

Shipping (Inquiry and Formal Investigation) Regulations

SAINT LUCIA

STATUTORY INSTRUMENT, 2016, No. 69

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*Shipping (Inquiry and Formal Investigation) Regulations***SAINT LUCIA**

STATUTORY INSTRUMENT, 2016, No. 69

[25th July, 2016]

In exercise of the powers conferred under sections 111(1)(1) and 491 of the Shipping Act, Cap. 13.27, the Minister responsible for shipping makes these Regulations:

PRELIMINARY**Citation**

1. These Regulations may be cited as the Shipping (Inquiry and Formal Investigation) Regulations, 2016.

Interpretation

2.—(1) In these Regulations —

“Act” means the Shipping Act, Cap. 13.27;

“Director” has the meaning assigned under section 2 of the Act;

“formal investigation” means a formal investigation into a casualty under section 439 of the Act;

“officer” includes a master, skipper, mate, second hand, deck officer, marine engineer officer and radio officer;

“Wreck Commissioner” means a person appointed by the Minister under section 439 of the Act to hold a formal investigation into a casualty.

(2) Any period of time specified in these Regulations by reference to days is exclusive of the first day and inclusive of the last day unless the last day falls on a Saturday, Sunday, Good Friday or any day appointed by law to be a public holiday in Saint Lucia, in which case the time is determined exclusive of that day also.

*Shipping (Inquiry and Formal Investigation) Regulations***PART I****INQUIRY BY BOARD OF INQUIRY****Notice of inquiry**

3.—(1) When the Minister appoints a board of inquiry under section 114 of the Act, the board of inquiry shall cause a notice of inquiry to be served on the officer concerned who shall be made a party to the inquiry.

(2) Service of a notice of inquiry shall be effected at least thirty days before the date fixed for the inquiry either by serving the officer concerned personally or by sending the notice of inquiry to his or her last known address by registered post or by a recorded delivery service.

(3) The notice of inquiry must state —

- (a) the facts giving rise to the inquiry;
- (b) the allegation made against the officer to whom the notice is addressed and the grounds for the allegation;
- (c) the time and date when and the place where the inquiry is to be held;
- (d) the officer's rights as set out in regulation 5(2) and (3).

Holding of inquiry

4.—(1) Subject to subregulation (2), at the time and the place appointed for holding the inquiry the board of inquiry may proceed with the inquiry in the absence of the officer upon whom the notice of inquiry was served, any other party, or any person who has applied to become a party.

(2) Where the officer concerned has been served with the notice of inquiry by post, the board of inquiry shall not proceed with the inquiry in his absence unless satisfied that the officer has been served under regulation 4(1) and (2).

(3) Any other person, not being the officer concerned, may, with the leave of the board of inquiry, become a party to the inquiry.

(4) The inquiry shall be held in public except where the board of inquiry is properly satisfied that in the interests of justice, or for other good and sufficient reason in the public interest, any part of the evidence or any argument relating to the evidence should be heard in private.

*Shipping (Inquiry and Formal Investigation) Regulations***Procedure at inquiry**

5.—(1) The proceedings at the inquiry shall commence with the presentation on behalf of the Director of the case against the officer concerned.

(2) The officer concerned has the right —

- (a) to defend himself or herself against an allegation, in person or otherwise;
- (b) to admit to, before or at any time after the commencement of the inquiry, an allegation or any part of an allegation made against him or her.

(3) Where more than one allegation is made against an officer, his or her admission to an allegation or any part of that allegation pursuant to subregulation (2)(b) is without prejudice to his or her right to defend himself or herself against any other allegation to which he or she does not admit.

(4) Any party to the inquiry has the right in person or by a representative to make an opening statement, call witnesses, cross-examine witnesses called by other parties, tender evidence other than oral evidence and address the board of inquiry.

(5) Where a party does not appear in person at the inquiry and is not represented by another person he or she may make representations in writing to the board of inquiry and such written representations shall be read out at the inquiry by or on behalf of the board of inquiry.

(6) Without prejudice to the admission of documents as secondary evidence allowed by statute or otherwise, affidavits, depositions, statutory declarations and other written evidence shall, unless the board of inquiry considers it unjust, be accepted as evidence at the inquiry.

(7) The board of inquiry may postpone or adjourn the hearing of the inquiry for such period as it thinks fit on its own motion or upon the application of any party.

