

Isle of Man Ship Registry

CONSULTATION:

Proposed legislation to update and replace the Isle of Man Ship Registry's Accident Reporting and Investigation Regulations

Opening Date: 2 March 2020

Closing Date: 13 April 2020



Isle of Man Ship Registry Consultation:

Proposed legislation to update and replace the Isle of Man Ship Registry's Accident Reporting and Investigation Regulations

This consultation paper sets out the Isle of Man Government's proposals to make new Regulations to give effect to the International Maritime Organisation's Casualty Investigation Code. The Ship Registry also intends to include requirements for investigating accidents on ships not covered by the IMO Code (for example fishing boats and pleasure vessels).

We would be grateful for any comments on the proposed regulations as detailed in this consultation paper (preferably by email) to:

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When responding, please consider whether you are willing to have your response published and indicate your preference from the following options:

- Response can be published together with your name/organisation
- Response can be published anonymously
- Response cannot be published

This consultation will close at 1700 on 13 April 2020

1. Introduction

The Isle of Man Ship Registry intends to revoke and replace existing accident reporting and investigation Regulations with new legislation in order to take into account the IMO's Casualty Investigation Code (IMO Code). Please be aware this is a legislation project to update existing requirements and any changes required to be made by operators of Isle of Man registered ships will be minor.

The IMO's Casualty Investigation Code has been developed in order to provide a common approach for States to adopt in the conduct of marine safety investigations into marine casualties and marine incidents. This Code was adopted on 16 May 2008 by IMO Resolution MSC.255(84) and has been developed following best practices in marine casualty and marine incident investigations that have been established since the previous version of the Code (Resolution A.849(20)) was adopted in November 1997.

The IMO Code has been adopted for commercially operated ships on international voyages, to ensure that all very serious marine casualties are investigated. The Ship Registry also intends to include provisions for investigating accidents on ships not covered by the IMO Code. There will be slightly different provisions depending on if the ship is, or is not, subject to the IMO Code.

It is important to note that marine safety investigations do not seek to apportion blame or determine liability. Instead a marine safety investigation is an investigation conducted with the objective of preventing marine casualties and marine incidents in the future.

The Regulations will state the requirements for investigating and reporting accidents. The definition of accidents includes: 'very serious marine casualties', 'marine casualties', and 'marine incidents'. A full set of definitions of these terms is stated in Section 10.

2. Isle of Man registered ships which are subject to the IMO Code

This includes all ships to which SOLAS Chapter 1 Regulation 3 applies, in effect this includes all commercial ships of 500gt and above registered with the Ship Registry, which operate on international voyages.

A summary of the proposed Regulations that will affect Isle of Man (IoM) registered ships which are subject to the IMO Code, is as follows:

1. An investigation may be carried out into any accident occurring to an IoM registered ship. This investigation will be carried out if it is considered that it may assist in determining what changes in any present Regulations may be desirable, or if a casualty has resulted in a major deleterious effect upon the environment.
2. In the case of a very serious marine casualty, a marine safety investigation must be carried out.
3. All accidents must be reported to the Ship Registry. The duty to report accidents is stated in Section 6. This is to ensure the Ship Registry is aware of an accident in order to determine if an investigation will be carried out.
4. If an accident occurs, any evidence must be preserved in accordance with the requirements stated in Section 8.

5. If an accident occurs, there is a duty for one of the persons specified in Section 6 to make an examination into the circumstances of the accident and publish a report detailing the findings (see Section 7).

