

# DEPARTMENT OF TRANSPORT

No. R. 1067

GG (Extraordinary) 119

24 November 1961

MERCHANT SHIPPING ACT, 1951 (ACT No. 57 OF 1951)

## THE COURTS OF MARINE ENQUIRY REGULATIONS, 1961

The Minister of Transport has, under the provisions of subsection (1) of section *three hundred and fifty-six* of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), as amended, repealed the Courts of Marine Enquiry Regulations, 1960 promulgated by Government Notice No. 1898 dated 20 November 1959 and has, in terms of the said subsection, made the regulations contained in the Schedule hereto, with effect in each case from the date of promulgation hereof.

[Substitution of expression: "Authority" substituted for "Secretary", wherever it occurs, by para 7, GNR241/19775/36,26Feb1999]

## SCHEDULE

### *Arrangement of regulations*

*Regulation*

*No.*

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\* Spelling error in published text: "Enforcements".

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## INTRODUCTORY NOTE

Attention is invited to section 280 of the Act, which empowers a Court of Marine Enquiry, subject to the provisions of the Act and the regulations made thereunder, to determine the procedure to be followed at the investigation. In so far, therefore, as any matter of procedure is not covered by the Act itself or the regulations following, the Court is free to determine its own procedure.

### Title of these Regulations

1. These regulations are called the Courts of Marine Enquiry Regulations, 1961.

### Interpretation

2. In these regulations the expression "**the Act**" means the Merchant Shipping Act, 1951 (Act No. 57 of 1951), and unless the context otherwise indicates, any expression used in these regulations to which a meaning has been assigned in the Act, bears the meaning so assigned, and—

"**Court**" means a Court of Marine Enquiry convened under section *two hundred and sixty-six* of the Act;

"**clerk**" means the clerk of a Court of Marine Enquiry appointed under regulation 8;

"**party**" means a person declared by or under regulation 9 to be a party to the proceedings of a Court.

### Powers and duties of Director-General

**2A.** All powers conferred and all duties imposed upon the Director-General in terms of these regulations may be exercised or performed by the Director-General personally or by an officer under the control or direction of the Director-General.

[Reg 2A inserted by reg 3, GNR777/27847,5Aug2005]

### **List from which members of court to be selected**

3. (1) The Director-General shall from time to time frame a list of persons qualified in terms of subsection (2) of section *two hundred and sixty-seven* of the Act to be members (other than presiding officers) of Courts of Marine Enquiry.

(2) The Director-General shall submit the list framed under paragraph (1) to the Minister for approval. The Minister may in his discretion remove from the list any names appearing therein and insert therein any names of persons qualified as aforesaid.

(3) When the Minister has approved any such list submitted to him, the list that up to that time, had been in use shall be cancelled.

(4) Opposite every name appearing in the list shall be stated the kind of nautical, engineering or other special skill, knowledge or experience which the person named possesses.

(5) Upon receipt by the Director-General of a request in writing by any person whose name appears on any such list for the removal of his name from the list, the Director-General shall remove his name.

(6) Every person whose name appears in the current list approved by the Minister shall be eligible for selection as a member (other than a presiding officer) of a Court of Marine Enquiry.

[Reg 3 amended by reg 4, GNR777/27847,5Aug2005]

### **Appointment of members of court**

4. (1) Whenever the Minister has decided that a Court of Marine Enquiry be convened, he shall appoint a person contemplated in section 267(1) of the Act to be the presiding officer thereof and two or four other persons to be members thereof.

[Para (1) substituted by para 2, GNR241/19775/36,26Feb1999]

(2) The members, other than the presiding officer, shall be selected from the current list framed in terms of regulation 3, unless by reason of the special nature of the investigation it appears to the Minister expedient to appoint as a member a person whose name does not appear on that list.

### **Notification of appointment as member**

5. The Director-General shall by letter inform all persons appointed by the Minister to be members of the Court that they have been so appointed, and of the questions which, on the information then in the possession of the Minister, are to be investigated by the Court. The Director-General may, at any time before the hearing of the investigation, by a subsequent letter, modify, add to or omit any of the questions specified in the letter of appointment.

