

MERCHANT SHIPPING ORDINANCE, 2021

**MERCHANT SHIPPING (ACCIDENT REPORTING AND INVESTIGATION)
REGULATIONS, 2021**

(Section 107)

TABLE OF CONTENTS

1. Citation
2. Interpretation
3. Electronic communication
4. Appointment of Investigator
5. Accident
6. Application
7. Duty to report accidents and serious injuries
8. Preservation of evidence
9. Action following notification of an accident
10. Subsequent or reopened investigations
11. Notification of commencement of investigation
12. Notification to other States
13. Objective of a marine safety investigation
14. Conduct of a marine safety investigation
15. Evidence of seafarers
16. Co-operation with other States
17. Completion of investigation and draft marine safety investigation report
18. Final marine safety investigation reports
19. Publication of marine safety investigation reports
20. Response to recommendations in a marine safety investigation report
21. Publication of reports other than marine safety investigations reports
22. General recommendations
23. Prohibition on disclosure of information
24. Extension of time
25. Service of documents
26. Offences and penalties

Legal Notice No. of 2021

ST HELENA



MERCHANT SHIPPING ORDINANCE, 2021

*MERCHANT SHIPPING (ACCIDENT REPORTING AND INVESTIGATION)
REGULATIONS, 2021*

In exercise of the powers conferred by section 107 of the Merchant Shipping Ordinance, 2021, the Governor in Council makes the following Regulations:

Citation

1. These Regulations may be cited as the Merchant Shipping (Accident Reporting and Investigation) Regulations, 2021.

Interpretation

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

“**accident**” means—

- (a) a marine casualty;
- (b) a marine incident; or
- (c) a very serious marine casualty;

“**Casualty Investigation Code**” means the means the Code of the International Standards and Recommended Practices for a Marine Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code) adopted by the IMO by Resolution MSC.255(84) on 16th May 2008;

“**draft report**” means a draft Maritime Safety Investigation Report prepared in accordance with regulation 17(2);

“**final report**” means a Maritime Safety Investigation Report prepared in accordance with regulation 18(1);

“**foreign ship**” means a ship which is not a St Helena ship;

“**IMO**” means the International Maritime Organisation;; and

“**IMO guidelines on the fair treatment of seafarers**” means the Guidelines on fair treatment of seafarers in the event of a maritime accident adopted by the IMO by Resolution A.987(24);

“**incapacitation**” means a person’s inability to undertake the person’s full range of normal activities;

“**investigator**” means a person appointed under regulation 4(1) or (2);

“marine casualty” means an event or sequence of events that has resulted in any of the following and has occurred directly by or in connection with the operation of a ship involving—

- (a) the death of, or serious injury to, a person;
- (b) the loss of a person from a ship;
- (c) the loss, presumed loss or abandonment of a ship;
- (d) material damage to a ship;
- (e) the stranding or disabling of a ship, or the involvement of a ship in a collision;
- (f) material damage to marine infrastructure external to a ship, that could seriously endanger the safety of the ship, another ship, or any individual;
- (g) severe damage to the environment, or the potential for severe damage to the environment, brought about by damage to a ship or ships;

“marine incident” means an event, or sequence of events, other than a marine casualty, which has occurred directly in connection with the operations of a ship that endangered, or, if not corrected, would endanger—

- (a) the safety of a ship, its crew or passengers or any other person; or
- (b) the environment;

“marine safety investigation” means—

- (a) an investigation into an accident involving a ship; or
- (b) an investigation or inquiry into an accident conducted under these Regulations with the objective of preventing future accidents;

“marine safety investigation authority” means an authority in a State, other than St Helena, responsible for investigating accidents in accordance with the Casualty Investigation Code;

“marine safety record” means any of the following types of records, including those in electronic form, collected for a marine safety investigation—

- (a) a statement taken for the purpose of a marine safety investigation;
- (b) a communication between persons pertaining to the operation of a ship involved in an accident;
- (c) medical or private information regarding persons involved in the marine casualty or marine incident;
- (d) a record of the analysis of information or evidential material acquired in the course of a marine safety investigation; and
- (e) information from a voyage data recorder;

“Maritime Authority” means the person appointed in accordance with section 2A;

“material damage”, in relation to a marine casualty, means—

- (a) damage that—
 - (i) significantly affects the structural integrity, performance or operational characteristics of marine infrastructure or a ship; and
 - (ii) requires major repair or replacement of a major component or components;or
- (b) destruction of the marine infrastructure or ship.

