

**BERMUDA STATUTORY INSTRUMENT**

**BR 6/1985**

**MERCHANT SHIPPING (SECTION 49 INQUIRIES) RULES 1985**

*[made under section 54(1) of the Merchant Shipping Act 1979 [title 31 item 16] and brought into operation on 6 February 1985]*

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**Citation**

- 1 These Rules may be cited as the Merchant Shipping (Section 49 Inquiries) Rules 1985.

**Interpretation**

- 2 (1) In these Rules unless the context otherwise requires—  
"the Act" means the Merchant Shipping Act 1979 [*title 31 item 16*];  
"a section 49 inquiry" means an inquiry into the fitness or conduct of an officer under Section 49 of the Act;

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"allegation" means an allegation by the Minister that an officer's fitness or conduct falls within paragraph (a), (b) or (c) of section 49 of the Act;

"officer" means an officer qualified for the purposes of section 41 of the Act and includes a master, skipper, mate, second hand, deck officer, marine engineer officer, radio officer and doctor;

"person appointed" means the person appointed by the Minister to hold a section 49 inquiry.

(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 public holiday in Bermuda, in which case the time shall be reckoned exclusive of that day also.

### **Application of Regulations**

3 These Rules apply to any section 49 inquiry, and to any rehearing of such an inquiry under section 53 of the Act which is not held by the Supreme Court under section 53 of the Act.

### **Notice of inquiry**

4 (1) When the Minister causes a section 49 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 of inquiry is addressed and the ground 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), (3) and (4) of these Rules.

### **Appointment of court of enquiry**

5 (1) The person appointed shall conduct it with the assistance of one or more assessors who shall be appointed by the Minister.

(2) The person appointed shall be either—

- (a) a lawyer 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 high judicial office or has held such an office not less than one year 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 enquiry**

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 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 of the inquiry.

(3) The inquiry shall be held in public save 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 enquiry**

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

(2) The officer concerned shall have the right—

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

(3) Where more than one allegation is made against an officer his admission of an allegation or any part of it shall be without prejudice to his right to defend himself against any other allegation which he does not admit.

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(4) 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 representation 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, 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 at the inquiry 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 Minister pursuant to section 52(4) of the Act. 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 Minister with the report. The Minister shall inform the officer concerned, in writing, of the decision of the person appointed if the officer was not present when that decision was announced, and shall 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 Minister.

### **Re-hearing of an enquiry**

9 Any re-hearing of a section 49 inquiry pursuant to section 53(1) of the Act which is not held by the Supreme Court shall be conducted in accordance with the provisions of rules 4 to 8 inclusive of these Rules.