

S.I. No. 276/2011 — European Communities (Merchant Shipping) (Investigation of Accidents) Regulations 2011.

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*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 17th June, 2011.*

I, LEO VARADKAR, Minister for Transport, Tourism and Sport, in exercise of the powers conferred on me by Section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009¹, hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Communities (Merchant Shipping) (Investigation of Accidents) Regulations 2011.
- (2) These Regulations come into operation on 17 June 2011.

Interpretation

2. (1) In these Regulations—
“Act” means the Merchant Shipping (Investigation of Marine Casualties) Act 2000 (No. 14 of 2000);
“Board” means the Marine Casualty Investigation Board;
“casualty” means 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:
 - (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 an individual;
 - (g) severe damage to the environment, or the potential for severe damage to the environment, brought about by the damage of a ship or ships,

but 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;

“Commission” means the European Commission;

“Directive” means Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009¹ ;

“EMCIP” means the European Marine Casualty Information Platform;

“IMO” means the International Maritime Organization;

“IMO Code” means the IMO Code for the Investigation of Marine Casualties and Incidents;

“incident” means an event, or a sequence of events (other than a casualty), that has occurred directly or in connection with the operation of a ship that endangered or, if not corrected, would endanger, the safety of the ship, its occupants, any other person or the environment, but 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;

“Minister” means the Minister for Transport, Tourism and Sport;

“territorial waters” means territorial seas and internal waters within the meaning of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982;

“third country” means a state that is not a Member State of the European Union;

“very serious casualty” means a casualty involving the total loss of the ship or a death or severe damage to the environment.

(2) A word or expression that is used in these Regulations and is also used in the Directive has the same meaning in these Regulations as it has in the Directive.

Application of regulations

3. (1) These Regulations shall apply to casualties and incidents that—

- (a) involve ships flying the flag of the State; irrespective of the location of the casualty,
- (b) occur within the territorial waters of the State, or
- (c) involve other substantial interests of the State, irrespective of the location of the casualty or incident and of the flag of the ship or ships involved.

(2) These Regulations shall not apply to casualties and incidents involving only the following:

- (a) ships of war and troop ships and other ships owned or operated by a Member State (including the State) and used only on government non-commercial service;
- (b) ships not propelled by mechanical means, wooden ships of primitive build, pleasure yachts and pleasure craft not engaged in trade, unless they are or will be crewed and carrying more than 12 passengers for commercial purposes;
- (c) inland waterway vessels operating in inland waterways;
- (d) fishing vessels with a length of less than 15 metres;
- (e) fixed offshore drilling units.

Investigative body

4. The Marine Casualty Investigation Board is designated as the investigative body in the State referred to in Article 8 of the Directive.

Certain provisions of Act of 2000 to apply

5. Sections 2, 7, 8, 18, 23 to 33, 37, 41 and 42 of the Act shall apply to these Regulations with—

- (a) the substitution of “these Regulations” for “this Act” wherever it appears in those provisions,
- (b) the substitution of “ship” for “vessel” wherever it appears in those provisions,
- (c) the substitution of “casualty or incident” for “marine casualty” and “casualty” wherever they appear in those provisions,
- (d) in section 2(1), the deletion of the definitions of “Irish waters”, “marine casualty” and “vessel”,

(e) in section 23(1), the substitution of “the Board” for “the Chief Surveyor or any other marine surveyor in the Marine Survey Office of the Department of the Marine and Natural Resources”, and

(f) any other necessary modifications.

Obligation to investigate

6. (1) The Board shall conduct a safety investigation in respect of very serious casualties to which these Regulations apply.

(2) In the case of serious casualties, the Board shall carry out a preliminary assessment in order to decide whether or not to undertake a safety investigation.

(3) In the case of any other casualty or incident not covered in paragraphs (1) and (2) the Board shall decide whether or not a safety investigation is to be undertaken.

(4) Where paragraph (1) or (2) applies, the Board shall take into account the seriousness of the casualty or incident, the type of vessel or cargo involved, and the potential for the findings of the safety investigation to lead to the prevention of future casualties and incidents.

(5) The scope and practical arrangements for the conduct of safety investigations shall be determined by the Board in accordance with the requirements of these Regulations and the Directive.

(6) The Board shall commence a safety investigation as promptly as is practicable after the casualty or incident occurs, and, in any event, no later than 2 months after its occurrence.

(7) Where the Board decides not to undertake a safety investigation, the reasons for that decision shall be recorded and notified in accordance with Article 17(3) of the Directive.

Mutual assistance

7. (1) The Board shall, where appropriate—

(a) cooperate with and provide assistance to the investigative bodies of other Member States in safety investigations,

(b) delegate to another Member State the task of leading a safety investigation in accordance with Article 7 of the Directive,

(c) coordinate its activities with the investigative bodies of other Member States to achieve the objectives of the Directive,

(d) cooperate, to the maximum extent possible, with substantially interested third countries in safety investigations,

(e) allow, by mutual agreement, substantially interested third countries to join safety investigations, and

(f) cooperate in a safety investigation conducted by a substantially interested third country, without removing the requirement on the Board to comply with these Regulations.