[Reg 5 amended by reg 5, GNR777/27847,5Aug2005]

## **Allowances payable to members**

6. Every member of the Court shall, if he is in the employ of the Government of the Republic, be paid such allowances towards subsistence and transport as may be prescribed (otherwise than under the Act) for Government employees of his class, and if he is not in the employ of the Government of the Republic, or if no such allowances have been prescribed for Government employees of his class, he shall be paid the allowances towards subsistence and travel set forth in Annex A.

[Reg 6 substituted by para 3, GNR241/19775/36,26Feb1999]

## **Time when and place where investigation held**

7. (1) The presiding officer shall appoint the time when and place where the investigation is to be held.

(2) The clerk shall by letter notify the Director-General and any other person who before the commencement of the proceedings has been declared a party thereto of the said time and place.

[Para (2) amended by reg 6, GNR777/27847,5Aug2005]

## **Appointment and duties of clerk of a Court of Marine Enquiry**

8. (1) The Director-General shall appoint a person to be clerk of the Court of Marine Enquiry.

(2) The clerk shall, subject to the provisions of regulation 20 and to any instructions by the presiding officer, make minutes of the proceedings of the Court, and take such minutes and any documents produced during or in connection with the investigation into his custody.

[Para (1) amended by reg 7, GNR777/27847,5Aug2005]

## **Parties to the proceedings**

9. (1) The following persons shall be parties to the proceeding:

(a) The Director-General; and

[Subpara (a) amended by reg 8, GNR777/27847,5Aug2005 as corrected by GNR826/27893,19Aug2005]

(b) any person who the presiding officer is satisfied has a direct interest in the subject of the investigation and who has been declared by the presiding officer to be a party.

(2) The presiding officer may make a declaration that any person is a party on the application of the person concerned or of any other party or of his own motion, and any such declaration may be made at any time after the presiding officer has been appointed and before or after the commencement of the investigation.

(3) A declaration by the presiding officer that any person is a party may be made during a sitting of the Court or otherwise, and if such a declaration is made otherwise than during a sitting of the Court at which the person concerned is present, the clerk shall notify

him in writing that he has been declared to be a party and when and where the next meeting of the Court will be held.

### **Summoning of witnesses\***

**10.** (1) The summoning by the Court, in the exercise of its powers under paragraph (iii) of subsection (1) of section *nine* of the Act, of any person to appear before it to be interrogated or to produce any book, document or thing shall be by subpoena in the form set forth in Annex B.

(2) Any such subpoena may be sued out by the Director-General or any other party desiring the attendance of the witness and shall be signed by the clerk.

[Para (2) amended by reg 9, GNR777/27847,5Aug2005]

(3) The subpoena may be served on the person to be summoned by the Messenger of the Magistrate's Court within whose area of jurisdiction the Court of Marine Enquiry is held or by any other person, and the service shall be effected at a reasonable time before attendance is required.

(4) There shall be delivered to the person who is to effect service together with the subpoena so many copies thereof as there are witnesses to be summoned and also such sum or sums of money as the person suing out the subpoena intends that the person who is to effect service shall pay or offer to the said witnesses respectively for their conduct money.

(5) The service of any such subpoena may be proved by the affidavit of the person who has effected the service or by his testimony upon oath before the Court, or, if the service was effected by the Messenger, by a return of service under his hand.

(6) The Messenger shall be entitled to be paid for the service of any subpoena the fees and charges that would be payable to him if the subpoena were a subpoena issued out of a Magistrate's Court.

### **Commencement of proceedings**

**11.** At the time and place appointed for holding the investigation, the Court may proceed with the investigation, whether the parties or any of them are present or not.

### **Representation of parties**

**12.** (1) Any party may be represented by an attorney for the purpose of suing out subpoenas and by an advocate or attorney for the purposes of examining, cross examining or re-examining witnesses or addressing the Court.

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\* As to the method of service of a subpoena attention is invited to section 342(a) and (b) of the Act. As to the fees payable to witnesses, attention is invited to section 285 of the Act.

