

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

Subsidiary Legislation made under s.118(1)(c).

Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

LN.2012/023

	<i>Commencement</i>	5.3.2012
Amending enactments	Relevant current provisions	Commencement date
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Transposing:
Directive 2009/18/EC

1995-13 Gibraltar Merchant Shipping (Safety, etc.)
2012/023 Gibraltar Merchant Shipping (Accident Reporting and
Investigation) Regulations 2012

ARRANGEMENT OF REGULATIONS

Regulation

1. Title and commencement.
2. Interpretation.
3. Application of these Regulations.
4. Purpose of these Regulations.
5. Marine Accident Investigation Compliance Officer.
- 5A. Appointment of Deputy MAICO.
6. MAICO's powers and duties.
7. Appointment of inspectors.
8. Impartiality.
9. Duty to report accidents and serious injuries.
10. Obligation to investigate.
11. Leading of, and participation in, safety investigation.
12. Subsequent or reopened investigations.
13. Preservation of evidence.
14. Conduct of investigations.
15. Co-operation with the substantially interested States.
16. *Repealed.*
17. Cooperation with substantially interested other States.
18. Disclosure of records.
19. Reports of investigation.
20. Publication of accident reports.
21. Publications other than reports of investigations.
22. Recommendations.
23. Extension of time.
24. Service of documents.
25. *Repealed.*
26. *Repealed.*
27. Costs.
28. Fair treatment of seafarers.
29. Offences and penalties.
30. Repeal.
31. Savings and transitional provisions.
32. Application of sections 56 and 91 of Act.

SCHEDULE 1

Information to be included, where relevant, in reports in relation to an *accident*

Gibraltar Merchant Shipping (Safety, etc.) **1995-13**

**Gibraltar Merchant Shipping (Accident Reporting and
Investigation) Regulations 2012** **2012/023**

SCHEDULE 2

COMMISSION REGULATION (EU) No 1286/2011 of 9 DECEMBER 2011

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

2012/023 Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

In exercise of the powers conferred on it by section 118(1)(c) of the Gibraltar Merchant Shipping (Safety, etc.) Act 1993, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 and come into operation on the day of publication.

Interpretation.

2.(1) In these Regulations—

“accident” means one or both of the followings—

- (a) marine casualty that includes a serious casualty or very serious casualty;
- (b) marine incident that includes a serious injury;

“Act” means the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993;

“BGTW” means British Gibraltar Territorial Waters which is the area of sea, the sea bed and subsoil within the seaward limits of the territorial sea adjacent to Gibraltar under British sovereignty and which, in accordance with the United Nations Convention on the Law of the Sea 1982, currently extends to three nautical miles and to the median line in the Bay of Gibraltar;

“access” means the process of embarking on or disembarking from a ship, by whatever means employed;

“causes” means actions, omissions, events, existing or pre-existing conditions or a combination thereof, which led to the casualty or incident;

“Deputy MAICO” means any person appointed under regulation 5A;

“Gibraltar ship” means a ship registered in Gibraltar under the Gibraltar Merchant Shipping (Registration) Act 1993;

“high-speed passenger craft” shall have the meaning assigned to it by regulation 2 of the Gibraltar Merchant Shipping (Ro-Ro Ferry and High-Speed Passenger Craft on Regular Service) Regulations 2005;

“IMO” means the International Maritime Organisation;

“IMO Code” means the code of the International Standards and Recommended Practices for a 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;

“IMO guidelines on the fair treatment of seafarers in the event of a maritime accident” means the updated guidelines as annexed to Resolution LEG.3(91) of the IMO Legal Committee of 27 April 2006 and as approved by the Governing Body of the International Labour Organisation in its 296th session of 12 to 16 June 2006;

“inspector” means any person appointed under regulation 7(1) by the MAICO;

“judicial inquiry” includes any investigation or other matter conducted under the authority of any enactment for the purposes of or in connection with the institution or conduct of civil or criminal proceedings;

“lead investigating State” shall be understood in accordance with the definition contained in the IMO Code;

“Marine Accident Investigation Compliance Officer” or “MAICO” means the person appointed under regulation 5(1) and where the context so admits or requires, includes Deputy MAICO or an inspector acting under his direction or on his behalf;