3. Isle of Man registered ships which are not subject to the IMO Code

A summary of the proposed Regulations that will affect Isle of Man (IoM) registered ships that are not subject to the IMO Code (including ships registered with the Ship Registry and craft registered with the Ports Division of the Department of Infrastructure) is as follows:

- All commercial vessels of less than 500gt, this includes cargo ships, commercial yachts and commercial craft registered with the Isle of Man Ports Division;
 - Pleasure vessels;
 - Fishing vessels; and
 - Ships not propelled by mechanical means.
1. An investigation may be carried out into any accident occurring to an IoM registered ship. This investigation will be carried out if it is considered that it may assist in determining what changes in any present Regulations may be desirable, or if a casualty has resulted in a major deleterious effect upon the environment.
 2. All IoM registered ships (except pleasure vessels) must report accidents to the Ship Registry. The duty to report accidents is stated in Section 6. This is to ensure the Ship Registry is aware of an accident in order to determine if an investigation will be carried out.
 3. If an accident occurs, any evidence must be preserved in accordance with the requirements stated in Section 8. For pleasure vessels, evidence must be preserved if required by an inspector appointed by the Ship Registry.
 4. If an accident occurs, there is a duty for one of the persons specified in Section 6 to make an examination into the circumstances of the accident and publish a report detailing the findings (see Section 7). The Ship Registry may issue an exemption from this requirement.

4. Foreign ships

A summary of the proposed Regulations that will affect foreign ships in the territorial waters (this includes an IoM port) of the Island, is as follows:

1. An investigation may be carried out into any accident occurring to a foreign ship whilst it is in the territorial waters of the Island. This investigation will be carried out if it is considered that it may assist in determining what changes in any present Regulations may be desirable, or if a casualty has resulted in a major deleterious effect upon the environment.
2. All foreign ships (except pleasure vessels) which are in the territorial waters of the Island, must report accidents to the Ship Registry in accordance with the requirements stated in Section 6. This is to ensure the Ship Registry is aware of an accident in order to determine if an investigation will be carried out.

5. If an accident occurs, any evidence must be preserved in accordance with the requirements stated in Section 8. For pleasure vessels, evidence must be preserved if required by an inspector appointed by the Ship Registry.
6. If an accident occurs, if requested by the Ship Registry, there is a duty for one of the persons specified in Section 5 to make an examination of the circumstances of the accident and publish a report detailing the findings, see Section 7. The Ship Registry may issue an exemption from this requirement.

5. Additional investigations

An investigation may also be carried out into any ship which in the opinion of the Ship Registry involves the substantial interests of the Island.

6. Reporting accidents to the Ship Registry

When an accident occurs, the following persons shall notify the Ship Registry as soon as is practicable and by the quickest means available:

- a. the master* or, if the master has not survived, the senior surviving officer; and
- b. the ship's operator unless they have ascertained to their satisfaction that the master or senior surviving officer has reported the accident.

*Master includes skipper of a fishing boat

The person making a notification must provide the information to the best of their ability and knowledge and so far as is practicable. This shall include the information specified in the Annex. It is preferable for the Ship Registry's Accident Report Form (ARF 1 Form) to be completed and emailed to the Ship Registry, a copy of which is available on the Ship Registry's website.

The Ship Registry can be notified by:

- Tel: +44 (01624) 688500. If the office is closed you will be directed to the emergency number.
- Emailing a copy of the Ship Registry's ARF 1 Form to marine.survey@gov.im

7. Duty to examine an accident and make a report

In addition to notifying the Ship Registry of an accident. The persons specified in Section 6 must so far as is reasonably practicable, ensure that the circumstances of every accident are examined and that a report giving the findings of such examination, stating any measures taken or proposed to be taken to prevent a recurrence must be provided to the Ship Registry as soon as is practicable.

8. Preservation of evidence/ obtaining evidence

Following a reportable accident, the persons specified in Section 6 must so far as is practicable ensure that:

- a. charts;
- b. log books;

- c. recorded information relating to the period preceding, during and after an accident, how so ever recorded or retained, including information from a voyage data recorder and video records; and
- d. all documents or other records which might reasonably be considered pertinent to the accident,

are kept and that no alteration is made to any recording or entries in them.