“seafarer” means any person who is employed or engaged or works in any capacity on board a ship;

“senior surviving officer” means the senior surviving officer in the deck department; and if there is no surviving officer in the deck department, then whoever is the senior surviving officer between—

- (a) the senior surviving engineer officer; or
- (b) the senior surviving electro-technical officer;

“serious injury” means an injury which is sustained by a person, resulting in—

- (a) incapacitation; or

- (b) the person being unable to function normally for more than 72 hours, commencing within seven days from the date when the injury was suffered;

“severe damage to the environment” means damage to the environment which, as evaluated by St Helena or State affected, or a Flag State, produces a major deleterious effect upon the environment;

“ship’s boat” includes a life-raft, painting punt and any boat normally carried by a ship;

“State” includes a territory;

“substantially interested State” means a State—

- (a) which is the flag State of a ship involved in an accident;
- (b) which is the coastal State involved in an accident;
- (c) whose environment was severely or significantly damaged by an accident (including the environment of its waters and territories recognised under international law);
- (d) where the consequences of an accident caused, or threatened, serious harm to the State or to artificial islands, installations, or structures over which it is entitled to exercise jurisdiction;
- (e) where, as a result of an accident, the lives of nationals of the State are lost or the nationals of the State received serious injuries;
- (f) that has important information at its disposal that the Maritime Authority considers useful to a marine safety investigation; or
- (g) that for some other reason establishes an interest that is considered significant by the Maritime Authority;

“UK Chief Inspector of Marine Accidents” means the United Kingdom Chief Inspector of Marine Accidents, and any Deputy Chief Inspector, appointed by the United Kingdom Secretary of State under section 267(1) of the Merchant Shipping Act 1995; and

“UK inspector of marine accidents” means a United Kingdom inspector of marine accidents appointed by the United Kingdom Secretary of State under section 267(1) of the Merchant Shipping Act 1995

“very serious marine casualty” means a marine casualty involving—

- (i) the total loss of a ship;
- (ii) loss of life; or
- (iii) severe damage to the environment; and

“voyage data recorder” means the electronic or mechanical equipment which may be installed on a ship to record key navigational and control information.

(2) Where a ship is operated or managed by a person other than by the owner (whether on behalf of the owner or some other person, or on the person’s own behalf, including a bareboat charterer), a reference in these Regulations to the owner includes a reference to that person.

Electronic communication

3. A requirement in these Regulations that a notice must be in writing or that a certificate must be issued is satisfied where the text contained in such notice or certificate is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.

Appointment of Investigator

4. (1) For the purpose of conducting a marine safety investigation or to assist with conducting a marine safety investigation, the Governor in Council may in writing, on the advice of the Maritime Authority, appoint—

- (a) an investigator; or
- (b) a person with special qualifications or experience in the investigation of an accident involving a ship.

(2) If no appointment is made in respect of a person conducting a marine safety investigation under sub-regulation (1) the Governor in Council may in writing, to conduct a marine safety investigation, appoint—

- (a) the UK Chief Inspector of Marine Accidents; or
- (b) a UK inspector of marine accidents.

(3) An appointment made pursuant to sub-regulation (1) or (2) must be published by Notice in the Gazette and must be for a specified period of time which must be included in the Notice.

(4) In exercising the power to appoint a person to investigate a particular accident, the Maritime Authority must—

- (a) take account of Chapters 15.2 and 15.3 and 16.1 of the Casualty Investigation Code; and
- (b) be satisfied that a person appointed is—
 - (i) suitably qualified and knowledgeable in matters relating to the accident which is subject to the investigation;
 - (ii) impartial and objective; and
 - (iii) capable of acting without direction or interference from any person who may be affected by the outcome of the marine safety investigation.

(5) A person who has or who has had any previous connection with any person or ship which may be involved in an investigation where the connection creates a potential or actual conflict of interest must not be appointed by the Maritime Authority in respect of the investigation.

(6) A person appointed as an investigator must agree in writing to act in accordance with the Casualty Investigation Code.

Accident

5. An accident does not include a deliberate act or omission with the intention to cause harm to the safety of a ship, an individual or the environment.

Application

6. (1) Subject to sub-regulation (2), these Regulations apply to an accident involving or occurring on board—

- (a) a St Helena ship, wherever the ship may be;
- (b) any other ship within St Helena's waters; or
- (c) any ship where, as a result of the accident—
 - (i) a person with St Helena status lost the person's life or suffered serious injuries; or
 - (ii) in the opinion of the Maritime Authority the substantial interests of St Helena are involved.

(2) These Regulations do not apply to an accident involving or occurring on board—

- (a) a warship;

- (b) a ship that is not propelled by mechanical means;
- (c) a ship that is wooden and of traditional build which is not primarily propelled by mechanical means, including a dhow or junk which is made of wood and provided with sails; or
- (d) a fishing vessel of less than 15 metres length overall.

