



BERMUDA

MERCHANT SHIPPING (SECTION 75 INQUIRIES) RULES 2021

BR 117 / 2021

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The Minister responsible for Maritime Administration, in exercise of the powers conferred by section 77(1) of the Merchant Shipping Act 2002, makes the following Rules:

Citation

1 These Rules may be cited as the Merchant Shipping (Section 75 Inquiries) Rules 2021.

Interpretation

2 In these Rules—

“allegation” means an allegation by the Minister that a certificate holder is unfit to be the holder of such a certificate, by reason of incompetence or misconduct or for any other reason, within the meaning of section 74(1) of the Act or Regulation I/5 of the STCW Convention 1978;

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“certificate holder” means the holder of a certificate of competency issued under section 59, other than one certifying that a person is qualified as an officer, or section 66 of the Act;

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

“person appointed” means a person appointed by the Minister to hold a section 75 inquiry;

“STCW Convention” means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978.

Application

3 These Rules apply to any inquiry under section 75 of the Act and to any re-hearing of such an inquiry under section 76 of the Act, which is not held by the Supreme Court.

Notice of inquiry

4 (1) When the Minister causes an inquiry to be held, he shall cause 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 thirty 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 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 for the allegation;
- (c) the time and date when, and the place where, the inquiry is to be held; and
- (d) the certificate holder's rights as set out in rule 7(2), (3) and (4).

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 Attorney-General.

(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) Subject to paragraph (2), at the time, date and the place appointed for holding the inquiry, the person appointed may proceed with the inquiry, in the absence of the certificate holder on 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.

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(2) Where the certificate holder concerned has been served with the notice of inquiry by registered 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 rule 4(1) and (2).

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

(4) 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 to the evidence 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 Minister, of the case against the certificate holder concerned.

(2) The certificate holder concerned shall have the right—

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

(3) Where more than one allegation is made against a certificate holder, his admission of an allegation or any part of it pursuant to paragraph (2) shall be without prejudice to his right to defend himself against any other allegation which he does not admit.

(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 or on behalf of the Minister, tender evidence other than oral evidence and address the person appointed, in such order as the person appointed may direct.

(5) 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.

(6) 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.

(7) 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 on 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.

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(2) Each assessor shall either sign the report with or without reservations, or state in writing, his dissent from the report and his reasons for such dissent, and any such reservations or dissent and reasons shall be forwarded to the Minister, with the report.

(3) The Minister 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, on request to the Minister.

Revocation

9 The Merchant Shipping (Section 75 Inquiries) Rules 2005 are revoked.

Made this 7th day of July 2021

Minister of Transport

[Operative Date: 08 July 2021]