(2) The Director-General may be represented for the said purposes and for the purposes mentioned in regulation 13 by any person appointed by him whether or not such person is an advocate or attorney.

[Para (2) amended by reg 10, GNR777/27847,5Aug2005]

### **Formulation of questions for decision by Court**

**13.** (1) After the Court has been opened, and before any evidence is given, the Director-General shall state in open court the questions in reference to the allegation or event upon which the finding of the Court is required. In formulating the questions for the finding of the Court, the Director-General may make such modifications in, additions to or omissions from the questions set forth in the letter referred to in regulation 5, as amended in terms of that regulation, as, having regard to the information then known to him, he may think fit.

(2) The Director-General may at any stage of the investigation, with the approval of the presiding officer, make such further modifications in, additions to or omissions from any of the questions so formulated as, having regard to any evidence which may have been given, he may think fit.

[Reg 13 substituted by para 4, GNR241/19775/36,26Feb1999]

[Paras (1) and (2) substituted by reg 11, GNR777/27847,5Aug2005]

### **Evidence**

**14.** (1) After the questions upon which the finding of the Court is required have been formulated in terms of paragraph (1) of regulation 13, each of the parties shall be entitled to address the Court for the purpose of opening the evidence which he intends to adduce, and produce and examine witnesses or, with the approval of the presiding officer, recall any of the witnesses who have already been examined for further examination and generally adduce evidence. The witnesses may be cross-examined by the other parties in such order as the presiding officer may direct, and may then be re-examined by the party who has produced them. The parties shall be heard and their witnesses examined, cross-examined and re-examined in such order as the presiding officer may direct.

(2) Any party who has produced witnesses may at any stage of the investigation, with the approval of the presiding officer, produce and examine further witnesses, who may be cross-examined by the other parties in such order as the presiding officer may direct, and re-examined by the party who has produced them.

(3) The law as to admissibility of evidence and as to the competency, examination, cross-examination and re-examination of witnesses in courts of law shall not be binding upon a Court of Marine Enquiry, but the presiding officer, may, in his discretion, disallow any question which any other member of the Court or any party proposes to put to any witness, on the ground that such question is irrelevant or that for any other cause it would be improper that the question be put, and may, in his discretion and on similar grounds, rule that the production of any book, document or thing required by any other member of the Court or any party shall not be allowed.

(4) Affidavits and statutory declarations may, by permission of the presiding officer, be used as evidence.

## **Addresses by the parties**

**15.** After all the evidence has been adduced, any of the parties (other than the Director-General) who desires to do so may, in such order as the presiding officer may direct, address the Court upon the evidence, and the Director-General may address the Court in reply upon the whole case.

[Reg 15 amended by reg 12, GNR777/27847,5Aug2005]

## **Adjournments**

**16.** The Court may adjourn the investigation from time to time and from place to place, and where an adjournment is asked for by a party to the proceedings, the Court may impose such terms as to payment of costs or otherwise as it may think just as a condition of granting the adjournment.

## **Orders for costs**

**17.** (1) The Court may make such order for the payment by the Director-General or any other party—

- (a) of the costs or any part thereof reasonably incurred by the Director-General or any other party in attending or being legally represented at the hearing or in bringing witnesses or adducing evidence; and
- (b) of any other costs or any part thereof reasonably incurred by the Director-General in connection with the investigation or hearing,

as may be just.

[Para (1) amended by reg 13, GNR777/27847,5Aug2005]

(2) Any costs awarded in terms of subparagraph (a) of paragraph (1) shall be subject to taxation by the clerk of the Magistrate's Court within whose area of jurisdiction the investigation was held. His taxation shall, unless the Court of Marine Enquiry has directed that it be made on scale B or C, be made on the ordinary scale A applicable to the taxation of costs in an action tried in a Magistrate's Court, as though it was a taxation of the costs of such an action, and shall be subject to review as though it was such a taxation. The same fees as would be paid on the taxation of a bill of costs in a Magistrate's Court shall be paid in respect of the taxation of any costs so awarded.