Duty to report accidents and serious injuries

7. (1) The Maritime Authority must be notified of the occurrence of an accident as soon as is practicable and by the quickest means available by—

- (a) the master;
- (b) if the master has not survived, the senior surviving officer;
- (c) the owner, unless the master or senior surviving officer has reported the accident in accordance with paragraph (a) or (b);
- (d) in the case of an accident within or adjacent to the limits of any port or harbour in St Helena, the Harbour Master; or
- (e) the Harbour Master in the case of an accident—
 - (i) in St Helena's waters; or
 - (ii) involving a St Helena ship wherever it may be and the Harbour Master is informed of the accident.

(2) A person making a notification in accordance with sub-regulation (1) must, in so far as is practicable, include the following information—

- (a) the name of the ship and the flag State of the ship;
- (b) the IMO ship identification number;
- (c) the nature or type of the ship or ships involved;
- (d) the date and time of the accident;
- (e) the latitude and longitude or geographical position at which the accident occurred;
- (f) the number of people killed or seriously injured;
- (g) the consequences of the accident to individuals, property and the environment; and
- (h) the identification of any other ship involved.

(3) In addition to making a notification in accordance with sub-regulation (1) and (2), a person specified in sub-regulation (1) must, where applicable and so far as is reasonably practicable, ensure that—

- (a) the circumstances of every accident are examined; and
- (b) a report giving the findings of such examination, stating any measures taken or proposed to be taken to prevent a recurrence, is provided to the Maritime Authority as soon as is practicable.

(4) A person providing information in a notification under sub-regulation (1) or a report under sub-regulation (3) must ensure that the information provided is accurate to the best of the person's ability and knowledge.

(5) Unless an accident involves any event specified in sub-regulation (6), this regulation does not apply in relation to—

- (a) a pleasure vessel;
- (b) a recreational craft which is hired on a bareboat basis; or
- (c) any other craft or boat, other than one carrying passengers, which is in commercial use in a harbour and is less than 8 metres overall in length.

(6) An event to which sub-regulation (5) refers is—

- (a) an explosion;
- (b) a fire;
- (c) a death;
- (d) a serious injury;
- (e) the capsize of a power-driven craft or boat; or
- (f) an event causing severe damage to the environment.

(7) In sub-regulation (5), “hired on a bareboat basis” means hired without a professional master, skipper, or crew.

Preservation of evidence

8. (1) This regulation applies in respect of an accident which must be reported to the Maritime Authority under regulation 7.

(2) Following an accident, a person specified in sub-regulation (3) must, where applicable and so far as is practicable, ensure that a document or record specified in sub-regulation (4) relating to the ship or the accident is kept, and that no alteration is made to any recording or entry in the document or record.

(3) A person to whom sub-regulation (2) refers is—

- (a) the master;
- (b) if the master has not survived, the senior surviving officer;
- (c) the owner, unless the master or senior surviving officer has taken the action in question; or
- (d) the Harbour Master.

(4) A document or record to which sub-regulation (2) refers is—

- (a) a chart;
- (b) a logbook;
- (c) recorded information relating to the period preceding, during and after an accident, including information from a voyage data recorder and a video recorder; and
- (d) any other document or record which might reasonably be considered relevant to the accident.

(5) Following an accident, a persons specified in sub-regulation (3) must also ensure that—

- (a) all information from a voyage data recorder or recording system relating to the circumstances of an accident is saved and preserved, in particular by taking steps, where necessary, to prevent the information from being overwritten; and
- (b) any other equipment which might reasonably be considered relevant to the investigation of the accident is so far as practicable left undisturbed.

(6) The obligations under sub-regulation (2) and (5) continue until—

- (a) published notification is received from the Maritime Authority that no marine safety investigation is to take place or that the investigation is completed;
- (b) 30 days have passed since the Maritime Authority received the report referred to in regulation 7(1) and no notice is published by the Maritime Authority that a decision was made to investigate the matter; or
- (c) the Maritime Authority or an investigator gives written notification that the obligations are no longer required.

(7) The Maritime Authority or an investigator may, pending investigation, prohibit persons from gaining access to, or interfering with, any ship, ship's boat or other equipment involved in an accident.

(8) Following an accident, the Maritime Authority may, if it is considered reasonably necessary for the collection or preservation of evidence in connection with any marine safety investigation, require the master or, if the master has not survived, the senior surviving officer and the owner to ensure that a ship is accessible to an investigator engaged in the investigation of the accident, until the process of collecting or preserving evidence is completed to the satisfaction of the Maritime Authority.

(9) A ship must not be required to remain in St Helena's waters by the Maritime Authority in accordance with sub-regulation (8) any longer than is necessary for the collection or preservation, as the case may be, of the evidence and must take all reasonable steps to ensure that such evidence is collected or preserved expeditiously.

(10) No requirement under sub-regulation (8) may be imposed in respect of a ship unless the Maritime Authority has reasonable grounds for believing that if the ship leaves St Helena's waters, access to—

- (a) the ship;
- (b) a member of the crew of a ship; or
- (c) any evidence on board relating to the investigation,

may subsequently be denied to a person appointed for the purpose of conducting a marine safety investigation.

