

PART VII
SPECIAL SHIPPING INQUIRIES AND COURTS
Inquiries and Investigations as to Shipping Casualties

332. Shipping Casualties

For the purpose of inquiries and investigations under this Part a shipping casualty shall be deemed to occur -

- (a) when on or near the coasts of the Federation any ship is lost, abandoned or materially damaged;*
- (b) when on or near the coasts of the Federation any ship has been stranded or damaged;*
- (c) when on or near the coasts of the Federation any ship causes loss or material damage to any other ship or to any property;*
- (d) when any loss of life ensues by reason of any casualty happening to or on board any ship or near the coasts of the Federation;*
- (e) when in any place any such loss, abandonment, material damage or casualty as above-mentioned occurs, and any witness is found in the Federation;*
- (f) when in any place any loss, abandonment, material damage or casualty occurs to any Malaysian ship or any Malaysian ship is stranded or damaged;*
- (g) when any Malaysian ship is lost or is supposed to have been lost. (A792/91)*

333. Definitions

In this Part and in any rules made under it-

"an officer certificated under the Merchant Shipping Acts" means the holder of any certificate as master, mate or engineer, granted under those Acts or of any certificate declared under section 102 of the Merchant Shipping Act, 1894, to be of the same force as if granted under that Act;

"the holder of a local certificate" means the holder of any certificate granted under this Ordinance; (A792/91)

"Malayan ship" shall be deemed to include any native sailing ship and any vessel of such class or classes as the Minister (LN 332/58) may by notification in the Gazette prescribe. (No.49 of 1955)

334. Preliminary inquiry

(1) Where a shipping casualty has occurred, a preliminary inquiry may be held respecting the casualty by the Port Officer residing at or near any place at which the witnesses with respect to the casualty arrive, or are found, or can conveniently be examined.

(2) For the purpose of any such inquiry the person holding the same shall have the powers of an Inspector under this Ordinance.

(3) After hearing such inquiry, the person holding the same shall forward a report thereof to the Minister (LN 332/58) without delay.

335. The Minister may appoint Court of Investigation into shipping casualties and conduct of certificated officers

(1) The *Minister (LN 332/58)* may appoint a Court of Investigation for the purpose of holding a formal investigation in any case -

(a) where a shipping casualty has occurred, whether there has been a preliminary inquiry or not; or

(b) whenever the *Minister (LN 332/58)* has reason to believe that any officer certificated under the Merchant Shipping Acts is from incompetency or misconduct unfit to discharge his duty in the following cases -

(i) where the incompetency or misconduct has occurred on board a British ship on or near the coasts of the Federation, or on board a British ship in the course of a voyage to a port within the Federation;

(ii) where the incompetency or misconduct has occurred on board a British or Malayan ship registered in the Federation;

(iii) where the officer of a British ship who is charged with incompetency or misconduct on board that British ship is found in the Federation; or

(c) whenever the *Minister (LN 332/58)* has reason to believe that the holder of a local certificate is from incompetency or misconduct unfit to discharge his duties:

Provided that a Court of Investigation shall not be appointed for the purpose of holding a formal investigation into any shipping casualty occurring to a ship not registered in the Federation unless either the casualty occurs on or near the coast of the Federation or whilst the ship is wholly engaged in the coasting trade of the Federation or the appointment of the Court is requested or consented to by the Government of the country in which the ship is registered.

(2) A Court of Investigation shall consist of a Judge or a *President of a sessions Court, (No.49 of 1955)* with the assistance of not less than two nor more than four assessors of whom one shall, if possible, be the Port Officer.

(3) The Port Officer shall not be a member of a Court when he has held a preliminary inquiry with regard to the casualty which is the subject of investigation.

(4) Where an investigation involves or appears likely to involve any question as to the cancelling or suspension of any certificate, the Court shall hold the investigation with the assistance of not less than two assessors having experience in the merchant service.

(5) The Court after hearing the case shall make a report to the *Minister (LN 332/58)* containing a full statement of the case and of the opinion of the Court thereon, accompanied by such report of or extracts from the evidence and such observations as the Court thinks fit.

(6) Each assessor shall either sign the report or state in writing on the report his dissent therefrom and the reasons for that dissent.

(7) The Court may make such order as the Court thinks fit respecting the costs of the investigation or any part thereof, and such order shall be enforced by the Court in the manner provided for levying a fine by a Magistrate's Court.

(8) The *Minister (LN 332/58)* may, if in any case he thinks fit so to do so, order the costs of any such investigation to be paid out of the general revenue of the Federation.

(9) For the purpose of this section the Court holding a formal investigation shall have all the powers of a Magistrate's Court and shall also have the powers of an Inspector under this Ordinance.

(10) Every formal investigation into a shipping casualty shall be conducted in such manner that if a charge is made against any person that person shall have an opportunity of making a defence.

