
STATUTORY INSTRUMENTS

1982 No. 1752

MERCHANT SHIPPING

MASTERS AND SEAMEN

The Merchant Shipping (Section 52 Inquiries) Rules 1982

<i>Made</i>	- - - -	<i>6th December 1982</i>
<i>Laid before Parliament</i>		<i>10th December 1982</i>
<i>Coming into Operation</i>		<i>1st January 1983</i>

The Secretary of State, in exercise of powers conferred by section 58(1) and (2) of the Merchant Shipping Act 1970 and now vested in him⁽¹⁾ and of all other powers enabling him in that behalf, hereby makes the following rules:

Commencement and interpretation

1. These Rules may be cited as the Merchant Shipping (Section 52 Inquiries) Rules 1982 and shall come into operation on 1st January 1983.

2.—(1) In these Rules, unless the context otherwise requires:

“the Act of 1970” means the Merchant Shipping Act 1970;

“allegation” means an allegation by the Secretary of State that an officer's fitness or conduct falls within section 52(1)(a) to (c) of the Act of 1970;

“officer” means an officer qualified for the purposes of section 43 of the Act of 1970⁽²⁾ and includes a master, skipper, mate, second hand, deck officer, marine engineer officer, radio officer and doctor;

“person appointed” means the person or persons appointed by the Secretary of State to hold a section 52 inquiry;

“a section 52 inquiry” means an inquiry into the fitness or conduct of an officer under section 52 of the Act of 1970⁽³⁾.

(2) Any period of time specified in these Rules by reference to days shall be exclusive of the first day and inclusive of the last day unless the last day falls on a Saturday, Sunday, Christmas Day,

(1) See S.I. 1970/1537.

(2) Section 43 was amended by section 37(2) and (3) of the Merchant Shipping Act 1979 (c. 39).

(3) Section 52(3) was amended by section 37(4) of the Merchant Shipping Act 1979.

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Good Friday or any day appointed by law to be a bank holiday in that part of the United Kingdom where the inquiry is to be held, in which case the time shall be reckoned exclusively of that day also.

Application

3. These rules apply to any section 52 inquiry, and to any re-hearing of such an inquiry under section 57 of the Act of 1970 which is not held by the High Court or the Court of Session.

Notice of Inquiry

4.—(1) When the Secretary of State causes a section 52 inquiry to be held, he shall cause a notice, in these Rules called a “notice of inquiry”, to be served on the officer concerned who shall be made a party to the inquiry. Service of such a notice shall be effected at least 30 days before the date fixed for the inquiry either by serving the officer concerned personally or by sending the notice to his last known address by registered post or by the recorded delivery service.

(2) The notice of inquiry shall 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 therefor;
- (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 rule 7(2) and (3) of these Rules.

Appointment of the court of inquiry

5.—(1) The person appointed to hold the inquiry shall conduct it with the assistance of one or more assessors who shall be appointed by the Lord Chancellor or, in the case of an inquiry held in Scotland, by the Lord Advocate.

(2) The person appointed shall be either:

- (a) a barrister or solicitor of not less than ten years' standing who has been in practice as such not less than three years before the date of his appointment; or
- (b) a person who holds or has held high judicial office or the office of a circuit judge not less than three years before the date of his appointment.

(3) Wherever possible at least one of the assessors appointed shall have had experience in the same capacity and in the same type of ship as the officer concerned.

Holding of the inquiry

6.—(1) At the time and the place appointed for holding the inquiry the person appointed may proceed with the inquiry whether the party upon whom the notice of the inquiry was served, any other party, any person who has applied to become a party, or any of them, are present or not:

provided that where the officer concerned has been served with the notice of inquiry by post the person appointed shall not proceed with the inquiry in his absence unless satisfied that the officer has been served in accordance with the requirements of rule 4(1).

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

(3) The inquiry shall be held in public save to the extent to which the person appointed 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 thereto should be heard in private.

Procedure at inquiry

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

- (a) (2) (a) The officer concerned shall have the right:
 - (i) to defend himself against the allegation, in person or otherwise;
 - (ii) to admit before or at any time after the commencement of the inquiry the allegation or any part of it made against him.
- (b) Where more than one allegation is made against an officer his admission of an allegation or any part of it pursuant to sub-paragraph (a) above shall be without prejudice to his right to defend himself against any other allegation which he does not admit.

(3) Any party to the inquiry shall have 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 person appointed in such order as the person appointed may direct. If a party does not appear in person at the inquiry and is not represented by another person he may make representation in writing to the person appointed and such written representations shall be read out at the inquiry by or on behalf of the person appointed.

(4) 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 person appointed considers it unjust, be accepted as evidence at the enquiry.

(5) The person appointed may postpone or adjourn the hearing of the enquiry for such period as he thinks fit either of his own motion or upon the application of any party.

Decision of person appointed

8. The person appointed shall, at the conclusion of the inquiry or as soon as possible thereafter, announce his decision in public and make a report on the case to the Secretary of State pursuant to section 52(4)(c) of the Act of 1970. Each assessor shall either sign the report with or without reservations, or state in writing his dissent therefrom and his reasons for such dissent, and such reservations or dissent and reasons (if any) shall be forwarded to the Secretary of State with the report. The Secretary of State shall inform the officer concerned, in writing, of the decision of the person appointed if the officer was not in court when that decision was announced and make a copy of the report available to him. A copy of the report shall be made available to any party to the inquiry upon request to the Secretary of State.

Re-hearing of an Inquiry

9. Any re-hearing of a section 52 inquiry pursuant to section 57(1) of the Act of 1970 which is not held by the High Court or the Court of Session shall be conducted in accordance with the provisions of rules 4 to 8 inclusive of these Rules.

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6th December 1982

Iain Sproat
Parliamentary Under Secretary of State
Department of Trade

EXPLANATORY NOTE

These Rules prescribe the procedure to be followed at any inquiry under section 52 of the Merchant Shipping Act 1970 into the fitness or conduct of an officer and at any re-hearing of such an inquiry which is not held by the High Court or Court of Session. Notice of the inquiry must be served by the Secretary of State on the officer concerned (rule 4(1)) and the inquiry is to be held in public (rule 6(3)). The person appointed to hear the inquiry should be assisted by one or more assessors (rule 5(1)). He is required to announce his decision in public at the end of the inquiry or as soon as possible thereafter and to make a report to the Secretary of State. An assessor may sign the report with or without reservations (rule 8).

Section 57 of the 1970 Act provides for the re-hearing of inquiries if new or important evidence is discovered, or there are other grounds for suspecting that a miscarriage of justice may have occurred, and for an appeal to the High Court or Court of Session where the certificate of any person has been cancelled or suspended or any person has been found to be at fault by the person holding the inquiry.