The persons specified in Section 6 must, so far as is practicable, 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 such information from being overwritten; and
- b. any other equipment which might reasonably be considered pertinent to the investigation of the accident is so far as practical is to be left undisturbed.

The duties stated above continues until:

- a. written notification is received from the Ship Registry that they are not required; or
- b. 30 days have passed since the Ship Registry received the report of the accident and no notification has been given by the Ship Registry; or
- c. the Ship Registry or an inspector carrying out the investigation gives written notification that they are no longer required.

The Ship Registry may (if it is considered necessary) for the collection or preservation of evidence, require any of the persons stated in Section 6, to ensure that the ship is accessible to any inspector engaged in the investigation, until the process of collecting or preserving evidence has been completed to the inspector's satisfaction.

Any document, record or information referred to above which is required by an inspector to be produced for the purposes of a marine safety investigation (whether on board the ship involved or otherwise) may be retained by the inspector until the marine safety investigation is completed.

If a seafarer is required to provide evidence, the evidence shall be taken at the earliest practical opportunity. The seafarer shall be allowed to return to his/her ship, or be repatriated at the earliest possible opportunity. The seafarer's human rights shall, at all times, be upheld.

All seafarers who are required to give evidence shall be informed of the nature and basis of the marine safety investigation. The seafarer shall also be informed and allowed access to legal advice, regarding:

- a. any potential risk that they may incriminate themselves in any proceeding subsequent to the marine safety investigation;
- b. any right not to self-incriminate or to remain silent; and
- c. any protections afforded to the seafarer to prevent the evidence being used against them if they provide the evidence to the marine safety investigation.

Any person (except an advocate, solicitor or other professional legal adviser acting solely on behalf of the person requested to attend), who has been:

- a. allowed by an inspector to be present; or
- b. nominated to be present by a person required to attend,

at a witness interview, may at any time be excluded by the inspector with the agreement of the Department, if:

- a. both the inspector and Department have substantial reason to believe that the person's presence would hamper the investigation with the result that the objective of the marine safety investigation is likely to be hindered and future safety thereby endangered; and
- b. the Department is satisfied, having regard to all the circumstances that it is proper to exclude that person.

If a person has been excluded, the person who is required to attend, may nominate another person to be present at the witness interview.

During a witness interview, an inspector may record the interview in any manner the Department considers reasonable.

9. Ship Registry's conduct of a marine safety investigation

The Regulations will also stipulate the Ship Registry's responsibilities and procedures with regards to the conduct of a marine safety investigation. This consists of procedural requirements for determining if a marine safety investigation is required to be carried out and appointing marine safety inspectors.

In the case of a very serious marine casualty, the Ship Registry is responsible for ensuring a marine safety investigation is conducted and completed in accordance with the Casualty Code and a marine safety investigation report is published.

Prior to a report being made public, the Ship Registry must serve a notice and send a draft copy of the report to any person or organisation who could be adversely affected by the report. If the person has deceased, the Ship Registry shall send a draft copy of the report to any person or persons who appear to the Ship Registry as best to represent the interests and reputation of the deceased in the matter. Any feedback sent to the Ship Registry must be in writing and within 30 days of the notice being served.

Any feedback on the draft report from any person or organisation who a notice has been served to, will be considered with respect to the facts and analysis in the report, prior to the final report being published.

If a substantially interested State requests the Department to supply it with a draft report the Ship Registry must not do so unless that State has agreed, in writing to comply with the provisions of Chapter 13 of the IMO Code.

When an inquest or fatal accident inquiry is to be held following an accident which has been subject to a marine safety investigation, a draft report may be made available in confidence to the coroner by the Ship Registry.

When the final report is made available, it must be given to:

- a. any person who notice was served to and received a draft copy of the report;
- b. those persons or bodies to whom recommendations have been addressed in the report
- c. the IMO; and
- d. any person or organisation who the Ship Registry considers may find the report useful or of interest.