(11) Formal investigation into shipping casualties under this section shall be held in the Court room attached to the Port Office, or in some other suitable place to be fixed by the *Minister, (LN 332/58)* and, unless no other suitable place is in the opinion of the *Minister (LN 332/58)* available, shall not be held in a Court ordinarily used as a Magistrate's Court.

Power as to Certificates of Officers, etc.

336. Power of Court of Investigation as to certificates

(1) The certificate of a certificated officer may be cancelled or suspended by a Court holding an investigation into a shipping casualty, or into the conduct of a certificated officer, if the Court finds that the loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by his wrongful act or default, or that he is incompetent, or has been guilty of any gross act of misconduct, drunkenness or tyranny, or that in a case of collision he has failed to render such assistance or give such information as is required under section 422 of the Merchant Shipping Act, 1894.

(2) If the Court holding an investigation is presided over by a Magistrate, that Court shall not cancel or suspend a certificate unless one at least of the assessors concurs in the finding of the Court.

(3) Where any case before any such Court as aforesaid involves a question as to the cancelling or suspending of a certificate, that Court shall, at the conclusion of the case or as soon afterwards as possible, state in open Court the decision to which it has come with respect to the cancelling or suspending thereof.

(4) The Court shall, in the case of an investigation into a shipping casualty or into the conduct of an officer certificated under the Merchant Shipping Acts, send a full report on the case with the evidence to the Minister of Transport, and shall so, if it determines to cancel or suspend any

certificate held by any such officer, send the certificate cancelled or suspended to the Minister of Transport or other authority by which the same was granted with its report.

(5) The Court shall, if it determines to cancel or suspend any certificate belonging to the holder of a local certificate, send the certificate cancelled or suspended to the *Minister (LN 332/58)* or *other authority by which the same was granted (No.49 of 1955)* with its report.

(6) A certificate shall not be cancelled or suspended by a Court under this section, unless a copy of the report, or a statement of the case on which the investigation has been ordered, has been furnished before the commencement of the investigation to the holder of the certificate.

337. Power of High Court to remove master

(1) The High Court may remove the master of any ship within the jurisdiction of that Court, if that removal is shown to the satisfaction of the Court by evidence on oath to be necessary.

(2) The removal shall be made upon the application of any owner of the ship or his agent, or of the consignee of the ship, or of any certificated mate, or of one-third or more of the crew of the ship.

(3) The Court may appoint a new master instead of the one removed.

(4) Where the owner, agent or consignee of the ship is within the jurisdiction of the Court, such an appointment shall not be made without the consent of that owner, agent or consignee.

(5) The Court may also make such order and require such security in respect of the costs of the matter as the Court thinks fit.

338. Delivery of certificate cancelled or suspended

(1) A certificated officer whose certificate is cancelled or suspended by any Court holding an investigation under this Part shall deliver his certificate to that Court on demand.

(2) Any certificated officer who fails to comply with this section shall be liable for each offence to a fine not exceeding five hundred dollars.

Rehearing of Investigations

339. Rehearing of investigation

(1) The *Minister (LN 332/58)* may, in any case, where an investigation into the conduct of the holder of a local certificate has been held under this Part, order the case to be reheard either generally or as to any part thereof, and shall do so -

(a) if new and important evidence which could not be produced at the investigation has been discovered; or

(b) if for any other reason there has in his opinion been ground for suspecting that a miscarriage of justice has occurred.

(2) The *Minister (LN 332/58)* may order the case to be reheard either by the Court by which the case was heard in the first instance, or by another Court of Investigation under this Ordinance, or by a Judge of the High Court, and the case shall be so reheard accordingly .

(3) In every case -

(a) where the investigation is into a casualty affecting a ship registered in the Federation; or

(b) where the decision affects a local certificate; and an application for a rehearing under this section has not been made, or has been refused, an appeal shall lie from the decision to the High Court.

(4) The appellate jurisdiction of the High Court under this section shall be exercised by any one or three Judges.

(5) If the Court consists of three Judges, the decision shall be that of the majority.

(6) Any rehearing or appeal under this section shall be subject to and conducted in accordance with such conditions and regulations as are prescribed by rules made in relation thereto under the powers contained in this Ordinance.

General

340. Limitation of jurisdiction

(1) An investigation or inquiry shall not be held under this Part into any matter which has once been the subject of an investigation or inquiry and has been reported on by a competent Court or Tribunal in any part of Her Majesty's dominions, or in respect of which the certificate of a master, mate or engineer, has been cancelled or suspended by a naval court.

(2) Where an investigation or inquiry has been commenced in the United Kingdom with reference to any matter, an investigation or inquiry with reference to the same matter shall not be held under this Part in the Federation.