Report of board of inquiry

6.—(1) The board of inquiry shall, at the conclusion of the inquiry or as soon as possible thereafter, announce its decision in public and make a report on the case to the Minister under section 114(3) of the Act.

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(2) Each member of the board of inquiry shall either sign the report with or without reservations, or state in writing his or her dissent from the report and his or her reasons for such dissent, and such reservations or dissent and reasons, if any, shall be forwarded to the Minister with the report.

(3) The board of inquiry shall inform the officer concerned, in writing, of the decision of the board of inquiry if the officer was not present at the inquiry when that decision was announced and make a copy of the report available to the officer concerned.

(4) A copy of the report shall be made available to any party to the inquiry upon a request made to the Minister.

PART II**FORMAL INVESTIGATION****Assessors for formal investigation**

7.—(1) For the purposes of section 439(2) of the Act, the Wreck Commissioner must be assisted by at least one or more assessors who have the appropriate qualifications and experience in merchant shipping service specified in the Schedule.

(2) For the purposes of section 439(4), where any question as to the cancellation or suspension of an officer's certificate is likely to arise, the Wreck Commissioner shall be assisted by at least two assessors with the appropriate qualifications and experience in merchant shipping service as follows —

- (a) in the case of a master or deck officer, two of whom are mercantile marine masters;
- (b) in the case of a marine engineer officer, one of whom is a mercantile marine engineer and one a mercantile marine master;
- (c) in the case of a fishing vessel officer, one of whom is a mercantile marine master and one a fishing vessel skipper.

(3) In any case and wherever possible at least one of the assessors must have experience in the same capacity and in the same type of ship as the officer concerned.

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(4) The Minister shall maintain a list of assessors and may add or withdraw the name of any person to or from the list.

Notice of formal investigation

8.—(1) Where the Minister causes a formal investigation to be held, the Wreck Commissioner shall cause a notice of investigation to be served on any person, including the Director, who in the opinion of the Wreck Commissioner ought to be made a party to the formal investigation.

(2) A person upon whom a notice of investigation has been served under subregulation (1) is a party to the formal investigation.

(3) The Attorney General shall be a party to the formal investigation.

(4) The notice of investigation must contain —

(a) a statement of the facts giving rise to the formal investigation; and

(b) a statement of the questions which the Attorney General intends to raise at the formal investigation.

(5) At any time before or during the hearing of the formal investigation the Wreck Commissioner may amend, add to or omit any of the questions contained in the notice of investigation.

(6) The Wreck Commissioner shall as far as practicable cause every party to the formal investigation to be given not less than thirty days notice in writing of the time and the date when and the place where the hearing of the formal investigation will commence.

(7) Notwithstanding subregulation (6), a notice is not required to be given to any person who is made a party pursuant to regulation 10 after the date of the hearing has been fixed.

(8) Where at any time during the preparation for the formal investigation it appears likely to the Wreck Commissioner that the conduct of any person will be in issue, the Wreck Commissioner shall cause that person to be notified to that effect.

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

*Shipping (Inquiry and Formal Investigation) Regulations***Parties to the formal investigation**

9.—(1) Any person who is not already a party to a formal investigation may, with the leave of the Wreck Commissioner, become a party to the formal investigation.

(2) An application for such leave may be made to the Wreck Commissioner at any time before or during the formal investigation.

Evidence and procedure

10.—(1) Without prejudice to the admission of documents as secondary evidence allowed by statute or otherwise, affidavits, statutory evidence, 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 case of neglect or refusal to admit after such notice, the party so neglecting or refusing is liable for all the costs of proving the documents, whatever may be the results, unless the Wreck Commissioner considers that the refusal to admit was reasonable.

(3) The costs of proving any document is not allowed unless the notice under subregulation (2) has been given.

(4) 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.

(5) 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 or her absence unless satisfied that the party has been served under regulation 8(9).

(6) The Wreck Commissioner shall hold the formal investigation in public unless he or she is of the opinion that, in the interest of

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justice or for other good and sufficient reason in the public interest, any part of the evidence, or any argument relating to the evidence, should be heard in private.

Commencement procedure

11.—(1) The formal investigation commences with an opening statement by the Attorney General, followed, at the discretion of the Wreck Commissioner, with brief speeches on behalf of the other parties.

(2) The proceedings continue with the production and examination of witnesses on behalf of the Attorney General, and the Attorney General may adduce documentary evidence.

(3) Witnesses may be cross-examined by the parties in such order as the Wreck Commissioner directs and be re-examined on behalf of the Attorney General.