Action following notification of an accident

9. (1) Where notification is made pursuant to regulation 7(1) or a report is provided pursuant to regulation 7(3) the Maritime Authority—

- (a) must ensure that a marine safety investigation is conducted in relation to—
 - (i) an accident that is a very serious marine casualty; or
 - (ii) an accident other than a very serious marine casualty if the Maritime Authority is satisfied that a marine safety investigation may provide information that can be used to prevent accidents in the future; and
- (b) may arrange that a marine safety investigation be conducted in relation to any other accident.

(2) The Maritime Authority may request such information as the Maritime Authority considers necessary concerning an accident and any remedial action taken as a result from—

- (a) the master;
- (b) if the master has not survived, the senior surviving officer;
- (c) the owner;
- (d) the Harbour Master; or
- (e) any other person that the Maritime Authority has reasonable grounds to believe holds relevant information.

(3) In making a decision under sub-regulation (1)(b), consideration must be given by the Maritime Authority of the following—

- (a) the seriousness of the accident;
- (b) the type of vessel and or cargo involved; and
- (c) the potential for the findings of a marine safety investigation to lead to the prevention of future accidents.

(4) The Maritime Authority may decide not to carry out a marine safety investigation in respect of an accident if satisfied that—

- (a) any loss of life resulted solely from suicide or natural causes; or
- (b) any serious injury resulted solely from attempted suicide.

(5) In circumstances where sub-regulation (4) applies, the Maritime Authority may discontinue any marine safety investigation which has already been commenced in respect of the accident.

(6) The Maritime Authority must arrange for a marine safety investigation to be conducted as promptly as is practicable after an accident occurs, and in any event no later than two months after the accident is notified to the Maritime Authority.

(7) For the purposes of making a decision under this regulation, the powers of inspectors in relation to premises and ships prescribed in the Merchant Shipping Ordinance, 2021 apply.

- (8) A person who is requested to provide information under sub-regulation (2) must—
 - (a) comply with the request unless providing the information would be contrary to any enactment or rule of law; and
 - (b) ensure that the information provided is accurate to the best of the person's ability and knowledge.

Subsequent or reopened investigations

10. (1) Where a decision is made by the Maritime Authority not to arrange that a marine safety investigation be conducted, the Maritime Authority may at any time subsequent to the time specified in which the conduct of a marine safety investigation must be arranged, arrange the conduct of a marine safety investigation if satisfied that there is a good reason in the interests of future safety to do so.

(2) The Maritime Authority may arrange to have a completed marine safety investigation recommenced if, following the completion of the marine safety investigation, new and important evidence is discovered which in the opinion of the Maritime Authority could have a material effect on any safety recommendations made.

(3) A completed marine safety investigation may be recommenced either in whole or in part and a recommenced investigation is subject to the provisions of these Regulations.

Notification of commencement of investigation

11. (1) Where a marine safety investigation is being conducted in respect of a ship involved in an accident, the following persons must be notified by the Maritime Authority of the commencement of the investigation—

- (a) the master;
- (b) if the master has not survived, the senior surviving officer;
- (c) the owner; and
- (d) the Harbour Master.

(2) Under the circumstances specified in sub-regulation (1), a person specified in sub-regulation (1) must be provided with the following information by the Maritime Authority—

- (a) details of the marine casualty or marine incident under investigation;
- (b) the time and place at which the marine safety investigation will commence;
- (c) the name and contact details of the investigator;
- (d) the relevant details of the legislation under which the marine safety investigation is being conducted;
- (e) the rights and obligations of a person subject to the marine safety investigation; and
- (f) the rights and obligations of the person conducting the marine safety investigation.

(3) As soon as is reasonably practical and in such manner as the Maritime Authority considers suitable, public notice of the commencement of a marine safety investigation must be issued by the Maritime Authority.

(4) A public notice given under sub-regulation (3) may include an invitation to any person, who considers that the person is in possession of relevant evidence, to present the relevant evidence to an investigator in the manner and within the time specified in the notice.

Notification to other States

12. (1) If the Maritime Authority is notified that a St Helena ship is involved in an accident on the high seas or in an exclusive economic zone of a State other than St Helena, the marine safety investigation authority of any substantially interested State must be informed that a St Helena ship is involved in the accident by the Maritime Authority as soon as is reasonably practicable.

(2) If the Maritime Authority is notified that a foreign ship is involved in an accident in St Helena or in St Helena's waters, the marine safety investigation authority of any substantially interested State must be informed that a foreign ship is involved in the accident by the Maritime Authority as soon as is reasonably practicable.

(3) A notification under sub-regulation (1) or (2) must, so far as is practicable, include—

- (a) the information set out in the regulation 11(2); and
- (b) the name and contact details of the Maritime Authority and any investigator appointed to investigate the accident.