341. On report, the Minister may deal with certificate

The *Minister (LN 332/58)* may, if he thinks the justice of the case requires it, re-issue and return any cancelled or suspended certificate held by the holder of a local certificate, or shorten the time of its suspension, or grant a new certificate of the same or any lower grade in place of it.

342. Rules as to inquiries and investigations, etc.

The *Minister (LN 332/58)* may make general rules for carrying into effect the provisions relating to jurisdiction and investigations, and to the rehearing of an appeal from any inquiry or investigation held under this Part, and in particular with respect to the procedure, the appointment and summoning of assessors, the parties, the persons allowed to appear, the notice to those parties or persons or to persons affected, the amount and application of fees, and the place in which formal investigations shall be held.

Courts of Survey

343. Constitution of Court of Survey

- (1) A Court of Survey for a port shall consist of a Judge sitting with the assessors.
- (2) The Judge shall be such person as is summoned for the case, in accordance with the rules made under this Ordinance with respect to that Court, out of a list approved for the part by the Minister of Presidents of Sessions Court and other fit persons; but in any special case in which the Minister thinks it expedient to appoint a Judge of the Supreme Court, such Judge shall be the Judge of the Court of Survey.
- (3) The assessors shall be persons of nautical, engineering or other special skill and experience.
- (4) Subject to the provisions of section 305 as regards foreign ships, one of the assessors shall be appointed by the *Minister (LN 332/58)*, either generally or in each case, and the other shall be summoned, in accordance with the rules made as aforesaid, by the Registrar of the Court out of a list of persons periodically nominated for the purpose by the Chamber of Commerce of the port, or, if there is no such list, shall be appointed by the Judge.
- (5) If the *Minister (LN 332/58)* thinks fit any time to appoint any persons to any such list, those persons shall be added to the list, or, if there is no such list, shall form the list.
- (6) The Registrar of the Court of Survey shall be appointed by the *Minister (LN 332/58)*, and shall, on receiving notice of an appeal, immediately summon the Court to meet forthwith in manner directed by the rules.

(7) The name of the Registrar and his office, together with the rules made as aforesaid relating to Courts of Survey, shall be published in the manner directed by the rules.

344. Power and procedure of Court of Survey

(1) The Court of Survey shall hear every case in open Court.

(2) The Judge and each assessor of the Court may survey the ship, and shall have for the purposes of this Ordinance all the powers of an Inspector under this Ordinance.

(3) The Judge of the Court may appoint any competent person or persons to survey the ship and to report thereon to the Court.

(4) The Judge of the Court, any assessor of the Court, and any person appointed by the Judge of the Court to survey the ship, may go on board the ship and inspect the same and every part thereof, and the machinery, equipment and cargo, and may require the unloading and removal of any cargo, ballast or tackle.

(5) Any person who wilfully impedes such Judge, assessor or person, in the execution of the survey, or fails to comply with any requisition made by him, shall for each offence be liable to a fine not exceeding one hundred dollars.

(6) The Judge of the Court shall have the same power as the Minister has to order the ship to be released or finally detained, but unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

(7) The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Minister, may attend at any inspection or survey made in pursuance of this section.

(8) The Judge of the Court shall send to the *Minister (LN 332/58)* such report as is directed by the rules, and each assessor shall either sign the report or report to the *Minister (LN 332/58)* the reason for his dissent.

345. Rules of procedure of Court of Survey

The *Minister (LN 332/58)* may make general rules to carry into effect the provisions of this Ordinance with respect to a Court of Survey, and in particular with respect to the summoning of, and procedure before, the Court, the requiring on an appeal security for costs and damages, and the amount of fees.

346. Reference in difficult cases to scientific persons

(1) If the *Minister (LN 332/58)* is of opinion that an appeal to a Court of Survey involves a question of construction or design, or of scientific difficulty, or important principle, he may refer the matter to such one or more out of a list of scientific reference from time to time approved by the *Minister (LN 332/58)* as appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the *Minister (LN 332/58)* and the appellant, or in default of any such agreement by the *Yang Di-Pertuan Agong (LN 332/58)*, and thereupon the appeal shall be determined by the referee or referees, instead of by the Court of Survey.

(2) The *Minister (LN 332/58)*, if the appellant in any appeal so requires and gives security to the satisfaction of the *Minister (LN 332/58)* to pay the costs of and incidental to the reference, shall refer that appeal to a referee or referees so selected as aforesaid.

(3) The referee or referees shall have the same powers as a Judge of the Court of Survey.

Payments to Officers of Courts

347. Payments to officers of Courts

Such remuneration, if any, as the *Minister (LN 332/58)* directs, may be paid out of the public revenue of the Federation to any Judge or assessor of or in any Court of Investigation or Court of Survey, or to any Registrar of a Court of Survey.

Indemnity

348. Indemnity

No action, suit or other proceeding shall be brought against any person for anything done or omitted to be done by him as a member of a Court of Investigation or a Court of Survey under this Part.