(4) The Attorney General shall cause to be stated, the questions relating to the casualty, and to the conduct of persons connected with the casualty, upon which the opinion of the Wreck Commissioner is required.

(5) In framing the questions for the opinion of the Wreck Commissioner the Attorney General may make such modifications in, additions to, or omissions from, the questions as set out in the notice of investigation or subsequent notices as, having regard to the evidence which has been given, the Attorney General considers fit.

Further procedures

12.—(1) Any other party to the formal investigation is entitled to make a further opening statement, to give evidence, to adduce documentary evidence, to call witnesses, to cross-examine any witnesses called by any other party and to address the Wreck Commissioner in such order as the Wreck Commissioner directs.

(2) The Attorney General may produce and examine further witnesses who may be cross-examined by the parties and re-examined by the Attorney General.

(3) A party who does not appear in person at a formal investigation and is not represented may make representations in writing to

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the Wreck Commissioner and such written representations may be read out at the formal investigation on behalf of the party, subject to the approval of the Wreck Commissioner.

Opportunity to make defence

13. Every formal investigation must be conducted in such manner that where substantial criticism is made against any person, that person has an opportunity of making his or her defence either in person or otherwise.

Closing address

14.—(1) Any of the parties may, after completion of the taking of evidence, address the Wreck Commissioner on the evidence and the Attorney General may address the Wreck Commissioner in reply on the whole case.

(2) After an address in reply on the whole case, the Wreck Commissioner may permit or invite an officer of whose conduct substantial criticism has been made during the formal investigation to make a final statement as to why, in the event of a finding that his or her conduct caused or contributed to the casualty, his or her certificate of competency should not be cancelled or suspended, or as to why he or she should not be censured.

Adjournment

15. The Wreck Commissioner may adjourn the formal investigation from time to time and from place to place, and where an adjournment is requested by any party to the formal investigation, the Wreck Commissioner may impose such terms as to payment of costs or otherwise, as he or she thinks just, as a condition of granting the adjournment.

Results of formal investigation

16. At the end of the formal investigation the Wreck Commissioner shall —

- (a) in any case where an officer's certificate is in issue, give his or her decision concerning the certificate in public; and

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- (b) whether or not a certificate is in issue, make a report on the formal investigation to the Minister including his or her and the assessors' findings as to the reasons for the casualty or as to any particular matter relating to the casualty, or as to the conduct of any person implicated in the casualty, and the reasons for suspending or cancelling an officer's certificate.

Report

17.—(1) Each assessor shall sign the report with or without reservations, or state in writing his or her dissent from the report and give his or her reasons for dissent, and the dissent and reasons, if any, 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 formal investigation to be given a copy of the whole or, where appropriate, a relevant part of the report.

(3) Further copies of the report shall not be released until the Minister is satisfied that the parties have had reasonable time to receive copies of the report.

Cost of the formal investigation

18. Where the Wreck Commissioner makes any order as to the costs of the formal investigation and of any of the parties at the formal investigation or with regard to the parties by whom these costs are to be paid, he or she shall state in the report the reasons for making such an order.

PART III**INQUIRY INTO FITNESS OR CONDUCT****Assessors for inquiry into fitness or conduct**

19.—(1) An inquiry into fitness and conduct under section 442 of the Act shall be conducted by a Wreck Commissioner, with the assistance of one or more assessors, in accordance with section 439 of the Act.

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(2) For the purposes of section 439 of the Act, an assessor must be suitably qualified to assess the competence of a master, mate or engineer to discharge the duties and responsibilities commensurate with his or her certificate or licence.

Notice of inquiry into fitness or conduct

20.— (1) When the Minister causes an inquiry to be held, a Wreck Commissioner shall cause a notice of inquiry to be served in writing on the master, mate or engineer who holds a certificate or licence under section 111 or 113 of the Act who shall be made a party to the inquiry.

(2) Service of a notice of inquiry must be effected at least thirty days before the date fixed for the inquiry either by serving the master, mate or engineer who holds a certificate or licence personally or by sending the notice of inquiry to his or her last known address by registered post or by a recorded delivery service.

(3) The notice of inquiry must state —

- (a) the facts giving rise to the inquiry;
- (b) the grounds under sections 114(1) and 442(1) of the Act for the suspension of the certificate or licence of the master, mate or engineer to whom the notice is addressed;
- (c) the time and date when, and the place where, the inquiry is to be held;
- (d) the rights of the master, mate or engineer under regulations 22(2) and (3).