Objective of a marine safety investigation

13. (1) A marine safety investigation must have the prevention of future accidents through the ascertainment of the causes and circumstances of an accident as the sole objective of the marine safety investigation.

(2) It is not the purpose of a maritime safety investigation to determine liability nor, except so far as is necessary to achieve its objective to apportion blame.

(3) A marine safety investigation must be conducted in accordance with the regulations taking into account the principles of investigation set out in Chapter 16 of the Casualty Investigation Code.

- (4) A marine safety investigation must include but is not limited to—
- (a) the collection and analysis of evidence;
 - (b) the identification of causal factors; and
 - (c) where appropriate, the making of safety recommendations.

Conduct of a marine safety investigation

14. (1) A marine safety investigation must be conducted at the time and place and in the manner that the Maritime Authority considers is most conducive to achieving the objective specified in regulation 13.

(2) If in the opinion of the Maritime Authority the following are relevant to the circumstances of the accident or to future safety a marine safety investigation may extend to cover, but need not be limited to—

- (a)* all events and circumstances preceding the accident together with subsequent events and circumstances;
- (b)* issues involving salvage and pollution connected with the accident; and
- (c)* the conduct of search and rescue operations.

(3) The Maritime Authority may decide to discontinue any marine safety investigation, other than a marine safety investigation in relation to a very serious marine casualty, at any time and must publish the reasons for the decision.

(4) An investigator assigned to carry out a marine safety investigation has the power to require production of ship's documents, to inspect a ship and the equipment of a ship and the power of an inspector in relation to premises and ships as prescribed in the Merchant Shipping Ordinance, 2021.

(5) Any document, record or information specified in regulation 8, properly required by an investigator to be produced for the purpose of a marine safety investigation, whether on board the ship involved or otherwise, may be retained by the investigator until the marine safety investigation is completed.

(6) An investigator may record a witness interview of any person who is assisting a marine safety investigation in any manner that the investigator considers reasonable.

(7) Subject to the conditions specified in sub-regulation (8) being satisfied, any person who is not a professional legal adviser acting solely on behalf of a person required to attend at a witness interview before an investigator, who—

- (a)* is allowed by an investigator to be present; or
- (b)* is nominated to be present by a person required to attend,

may at any time be excluded from being present by the investigator, with the agreement of the Maritime Authority for the purpose of a marine safety investigation.

(8) The conditions to be satisfied in respect of sub-regulation (7) are—

- (a)* that both the investigator and Maritime Authority have substantial reason to believe that a person's presence would hamper the marine safety investigation with the result that the objective in regulation 13 is likely to be hindered and future safety endangered; and
- (b)* that the Maritime Authority is satisfied, having regard to all the circumstances, that it is proper to exclude a person from being present for the purpose of the marine safety investigation.

(9) Where a person nominated to be present is excluded in accordance with sub-regulation (7), the person required to attend is entitled to nominate another person to be present at the witness interview in place of the excluded person and sub-regulation (7) applies to the other person.

(10) A person required to attend before an investigator must be allowed the reasonable expenses of attending, payable by the person and in the manner prescribed.

Evidence of seafarers

15. (1) An investigator conducting a marine safety investigation into an accident must consider the provisions of the IMO guidelines on the fair treatment of seafarers.

(2) Where an investigator requires a seafarer to provide evidence, the evidence must be taken from the seafarer at the earliest practical opportunity.

(3) After a seafarer has provided evidence to an investigator, the seafarer must be allowed to return to the seafarer's ship or be repatriated at the earliest possible opportunity.

(4) A seafarer from whom evidence is sought—

(a) must be informed of the nature and basis of the marine safety investigation; and

(b) must be informed of, and allowed access to legal advice, regarding—

(i) any potential risk of self-incrimination in any proceedings subsequent to the marine safety investigation;

(ii) any right not to self-incriminate or to remain silent; and

(iii) the protections afforded to the seafarer to prevent the evidence being used against the seafarer if the seafarer provides the evidence to the marine safety investigation.

Co-operation with other States

16. (1) Where a marine safety investigation authority of a substantially interested State is notified of an accident under regulation 12, the Maritime Authority must, so far as practicable, seek to carry out the investigation in cooperation with the marine safety investigation authority or other relevant agency of that State.

(2) A marine safety investigation authority of a substantially interested State must be allowed to participate in a marine safety investigation conducted under these regulations to the extent determined by agreement between the marine safety investigation authority and the Maritime Authority or, in default of agreement, in such manner as the Maritime Authority considers fit.

(3) Where a marine safety investigation authority of a substantially interested State is participating in a marine safety investigation, the Maritime Authority and the marine safety investigation authority must agree in respect of the marine safety investigation, in the shortest possible time before the participation of the marine safety investigation authority commences—

(a) if the marine safety investigation authority or the Maritime Authority should lead the marine safety investigation, and

(b) the procedures to be adopted for the purpose of the marine safety investigation.