[Para (2) amended by GNR215/3783/29,16Feb1973]

(3) Any costs awarded in terms of subparagraph (b) of paragraph (1) shall be assessed by the presiding officer of the Court of Marine Enquiry.

## **Orders for damages caused by frivolous or vexatious allegations**

**18.** If the Court finds that the allegation for the investigation of which the Court was convened was frivolous or vexatious, it may make such order for the payment by the party who made the allegation of damages for any loss or delay caused thereby as may be just.

## **Enforcement of orders for costs or damages**

**19.** An order for the payment of costs or damages made under regulation 17 or 18, respectively shall, on being filed with the clerk of the Magistrate's Court within the area of jurisdiction of which the Court of Marine Enquiry has held the investigation, have all the effects of and may be executed as if it were a civil judgment lawfully given in that Magistrate's Court in favour of the person who is by such order declared entitled to such costs or damages and against the person who is by such order directed to pay such costs or damages: Provided that if the person who is by such order directed to pay such costs or damages is or was a master, apprentice-officer or seaman in the employ of the person who is by such order declared entitled to such costs or damages, the amount of such costs or damages may be deducted from any wages that may be due to such master, apprentice-officer or seaman.

## **Records of proceedings**

**20.** (1) The Court shall cause minutes to be made of—

- (a) any *viva voce* evidence given in court;
- (b) any objection made to any evidence received or tendered;
- (c) the proceedings of the court generally, including the record of any inspection *in loco*; and
- (d) the decisions of the Court.

(2) The Court shall duly mark each document put in evidence and note such mark on the record.

(3) Such minutes and marks may be made by the clerk and, save where made by the clerk, or as hereinafter provided, they shall be made by the presiding officer.

(4) The Director-General may cause such minutes to be recorded by mechanical or other suitable means either *verbatim* or in narrative form.

[Para (4) amended by GNR1419/E897/6, 11Sep1964 and substituted by reg 14, GNR777/27847, 5Aug2005]

(5) Any party shall be entitled to a transcript of any such record certified as correct by the transcriber on payment of a fee to be fixed by the Director-General, having regard to the costs to the Director-General of such transcript.

[Para (5) amended by GNR1419/E897/6, 11Sep1964 and substituted by reg 14, GNR777/27847, 5Aug2005]

(6) In the event of an appeal being noted and set down for hearing such record shall, so far as relevant to the appeal, be transcribed and certified on oath by the transcriber as a true record of the proceedings and such transcript shall thereafter form part of the record.

[Para (6) amended by GNR1419/E897/6, 11Sep1964 and substituted by reg 14, GNR777/27847, 5Aug2005]

(7) Any party may apply to the presiding officer to correct any errors in the record. Such application shall be made not later than seven days after the decision of the Court has been declared: Provided that if the application is for a correction of any errors in the record made under paragraph (4) the transcript of which has not been completed before the decision of the Court is declared, it shall be made not later than seven days after the transcript has been completed. Upon being satisfied that reasonable notice of the application has been given by the applicant to every other interested party, the presiding officer may, after

consideration of any representations that may be made to him by any such party, and, if he thinks it necessary, after consultation with one or more of the other members of the Court, correct any such errors.

[Para (7) amended by GNR1419/E897/6,11Sep1964 and substituted by reg 14, GNR777/27847,5Aug2005]

(8) If, before the hearing of the application, all parties affected file a consent to the corrections claimed, no costs of such application shall be allowed; otherwise, costs shall be in the discretion of the presiding officer, and the provisions of paragraph (2) of regulation 17 and regulation 19 shall apply in respect of any award by him of such costs.

### **Transmission of records to Authority**

21. (1) The records transmitted to the Authority in terms of section *two hundred and eighty-six* of the Act shall be certified by the clerk.

(2) The report referred to in the said section shall be in the form set forth in Annex C, with such modifications as circumstances may require.

(3) The Authority shall, within seven days of receipt thereof by it, cause to be transmitted to the Director-General for safe-keeping the record of proceedings, including the notes of evidence, the decisions, the report by the presiding officer and any reasons or other documents transmitted to it in terms of section 286 of the Act.