(2) Where a safety investigation is conducted by a substantially interested third country, in accordance with the IMO Code the Board may decide not to carry out a parallel safety investigation.

(3) Where the Board is involved in safety investigations involving 2 or more Member States, the respective activities shall be free of charge.

(4) Where the Board requires assistance from the Board of another Member State, that is not involved in the safety investigation, the investigative bodies involved shall agree on the reimbursement of costs incurred.

Ro-ro ferries and high-speed passenger crafts

8. (1) Where a ro-ro ferry or a high-speed passenger craft is involved in a casualty or incident occurring—

(a) in territorial waters of the State, or

(b) other than in territorial waters of the State, if the State is the last Member State visited by that ferry or craft,

the Board shall initiate the safety investigation procedure.

(2) The State shall remain responsible for the safety investigation and coordination with other substantially interested Member States until it is mutually agreed which of them is to be the lead investigating State.

Preservation of evidence

9. (1) An owner, charterer, master, skipper, person in charge, ship's agent, or ship's manager of a vessel or any responsible authority or party concerned by casualties and incidents shall make every effort to—

(a) save all information from charts, log books, electronic and magnetic recording and video tapes, including information from voyage data recorders and other electronic devices relating to the period preceding, during and after an accident,

(b) prevent the overwriting or other alteration of such information,

(c) prevent interference with any other equipment which might reasonably be considered pertinent to the safety investigation of the accident, and

(d) collect and preserve all evidence expeditiously for the purposes of the safety investigations.

(2) A person who fails to comply with any subparagraph of paragraph (1) shall be guilty of an offence and be liable—

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 2 years, or both.

Disclosure of confidential information

10. (1) Without prejudice to the Data Protection Act 1988 (No. 25 of 1988) the following shall be confidential:

(a) all witness evidence and other statements, accounts and notes taken or received by the Board in the course of the safety investigation;

(b) records revealing the identity of persons who have given evidence in the context of the safety investigation;

(c) information relating to persons involved in a casualty or incident that is of a particularly sensitive and private nature, including information concerning their health;

(2) The High Court, on application to it by an interested party, may disclose matters referred to in paragraph (1) where there is an overriding public interest to do so.

Accident reports

11. (1) Where the Board carries out a safety investigation, it shall publish a report in accordance with Annex I to the Directive.

(2) Notwithstanding paragraph (1), where the Board is of the opinion that—

(a) the casualty is not of a serious nature, and

(b) the findings will not help to prevent future casualties and incidents,

it may publish a simplified report.

(3) The Board shall endeavour to make the report referred to in paragraph 1, including its conclusions and any recommendations, available to the public, particularly to the maritime sector, within 12 months of the date of the casualty. Where a final report cannot be published within that time, an interim report shall be published within 12 months of the date of the casualty.

Safety recommendations

12. (1) The Board shall make safety recommendations to the appropriate parties and shall follow up on its recommendations in accordance with Community and international law.

(2) Safety recommendations shall in no circumstances determine liability or apportion blame for a casualty.

Early alert system

13. Without prejudice to its right to give an early alert, the Board shall, at any stage of a safety investigation, if it takes the view that urgent action is needed at Community level to prevent the risk of new casualties, inform the Commission without delay of the need to give an early alert.

Database

14. The Board shall notify the Commission on casualties and incidents in accordance with the format contained in Annex II to the Directive and shall provide the Commission with data resulting from safety investigations in accordance with the EMCIP database scheme, as referred to in Article 17 of the Directive.

Offences and penalties

15. (1) Proceedings for a summary offence under these Regulations may be brought and prosecuted by the Board.

(2) For the avoidance of doubt, where these Regulations apply, proceedings in respect of an offence specified in section 18 or sections 23 to 32 of the Act of 2000 shall be taken under these Regulations and not under the Act of 2000.



GIVEN under my Official Seal,

14 June 2011.

LEO VARADKAR,

Minister for Transport, Tourism and Sport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations prescribe the regulatory framework establishing the fundamental principles governing the investigation of accidents in the maritime transport sector.

The purpose of the Regulations is to improve maritime safety and the prevention of pollution by ships, and so reduce the risk of future marine casualties, by:

- Facilitating the expeditious holding of safety investigations and proper analysis of marine casualties and incidents in order to determine their causes; and
- Ensuring the timely and accurate reporting of safety investigations and proposals for remedial action.

The Regulations designate the Marine Casualty Investigation Board as the permanent Investigative Body in Ireland to investigate marine casualties and accidents.

1 OJ No. L131, 28.5.2009, p.114

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