(4) For the purpose of this regulation a marine safety investigation authority of a substantially interested State—

(a) has the powers and duties of an investigator under these Regulations in relation to witnesses and evidence involved in a marine safety investigation; and

(b) if St Helena is the lead investigating State, any representations that the marine safety investigation authority of the substantially interested State may make to the

Maritime Authority must be taken into consideration for the purposes of the marine safety investigation.

(5) Where a substantially interested State is allowed to participate in a marine safety investigation and no agreement in accordance with Chapter 7 of the Casualty Investigation Code is reached, the Maritime Authority and the other substantially interested States must—

- (a) arrange for the conduct of parallel marine safety investigations; and
- (b) exchange evidence and information with each other for the purposes, as far as possible, of reaching shared conclusions.

(6) The Harbour Master may delegate the whole or any part of a marine safety investigation to the marine safety investigation authority of a substantially interested State by mutual agreement with that State.

(7) Where a marine safety investigation authority of a substantially interested State is conducting a marine safety investigation into an accident—

- (a) involving a St Helena ship; or
- (b) a foreign ship whilst in St Helena or in St Helena's waters,

the Maritime Authority and an investigator must cooperate with the marine safety investigation authority of the substantially interested State so far as is practicable.

(8) If the Maritime Authority is satisfied that it is in the interest of St Helena to assist in a marine safety investigation in which a St Helena ship is not involved and which relates to an accident occurring outside St Helena's waters, the Maritime Authority may comply with the request from the other State to assist in the marine safety investigation in which a St Helena ship is not involved and which relates to an accident occurring outside St Helena's waters.

(9) The costs of any assistance provided by the Maritime Authority under sub-regulation (8) must first be agreed in writing between the Maritime Authority and the requesting State before assistance is provided.

Completion of investigation and draft marine safety investigation report

17. (1) Every effort must be made by the Maritime Authority to ensure that a marine safety investigation is completed in the shortest possible time and in any event within 12 months of the date of the accident being notified to the Maritime Authority.

- (2) Upon completion of a marine safety investigation—
 - (a) a draft marine safety investigation report must be prepared by the Maritime Authority; or
 - (b) the preparation of a draft marine safety investigation report by the appointed investigator must be arranged by the Maritime Authority.
- (3) A draft report must contain—
 - (a) a summary outlining the basic facts of the accident and stating whether any death, injury or pollution occurred as a result;
 - (b) the identity of the flag State, owners, operators, and the company, if any, as identified in the safety management certificate, and the classification society;
 - (c) where relevant, the details of the dimensions and engines of any ship involved, together with a description of the crew, work routine and other matters, such as time served on the ship;
 - (d) a narrative detailing the circumstances of the accident;

- (e) analysis and comment on the causal factors including any mechanical, human and organizational factors;
- (f) a discussion of the marine safety investigation's findings, including the identification of safety issues, and the marine safety investigation's conclusions; and
- (g) where appropriate, recommendations with a view to preventing future marine casualties and marine incidents addressed to those persons who, in the opinion of the investigators, are most fitted to implement them.

(4) If the Maritime Authority is satisfied that a marine safety investigation will not have the potential to lead to the prevention of future accidents then, except in the case of an investigation conducted into a very serious marine casualty, a simplified report may be published in such manner as the Maritime Authority considers fit.

- (5) A copy of the draft report must be served by the Maritime Authority on—
- (a) the Harbour Master;
 - (b) any person who could be adversely affected by the draft report;
 - (c) if the person to whom paragraph (b) refers is deceased, such person as appears to the Maritime Authority at the time it is proposed to serve notice in accordance with this sub-regulation, best able to represent the interests and reputation of the deceased person in the matter; and
 - (d) the marine safety investigation authority of a substantially interested State if the marine safety investigation authority requests a copy and has agreed in writing with the Maritime Authority to comply with the provisions of Chapter 13 of the Casualty Investigation Code.

(6) The draft report must be accompanied by a notice informing the person or State upon whom the draft report is served of the person's or the State's right to make representations relating to the facts or analysis contained in the draft report to the Maritime Authority.

(7) The representations referred to in sub-regulation (6) must be in writing and must be served on the Maritime Authority within 30 days of service of the draft report or within such further period as may be allowed under regulation 24.

(8) Where an inquest must be held following an accident which was subject to a marine safety investigation, a draft report may be made available by the Maritime Authority to the person in St Helena charged as prescribed in an Ordinance in St Helena with performing the functions of the coroner.

Final marine safety investigation reports

18. (1) If no representations are received by the Maritime Authority within the period specified in regulation 17(7)—

- (a) a final marine safety investigation report must be prepared by the Maritime Authority; or
- (b) the preparation of a final marine safety investigation report by the appointed investigator must be arranged by the Maritime Authority.

