
STATUTORY INSTRUMENTS

1997 No. 347

MERCHANT SHIPPING

SEAMEN

The Merchant Shipping (Section 63 Inquiries) Rules 1997

<i>Made</i>	- - - -	<i>14th February 1997</i>
<i>Laid before Parliament</i>		<i>20th February 1997</i>
<i>Coming into force</i>	- -	<i>13th March 1997</i>

The Secretary of State for Transport, after consulting with the organisations referred to in section 306(4) of the Merchant Shipping Act 1995(1), in exercise of powers conferred on him by section 65(1) of that Act and of all other powers enabling him in that behalf, hereby makes the following Rules—

Citation and Commencement

1. These Rules may be cited as the Merchant Shipping (Section 63 Inquiries) Rules 1997 and shall come into force on 13th March 1997.

Interpretation

2.—(1) In these Rules—

“the 1995 Act” means the Merchant Shipping Act 1995;

“allegation” means an allegation by the Secretary of State that a certificate holder is unfit to be the holder of such a certificate, whether by reason of incompetence or misconduct or for any other reason, within the meaning of section 62(1) of the 1995 Act;

“certificate holder” means the holder of a certificate of competency issued under either section 47, other than one certifying that a person is qualified as an officer, or 54 of the 1995 Act;

“person appointed” means the person or persons appointed by the Secretary of State to hold a section 63 inquiry;

“inquiry” means any inquiry, and any re-hearing of such an inquiry, to which these Regulations apply.

(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, Good Friday or any day appointed by law to be a bank holiday in the 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 inquiry under section 63 of the 1995 Act, and to any re-hearing of such an inquiry under section 64 of the 1995 Act which is not held by the High Court or the Court of Session.

Notice of Inquiry

4.—(1) When the Secretary of State causes an inquiry to be held, he shall cause a notice (in these Rules called a “notice of inquiry”) to be served in writing on the certificate holder concerned who shall be made a party to the inquiry.

(2) Service of such a notice shall be effected at least 30 days before the date fixed for the inquiry either by serving the certificate holder concerned personally or by sending the notice to his last known address by registered post or by the recorded delivery service.

(3) The notice of inquiry shall state:

- (a) the facts giving rise to the inquiry;
- (b) the allegation made against the certificate holder 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 certificate holder’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) An assessor shall be suitably qualified to assess the competence of a seaman to discharge the duties and responsibilities commensurate with his certificate.

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 in the absence of the certificate holder upon whom the notice of the inquiry was served, any other party, or any person who has applied to become a party, or any of them:

provided that where the certificate holder 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 certificate holder has been served in accordance with the requirements of rules 4(1) and (2).

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

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

Procedure at an 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 certificate holder concerned.

- (a) (2) (a) The certificate holder 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.
- (b) Where more than one allegation is made against a certificate holder 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 or on behalf of the Secretary of State, tender evidence other than oral evidence and address the person appointed in such order as the person appointed may direct.

(4) If a party does not appear in person at the inquiry and is not represented by another person he may make representations 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.

(5) 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 inquiry.

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

Decision of the person appointed

8.—(1) The person appointed shall, at the conclusion of the inquiry or as soon as possible thereafter, announce his decision in public.

(2) 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 any such reservations or dissent and reasons shall be forwarded to the Secretary of State with the report.

(3) The Secretary of State shall inform the certificate holder concerned, in writing, of the decision of the person appointed if the certificate holder was not present when that decision was announced and make a copy of the report available to him.

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

Signed by authority of the Secretary of State for Transport

14th February 1997

Goschen
Parliamentary Under-Secretary of State,
Department of Transport

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules prescribe the procedure to be followed at any inquiry under section 63 of the Merchant Shipping Act 1995 into the fitness or conduct of a seaman other than 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 certificate holder concerned (*rule 4(1)*) and the inquiry is to be held in public (*rule 6(3)*). The person appointed to conduct 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 (*rule 8(1)*). Each assessor must either sign the report, with or without reservations, or state his dissent therefrom in writing (*rule 8(2)*).