[Para (3) added by reg 15, GNR777/27847,5Aug2005]

### **Appeal to High Court**

22. (1) Any person aggrieved by a decision of a Court of Marine Enquiry who contemplates appealing to a High Court under section 292 of the Act may apply to the Director-General for a copy of the report transmitted to him in terms of regulation 21(3). Such application shall be made in writing, shall state an address to which the report may be posted or the name of the person to whom it may be delivered and shall be delivered at the office of the Director-General or posted so as to reach the Director-General not later than fourteen days after the delivery of the decision of the Court at the conclusion of the investigation. The Director-General shall cause a copy of the report to be posted to the applicant at the address stated or to be delivered to the person named, upon payment by the applicant of a fee calculated at R1,10 per A4 page, but subject to a minimum fee of R35.

(2) An appeal may be noted by any person other than the Director-General within thirty days after the posting to him or the delivery to the person named of the copy of the report, and by the Director-General within thirty days after the receipt by him of the report transmitted in terms of regulation 21(3).

(3) An appeal shall be noted by the service upon the Director-General and every other person who was a party to the proceedings of a notice of appeal and, unless the High Court to which appeal is made otherwise directs, by giving security to the satisfaction of the Registrar of that Court for the respondent's costs of appeal to the amount of R10 000: Provided that no security shall be required from the State or the Authority.

(4) A notice of appeal shall state—

(a) the High Court to which the appeal is noted;

- (b) whether the whole or part only of the decision is appealed against, and if part only, then what part; and
- (c) the grounds of appeal, specifying the findings of fact or rulings of law appealed against.

(5) Whenever an appeal has been noted, the Director-General shall forthwith transmit a copy of the notice of appeal to the person who was the presiding officer of the Court, who shall, within seven days of the receipt thereof by him, transmit to the Director-General a statement, in writing, showing (so far as may be necessary having regard to any written decision already delivered by him or by the Court and to the report referred to in regulation 21)—

- (i) the facts the Court found to be proved;
- (ii) the grounds upon which the Court arrived at any finding of fact specified in the notice of appeal as appealed against; and
- (iii) his reasons for any ruling of law so specified as appealed against.

The statement shall become part of the record.

(6) Any party may apply to the Director-General for a copy of the statement referred to in paragraph (5). The application shall be made in writing, shall state an address to which the statement may be posted or the name of the person to whom it may be delivered, and shall be accompanied by a fee of R35. The Director-General shall cause a copy of the statement to be posted to the applicant at the address stated or to be delivered to the person named.

(7) The Director-General shall, within seven days after he receives notice that the appeal has been set down for hearing, cause to be transmitted to the Registrar of the High Court the record of the proceedings before the Court of Marine Enquiry, including the notes of evidence, the decisions, the report by the presiding officer and any reasons and other documents transmitted to the Director-General in terms of regulation 21(3), and the statement referred to in paragraph (5).

(8) Subject to the provisions of this regulation, an appeal shall be prosecuted within the period and in accordance with the practice and rules which apply in the High Court to which appeal is made in respect of appeals in civil cases from Magistrates' Courts, and if the appeal is to a Local Division of the High Court which has no jurisdiction to hear appeals in civil cases from the Magistrates' Courts, the appeal shall be prosecuted within the period and in accordance with the practice and rules which apply in respect of such appeals in the Provincial Division of the Province within which that Local Division exercises jurisdiction, and in default of such prosecution, the appeal shall be deemed to have lapsed, unless that High Court shall see fit to make an order to the contrary.

(9) The judgment of the High Court to which appeal is made may be enforced as if it had been given in the Court appealed from.

[Reg 22 substituted by reg 16, GNR777/27847,5Aug2005]

### **Rehearing by order of the Minister**

23. Whenever the Minister has directed under the provisions of section *two hundred and ninety-one* of the Act that a case heard by a Court of Marine Enquiry be reheard by such

a Court or that a case heard by a Maritime Court be reheard by a Court of Marine Enquiry, the provisions of these regulations shall apply to such rehearing.