- (2) If any representations are made in response to service of a draft report—
- (a) the representations and whether any amendments are required to be made to the draft report must be considered by the Maritime Authority;

- (b) where the acceptance or rejection of representations made by a substantially interested State has a direct impact on the interests of the substantially interested State, the substantially interested State must be informed by the Maritime Authority of the manner in which the representations are to be addressed; and
 - (c) a final report must be prepared by the Maritime Authority.
- (3) The final report must contain the matters specified in regulation 17(3).

Publication of marine safety investigation reports

19. (1) The final report must be submitted by the Maritime Authority to—
- (a) the Minister charged with responsibility for Maritime matters;
 - (b) the Governor;
 - (c) the Harbour Master;
 - (d) any other person who is served with a notice in accordance with regulation 17(5);
 - (e) any person to whom recommendations have been addressed in the final report;
 - (f) in a case to which sub-regulation (3) applies, the IMO; and
 - (g) any other person the Maritime Authority considers may find the report useful or of interest.
- (2) The final report must otherwise be made available to the public in such manner as the Maritime Authority considers appropriate.
- (3) The cases are where the marine safety investigation relates to –
- (a) a very serious marine casualty; or
 - (b) an accident other than a very serious marine casualty, where the Maritime Authority is of the opinion that the final report contains information which may prevent or lessen the seriousness of accidents in the future.

Response to recommendations in a marine safety investigation report

20. (1) This regulation applies where a recommendation in a final report is addressed to a particular person.
- (2) A person to whom a recommendation is addressed must –
- (a) as soon as is reasonably practical, consider the recommendation;
 - (b) within 30 days following receipt of the recommendation, send to the Maritime Authority—
 - (i) details of the measures, if any, that the person is taking to implement the recommendation, and the timetable for securing the implementation; or
 - (ii) an explanation as to why no measures are being taken to implement the recommendation; and
 - (c) give notice to the Maritime Authority if at any time any information provided in accordance with sub-regulation (2)(b)(i) concerning the measures the person is taking or the timetable for securing the implementation of the measures is rendered inaccurate by any change of circumstances.

Publication of reports other than marine safety investigations reports

21. (1) The Maritime Authority may from time to time publish collective short reports of accidents which have not been the subject of a report published under regulation 20.

(2) The Maritime Authority may submit a report to the Minister charged with responsibility for maritime matters or the Governor on any matter arising from the Maritime Authority's analysis of marine accident investigations.

General recommendations

22. (1) The Maritime Authority may at any time make recommendations in respect of the prevention of future accidents.

(2) Where a recommendation made in accordance with sub-regulation (1) includes an action to be performed, the action recommended must be addressed to the person who in the opinion of the Maritime Authority, is most fitted to implement the action and the person must be notified by the Maritime Authority if the action that the person is required to perform.

(3) A recommendation made in accordance with sub-regulation (1) must be made publicly available by the Maritime Authority if the Maritime Authority considers that the publication is in the interests of safety or preventing pollution.

- (4) A person to whom a recommendation is addressed must—
- (a) as soon as is reasonably practical, consider the recommendation;
 - (b) within 30 days following receipt of the recommendation, send to the Maritime Authority—
 - (i) details of the measures, if any, that the person is taking to implement the recommendation, and the timetable for securing the implementation; or
 - (ii) an explanation as to why no measures are being taken to implement the recommendation; and
 - (c) give notice to the Maritime Authority if at any time any information provided to the Maritime Authority in accordance with sub-regulation (4)(b)(i) concerning the measures the person is taking or the timetable for securing the implementation of the measures is rendered inaccurate by any change of circumstances.

(5) Subject to sub-regulation (7) and (8), annually or at such other intervals as the Maritime Authority considers fit, information in respect of the matters, including any explanation, mentioned in sub-regulation (4)(b) and (c) and regulation 20(2)(b) and (c) must be made publicly available by the Maritime Authority.

(6) The Minister charged with responsibility for maritime matters and the Governor must be informed by the Maritime Authority of the matters specified in sub-regulation (5).

(7) Information under sub-regulation (5) must not be published by the Maritime Authority—

- (a) unless notification of the information to be published is sent to all persons mentioned in the information;
- (b) the Maritime Authority has considered any representations relating to the information which are made in accordance with sub-regulation (8) by or on behalf of any person notified pursuant to paragraph (a); and
- (c) the information is amended pursuant to any consideration made in accordance with paragraph (b) in such manner as the Maritime Authority considers fit.

(8) Any representations made in accordance with sub-regulation (7) must be in writing and must be served on the Maritime Authority within 30 days of receipt of the notification made in accordance with sub-regulation (7)(a) or within such further period as may be allowed under regulation 24.

