procurator fiscal by the Chief Inspector.

(10) The Chief Inspector shall prepare from time to time collective short reports of any investigations, or examinations referred to in regulation 5(3), to promulgate the lessons learned.

Provided the procedures in paragraph (2), if appropriate, are followed these collective short reports shall be made publicly available.

(11) The Chief Inspector may, at his discretion, submit a report to the Secretary of State on any matter arising from his analysis of marine accident investigations.

Recommendations

11.—(1) Recommendations may be made at any time by the Chief Inspector.

(2) Recommendations shall be addressed to those persons or bodies who in the opinion of the Chief Inspector are most fitted to implement them, and shall be made publicly available if the Chief Inspector considers that to do so is in the interests of safety or preventing pollution.

Reopening of investigation

12.—(1) The Chief Inspector may cause any investigation to be reopened either generally or as to any part thereof, and he 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

13. The Chief Inspector shall have the power to extend the period of 28 days prescribed in regulation 10(5), and shall not unreasonably refuse to do so, and this power may be exercised notwithstanding that the prescribed period has expired.

Penalties

- 14.—(1) (a) If a master, owner or officer fails without reasonable cause to report an accident as required by regulation 5, or
- (b) if any person fails without reasonable cause to provide information as required by regulation 6, or
- (c) if any person falsely claims to have any additional information or new evidence pertaining to the accident,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If any person fails without reasonable cause to comply with regulation 7(1), 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.

(3) If any person without reasonable cause discloses or permits to be disclosed information in contravention of regulations 9(1) and 10(6), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Signed by authority of the
Secretary of State for the Environment,
Transport and the Regions

13th September 1999

Keith Hill
Parliamentary Under Secretary of State,
Department of the Environment, Transport and the Regions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the Merchant Shipping (Accident Investigation) Regulations 1994.

The main changes are:

A new, broader, definition of “accident” which includes some of those events previously known as “dangerous occurrences”, has been introduced. (*Regulation 2(1)*)

The definitions of “dangerous occurrence”, “strands” and “serious casualty” have been removed.

“Serious injury” has been redefined and no longer applies only to people employed or carried in a United Kingdom ship. (*Regulation 2(2)*)

Various regulations have been updated with reference to modern methods of communication, and accordingly statutory accident reporting times have been reduced.

A regulation regarding the disclosure of records has been included. Declarations and other records used in accident investigation will only be disclosed if a court so orders, or if a declarant gives written permission. (*Regulation 9*)

The concept of an “Inspector’s Inquiry” and the reference to summary reports have been removed. Instead all reports of investigations will be made publicly available in such a manner as the Chief Inspector sees fit, subject to certain safeguards with respect to national security. (*Regulation 10*)

The consultation with those whose reputation is likely to be affected by a report of an investigation, before it is made publicly available, has been reduced to one period of 28 days. (*Regulation 10(5)*)

The Chief Inspector’s discretion whether or not to comply in serving a notice on a person likely to be adversely affected by a report, when a coroner’s inquest or fatal accident inquiry has been held, has been removed from the Regulations.

It will be an offence for any person to falsely claim to have additional information or new evidence pertaining to an accident. (*Regulation 14(1)(c)*)

£2.00

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Acts of Parliament

WO 5430 9/99 ON (MFK)