Holding of inquiry into fitness or conduct

21.—(1) Subject to subregulation (2), at the time and the place appointed for holding the inquiry the Wreck Commissioner may proceed with the inquiry in the absence of the master, mate or engineer who holds the certificate or licence, any other party, or any person who has applied to become a party.

(2) Where the master, mate or engineer who holds the certificate or licence has been served with the notice of inquiry

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by post, the Wreck Commissioner shall not proceed with the inquiry in his or her absence unless satisfied that the master, mate or engineer has been served under regulation 20(1) and (2).

(3) Any other person, not being the master, mate or engineer concerned, may, with the leave of the Wreck Commissioner, become a party to the inquiry.

(4) The inquiry must be held in public unless the Wreck Commissioner is satisfied that in the interests of justice, or for other good and sufficient reason in the public interest, any part of the evidence or any argument relating to the evidence may be heard in private.

Procedure at inquiry into fitness or conduct

22.—(1) The proceedings at the inquiry shall commence with the presentation, on behalf of the Director, of the case against the master, mate or engineer who holds the certificate or licence.

- (2) The master, mate or engineer concerned has the right —
- (a) to defend himself or herself in person or otherwise;
 - (b) to admit the grounds of the inquiry in whole or in part before or at any time after the commencement of the inquiry.

(3) Where there is more than one ground for the inquiry, the admission by the master, mate or engineer to all or any part of a ground under subregulation (2)(b) is without prejudice to his or her right to defend himself or herself against any other ground to which he or she does not admit.

(4) Any party to the inquiry has the right in person or by a representative to make an opening statement, call witnesses, cross-examine witnesses called by other parties or on behalf of the Director, tender evidence other than oral evidence and address the Wreck Commissioner in such order as the Wreck Commissioner directs.

(5) Where a party does not appear in person at the inquiry and is not represented by another person, he or she may make representations in writing to the Wreck Commissioner and such written representations shall be read out at the inquiry by or on behalf of the Wreck Commissioner.

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(6) Without prejudice to the admission of documents as secondary evidence allowed by statute or otherwise, affidavits, depositions, statutory declarations and other written evidence must, unless the Wreck Commissioner considers it unjust, be accepted as evidence at the inquiry.

(7) The Wreck Commissioner may postpone or adjourn the hearing of the inquiry for such period as he or she considers fit either of his or her own motion or upon the application of any party.

Report of inquiry into fitness or conduct

23.—(1) The Wreck Commissioner shall, at the conclusion of the inquiry or as soon as possible thereafter, announce his or her decision in public.

(2) Each assessor shall either sign the report with or without reservations, or state in writing his or her dissent from the report and his or her reasons for such dissent, and any such reservations or dissent and reasons must be forwarded to the Minister with the report.

(3) The Wreck Commissioner shall inform the master, mate or engineer who holds the certificate or licence, in writing, of the decision of the Wreck Commissioner if the master, mate or engineer was not present when that decision was announced and make a copy of the report available to the master, mate or engineer.

(4) A copy of the report must be made available to any party to the inquiry upon request made to the Minister.

PART IV**MISCELLANEOUS****Rehearing**

24. Where the Minister orders the whole or any part of an inquiry or formal investigation to be reheard under section 443 of the Act, the rehearing must be conducted in accordance with these Regulations.

*Shipping (Inquiry and Formal Investigation) Regulations***SCHEDULE**

(Regulation 8)

Special skills or knowledge of Assessors

1. Mercantile Marine Masters

- (a) must be in possession of a Certificate of Competency (Deck Officer) (Class 1) (Master Mariner) (or its equivalent) and have had command of a vessel for at least two years;
- (b) must have a wide knowledge of all modern aids to navigation;
- (c) must not be more than seventy years of age.

2. Mercantile Marine Engineers

- (a) must be in possession of 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 two years;
- (b) must have a wide knowledge of matters relating to marine engineering;
- (c) must not be more than seventy years of age.

3. Coast Guard

- (a) must have had rank of Lieutenant Commander and two years service in that rank in a Saint Lucia Guard Ship at sea; and
- (b) must not be more than seventy years of age.

4. Persons of special skill or knowledge

- (a) Naval architects;
- (b) persons with managerial or other experience.

Made this 29th day of June, 2016.

STEPHENSON KING,
Minister responsible for shipping