Prohibition on disclosure of information

23. (1) A Court may make an order for the use or disclosure, for a purpose other than that in respect of a marine safety investigation, of—

- (a) the names, addresses or other details of any person who has given evidence to an investigator;
- (b) a marine safety record; or
- (c) a draft report.

(2) Unless a Court makes an order pursuant to sub-regulation (1), a person must not use or disclose for any purpose other than a marine safety investigation the information specified in sub-regulation (1).

(3) A person who gives a declaration or statement to an investigator in the course of a marine safety investigation may make available a copy of the person's statement or declaration to another person as the person considers fit.

(4) Any independent technical analysis commissioned by the Maritime Authority and opinions expressed in such analysis may be made publicly available by the Maritime Authority and if considered appropriate for publication by the Maritime Authority.

(5) Subject to sub-regulation (6), no order may be made under sub-regulation (1) unless the Court is satisfied, having regard to the views of the Maritime Authority, that the interests of justice in disclosure outweigh any prejudice, or likely prejudice, to—

- (a) the marine safety investigation into the accident to which the document or record relates;
- (b) any future accident marine safety investigation undertaken in St Helena; or
- (c) relations between St Helena and any other State, or international organisation.

(6) This regulation is without prejudice to any enactment or rule of law which authorises or requires the withholding of any document or record or part of the document or record on the ground that disclosure of it would be injurious or contrary to the public interest.

(7) Any copy of information relevant to an accident obtained from a voyage recorder or from any other recording system, including a voice recording, a video recording and any other electric or magnetic recording and any transcript made from such information or recordings may be provided at the discretion of the Maritime Authority to the police or other official investigatory authority.

(8) Except where disclosure is ordered by a Court or made to a person's advisers where disclosure is necessary in order to enable the person to make representations to the Maritime Authority under regulation 17, a person must not disclose, or permit to be disclosed, any information—

- (a) which is furnished to the person in accordance with regulation 17; or
- (b) which has otherwise been furnished to the person by or on behalf of the Maritime Authority or an investigator in advance of the publication of a report and whose confidentiality is protected by sub-regulation (1).

(9) Where the disclosure of information is made to an adviser in accordance with sub-regulation (8)(b), the adviser must not disclose the information or permit the information to be disclosed.

(10) A marine safety record obtained in pursuance of the exercise of an investigator's powers under these Regulations is inadmissible in any judicial proceedings whose purpose or one of whose purposes is to attribute or apportion liability or blame unless a Court, having regard to the factors mentioned in sub-regulation (5), determines otherwise.

(11) For the purpose of these Regulations, where any investigator is required to attend judicial proceedings, the investigator cannot be required to provide—

- (a) opinion evidence or analysis of information provided to the investigator; or
- (b) information obtained in accordance with an investigator's powers under these Regulations,

where the purpose or one of the purposes of those proceedings is to attribute or apportion liability or blame unless a Court, having regard to all the factors mentioned in sub-regulation (5), determines otherwise.

(12) In this regulation “**judicial proceedings**” includes any civil or criminal proceedings before any court, or person having by law the power to hear, receive and examine evidence on oath.

Extension of time

24. (1) The Maritime Authority may extend any period prescribed in these Regulations, if the Maritime Authority considers that there is a good reason to extend the period having regard to the requirements in regulation 17(1) for a report of a marine safety investigation to be made available in the shortest time possible.

(2) The powers under this regulation may be exercised notwithstanding that the prescribed period has expired.

Service of documents

25. Any notice or other document required or authorised by these Regulations to be served on or given to any person may be served or given—

- (a) by delivering the notice or other document to the person;
- (b) by leaving the notice or other document at the person's usual or last-known residence or place of business, whether in St Helena or elsewhere;
- (c) by sending the notice or other document to the person by post at the person's address; or
- (d) by sending the notice or other document to the person by facsimile, or other means which produces a document containing a text of the notice or other document, or by electronic mail in which event the notice or other document is regarded as having been served when the notice or other document is sent.

Offences and penalties

26. (1) A person commits an offence if the person—

- (a) being a person specified in regulation 7(1), fails without reasonable cause to report an accident as required by regulation 7(1);

- (b) being a person mentioned in regulation 7(1), fails without reasonable cause to provide information as required by regulation 7(3); or
(c) falsely claims to have any additional information or new evidence pertaining to any accident.

Penalty: a fine of £ £50,000

(2) A person who fails without reasonable cause to comply with any requirement, duty, or prohibition in regulation 8(2), (3), (7) or (8), commits an offence.

Penalty: a fine of £ 50,000

(3) A person who without reasonable cause discloses or permits to be disclosed any information in contravention of regulation 23(2), (8) or (9), commits an offence.

Penalty: a fine of £ 50,000

Made by the Governor in Council this day of

2021.

Connie Johnson
Clerk of Councils

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for accident reporting and the investigation of same in respect of St Helena ships and ships in St Helena's waters.