10. Confidentiality of information

The Ship Registry will ensure that the names, addresses or other details of anyone who has given evidence to an inspector are not to be disclosed.

1. The following documents or records whether held electronically, mechanically or otherwise must not be made available for purposes other than a marine safety investigation unless a Court orders otherwise:
 - a. all declarations or statements taken from persons by an inspector or supplied to an inspector in the course of an investigation, together with any notes or recordings of witness interviews;
 - b. medical or confidential information regarding persons involved in an accident;
 - c. any reports made during the course of the investigation;
 - d. copies of the draft report;
 - e. all correspondence received by the Department from parties involved in a marine safety investigation;
 - f. evidence from voyage data recorders;
 - g. the notes made by an inspector (whether written or held electronically, including any recordings or photographs);
 - h. all communications between persons having been involved in the operation of the ship(s); or
 - i. inspector's opinions expressed in the analysis of information.
2. Copies of information obtained from a voyage data recorder or from other recording systems, may be provided at the discretion of the Ship Registry to the police or other official authorities.
3. Information obtained from a voyage data recorder may be provided at the discretion of the Ship Registry to the ship's owner.
4. Any independent technical analysis commissioned by the Ship Registry and opinions expressed in such analysis may be made publicly available if the Ship Registry considers it appropriate to do so.
5. A person who has given a declaration or statement to an inspector in the course of a marine safety investigation may make available a copy of their statement or declaration to another person as they see fit.

11. Definitions

1. Accident
For the purpose of the Regulations "Accident" means a
 - a. "Very serious marine casualty" which is an event, or a sequence of events that has resulted in any of the following which has occurred directly in connection with the operations of a ship-
 - i. the total loss of the ship; or
 - ii. a death; or
 - iii. severe damage to the environment;
 - b. "Marine casualty" which is an event, or a sequence of events that has resulted in any of the following which has occurred directly in connection with the operations of a ship-
 - i. the death of, or serious injury to a person;
 - ii. the loss of a person from a ship;
 - iii. the loss, presumed loss or abandonment of a ship;
 - iv. material damage to a ship;

- v. the stranding or disabling of a ship, or the involvement of a ship in a collision;
 - vi. material damage to the marine infrastructure external to a ship, that could seriously endanger the safety of the ship, another ship or an individual or
 - vii. severe damage to the environment, or the potential for severe damage to the environment, brought about by the damage of a ship or ships.
- c. "Marine incident" which is an event, or sequence of events, other than a very serious marine casualty or a marine casualty, which has occurred directly in connection with the operations of a ship that endangered, or, if not corrected, would endanger the safety of the ship, its occupants or any other person or the environment.

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.

2. "material damage" in relation to a marine casualty means-

Damage that-

- a. Significantly affects the structural integrity, performance or operational characteristics of marine infrastructure or a ship; and
- b. Requires major repair or replacement of a major component or components; or
- c. Destruction of the marine infrastructure or ship.

12. Reference material

International Maritime Organisations Casualty Investigation Code - Resolution MSC.255(84)
Adoption of the Code of the International Standards and recommended practices for a safety investigation into a marine casualty or marine incident (IMO Code).

ANNEX

The following information must be reported to the Ship Registry following an accident. The Ship Registry's ARF -1 Form can be used for this purpose, a copy is available on the Ship Registry's website.

- a. Name of ship and IMO, official or fishing vessel number, including flag of the country of registration;
- b. Type of ship;
- c. Date and time of the accident;
- d. Latitude and longitude or geographical position in which the accident occurred;
- e. Name and port of registry of any other ship involved;
- f. Number of people killed or seriously injured and associated type or types of casualty;
- g. Brief details of the accident including ship, cargo or any other damage;
- h. If the ship is fitted with a voyage data recorder, the make and model of the recorder
- i. Ports of departure and destination;
- j. Traffic separation scheme if appropriate;
- k. Place on board; and
- l. The nature of any pollution that occurs as a result of an accident.