

MERCHANT SHIPPING

The Merchant Shipping (Formal Investigations) Rules¹³³

[The Minister] in exercise of powers conferred on him by [section 187 and 293(3) of the Merchant Shipping Act], and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Commencement and Interpretation

1. These Rules may be cited as the Merchant Shipping (Formal Investigations) Rules 1985 and [came into operation on 10 October, 1985]¹³⁴.

2.—4. *[Rules 2 to 4 were not applied in the Bahamas]*

Notice of Investigation and Parties to the Investigation

5.—(1) When [the Minister] causes a formal investigation to be held, he shall cause a notice, in these Rules called a “notice of investigation” to be served on any persons, including [the Bahamas Maritime Authority], who in the opinion of [the Minister] ought to be made a party; and any such person upon whom a notice of investigation has been served shall be a party to the formal investigation. [The Minister] shall be a party to the formal investigation.

(2) The notice of investigation shall contain:—

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

At any time before or during the hearing of the formal investigation [the Minister] may amend, add to or omit any of the questions contained in the notice of investigation.

(3) [The Minister] shall as far as practicable cause every party to the formal investigation to be given not less than 30 days notice of the time of and the date when and the place where the hearing of the formal investigation will commence; provided that such notice shall not be required to be given to any person who is made a party pursuant to Rule 6 of these Rules after the date of the hearing has been fixed.

(4) If at any time during the preparation of the formal investigation it appears likely to [the Minister] that the conduct of any person will be in issue, [the Minister] shall cause that person to be notified to that effect.

(5) Service of any notice or other document issued under this Rule may be effected either personally or by registered post or by the recorded delivery service to the person’s last known address.

6. Any person who is not already a party to a formal investigation may, with the leave

¹³³ applied in the Bahamas from UK SI 1001/1985 by SI 50/1985

¹³⁴ applied in the Bahamas from UK SI 1001/1985 by SI 50/1985 which was gazetted on 10 October, 1985

of the wreck commissioner, become a party to the formal investigation. Application for such leave may be made to the wreck commissioner at any time before or during the formal investigation.

Evidence and Procedure

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 (saving all just exceptions), and in 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 opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice has been 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.

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

(4) At the time and place appointed for the commencement of the formal investigation the wreck commissioner may proceed with the formal investigation whether the parties upon whom a notice of investigation has been served, or a person who has applied to become a party, or any of them, are present or not, 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 satisfied that the party has been served in accordance with the requirements of Rule 5(5).

(5) The wreck commissioner shall hold the formal investigation in public save to the extent to which he is of opinion that, in the interest of justice or for other good and sufficient reason in public interest, any part of the evidence, or any argument relating thereto, should be heard in private.

(6) The formal investigation shall commence with an opening statement by [the Minister], followed at the discretion of the wreck commissioner with brief speeches of behalf of the other parties. The proceedings shall continue with the production and examination of witnesses on behalf of [the Minister; and the Minister] may adduce documentary evidence. These witnesses 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. The Minister] shall then cause to be stated the questions relating to the shipping casualty or incident and to the conduct of persons connected with the shipping casualty or incident upon which the opinion of the wreck commissioner is desired. In framing the questions for the opinion of the wreck commissioner [the Minister] may make such modifications in, addition to, omissions from, the questions as set out in the notice of investigation or subsequent notices referred to in Rule 5(2) of these Rules as, having regard to the evidence which has been given, [the Minister] may think fit.

8.—(1) Any other party to the formal investigations shall be entitled to make a further

opening statement, to give evidence, to adduce documentary evidence, to call witness, to cross-examine any witnesses called by any other party and to address the wreck commissioner in such order as the wreck commissioner may direct. [The Minister] may also produce and examine further witnesses who may be cross-examined by the parties and re-examined by [the Minister].

(2) A party 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.

9. Every formal investigation shall be conducted in such 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.

10. Any of the parties who desires so to do may, after completion of the taking evidence, address the wreck commissioner in reply upon the whole case. After this address in reply upon the whole case, at the discretion of the wreck commissioner, an officer of whose conduct substantial criticism has been made during the formal investigation may be permitted or invited to make a final statement as to why, in the event of a finding that his conduct caused or contributed to the casualty, his certificate of competency should not be cancelled or suspended, or as to why he should not be censured.

Adjournment

11. The wreck commissioner may adjourn the formal investigation from time to time and from place to place, 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.

[12.—15. Rules 12 to 15 were not applied in the Bahamas)

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These rules prescribe the procedure to be followed at any formal investigation into a shipping casualty or incident. The wreck commissioner will be assisted by one or more assessors¹³⁵. Notice of the formal investigation must be served on anyone who in the opinion of [the Minister] ought to be made a party, though other persons may apply to the wreck commissioner to be made a party. At the end of the formal investigation the wreck commissioner shall give his decision regarding an officer's certificate, in cases where it was liable to be cancelled or suspended, and make a report to [the Minister. An assessor may sign the report with or without reservations.]

¹³⁵ see section 243(2) of the Merchant Shipping Act