[Reg 23 amended by reg 17, GNR777/27847,5Aug2005]

## ANNEX A

### (Regulation 6)

[Annex A amended by GNR3055/2500/11,8Aug1969, substituted by GNR1287/7077/95.20Jun1980, amended by GNR2584/11632/23,23Dec1988 and GNR1713/18549/42,19Dec1997, and substituted by reg18, GNR777/27847,5Aug2005]

#### **ALLOWANCES TOWARDS SUBSISTENCE AND TRANSPORT PAYABLE TO MEMBERS OF COURTS OF MARINE ENQUIRY**

1. A member shall receive an allowance for every day on which he attends an investigation in respect of expenditure necessarily and actually incurred in respect of meals, liquid refreshments, accommodation, bedding and laundry and ironing but excluding alcoholic beverages and dry-cleaning—

- (i) when he is not absent from his usual place of residence or employment overnight: R80 per day or part of a day calculated from midnight to midnight; and
- (ii) when he is absent from his usual place of residence or employment overnight: R550 per day or part of a day calculated from midnight to midnight: Provided that if this allowance is insufficient the actual expenditure may be refunded to the member plus an amount of R50 per day to cover additional expenditure.

2. In addition to the allowance payable under paragraph 1 a member shall receive a special allowance for every day on which he attends an investigation and on which the case is wholly or partly heard of R750 per day or part of a day calculated from midnight to midnight.

3. For journeys undertaken by a member from his usual place of residence or employment to the place where the investigation is held, he may make use of public transport or his own motor vehicle or a hired motor vehicle.

4. A member is entitled to travel first class by train and in the economic class by air.

5. The actual cost will be refunded to a member in the case of public transport and, if the Director-General considers it reasonable, in the case of hired transport.

6. For the use of his own motor vehicle a member shall be reimbursed at the rate of R1,80 per kilometre for the distance travelled to and from the place of the investigation or the place from where the journey was continued by public transport.

**ANNEX B**

[Annex B amended by para 6, GNR241/19775/36,26Feb1999 and substituted by reg 18, GNR777/27847,5Aug2005]

**COURT OF MARINE ENQUIRY**

**SUBPOENA**

(Regulation 10)

To—

(1)..... of.....

(2)..... of.....

(3)..... of.....

(4)..... of.....

You are hereby required to appear in person before the Court of Marine Enquiry at ..... on the ..... day of 20....., at the hour of .....

which has been appointed to investigate the circumstances attending the .....

.....

.....

..... and to bring with you and then produce to the Court the several documents specified in the list hereunder:

Date	Description	Original or Copy

Place .....

.....

Clerk of the Court

Date .....

Attention is invited to section 9, read with section 313 of Act 57/1951, which provides that any person who fails to attend at the time and place specified in a subpoena and remain in attendance; or to answer fully and satisfactorily, to the best of his ability, all questions lawfully put to him; or, upon his being required to do so, to produce any document in his possession or control shall be liable to a penalty of a fine, or imprisonment for a period not exceeding six months, or both.

**ANNEX C**

[Annex C substituted by reg 18, GNR777/27847,5Aug2005]

**REPORT OF COURT OF MARINE ENQUIRY**

(Regulation 21)

In the matter of a formal investigation by a Court of Marine Enquiry held at ..... on the ..... (here state all the days on which the Court sat) ..... before ..... , Presiding Officer, and ..... and ..... , Members, into the circumstances attending the ..... (here state briefly the substance of the allegation or describe the event for the investigation of which the Court was convened) .....

The Court, having carefully inquired into the circumstances attending the matter to be investigated, finds for the reasons stated in the Appendix hereto, that the ..... (here state the finding of the Court) .....

Dated at ..... this ..... day of ..... 20.....

.....  
Presiding Officer

We (or I) concur in the above report.

.....  
Member

.....  
Member

**APPENDIX TO THE REPORT**

(Here state fully the circumstances of the case, the opinion of the Court touching the truth of the allegation or the causes of the event and the conduct of any persons implicated therein, and whether the certificate of any officer has been either suspended or cancelled, and the reasons for the said opinion, and if the certificates of any officer has been suspended or cancelled the reasons for such suspension or cancellation.)