“marine casualty” shall be understood in accordance with the definition contained in the IMO Code;

“marine casualty or incident safety investigation” shall be understood in accordance with the definition contained in the IMO Code;

“marine incident” shall be understood in accordance with the definition contained in the IMO Code;

“Maritime Administration” means the Maritime Administrator appointed under section 3 of the Act or any other qualified officer in his office;

“Minister” means the Minister with responsibility for the Port and Shipping;

“pleasure vessel” means—

- (a) any vessel which is—

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

2012/023 Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

- (i) wholly owned by an individual or individuals and used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or
- (ii) owned by a body corporate and used only for the sport or pleasure of employees or officers of the body corporate, or their immediate family or friends,

and is on a voyage or excursion which is one for which the owner is not paid for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion, or

- (b) any vessel which is wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club;

and no payments other than those referred to above are made by or on behalf of the users of the vessel, other than by the owner, and in this definition, "immediate family" means, in relation to an individual, the husband, wife of the individual, and a brother, sister, ancestor or lineal descendant of that individual or of that individual's husband or wife;

"preliminary assessment" means the initial part of an investigation which may be held to establish the causes and circumstances of an accident with a view to deciding whether any further investigation is warranted;

"ro-ro ferry" shall have the meaning assigned to it by regulation 2 of the Gibraltar Merchant Shipping (Ro-Ro Ferry and High-Speed Passenger Craft on Regular Service) Regulations 2005;

"safety investigation" means an investigation under these Regulations and where the context so admits means an equivalent investigation conducted pursuant to the obligations under the IMO Code;

"safety recommendation" means any proposal made, including for the purposes of registration and control, by the MAICO when conducting, or leading, the safety investigation on the basis of information derived from that investigation;

“senior surviving officer” means the senior surviving officer in the deck department and if there is no surviving officer in the deck department, the senior surviving engineer officer;

“serious injury” means an injury which is sustained by a person in a marine incident resulting in incapacitation for more than 72 hours commencing within seven days from the date of injury;

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

“substantially interested State” shall be understood in accordance with the definition contained in the IMO Code;

“very serious casualty” shall be understood in accordance with the definition contained in the IMO Code;

“Voyage Data Recorder” or “VDR” shall be understood in accordance with the updated definition contained in Resolution A.861 (20) of the IMO Assembly and Resolution MSC.163 (78) of the IMO Maritime Safety Committee.

(2) Where a ship is managed by a person other than her owner (whether on behalf of the owner or some other person, or on his own behalf), a reference in these Regulations to the owner shall be construed as including a reference to that person.

Application of these Regulations.

3.(1) These Regulations shall apply to accidents that—

- (a) involve Gibraltar ships;
- (b) occur within BGTW; or
- (c) involve other substantial interests of Gibraltar.

(2) These Regulations shall not apply to accidents involving only—

- (a) ships of war and troop ships and other ships owned or operated by a the Government of Gibraltar or of the United Kingdom and used only on government non-commercial service;

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

2012/023 Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

- (b) ships not propelled by mechanical means, wooden ships of primitive build, pleasure vessels and pleasure craft not engaged in trade, unless they are or will be crewed and carrying more than 12 passengers for commercial purposes;
- (c) fishing vessels with a length of less than 15 metres; and
- (d) fixed offshore drilling units.

Purpose of these Regulations.

4.(1) These Regulations seek to improve maritime safety and the prevention of pollution by ships, and so reduce the risk of future marine casualties, incidents or accidents by—

- (a) facilitating the expeditious holding of safety investigations and proper analysis of marine casualties and incidents in order to determine their causes; and
- (b) ensuring the timely and accurate reporting of safety investigations and proposals for remedial action.

(2) Investigations under these Regulations shall not be concerned with apportioning blame nor with determining civil or criminal liabilities.

Marine Accident Investigation Compliance Officer.

5.(1) There shall be a permanent officer to be known as the Marine Accident Investigation Compliance Officer or 'MAICO' to ensure that safety investigations in matters relating to marine casualties and incidents are carried out in accordance with these Regulations, the IMO Code and any relevant international obligation.

(2) The MAICO shall be appointed by the Government and shall hold office on such terms and conditions as may be provided for in the instrument of appointment.

(3) The MAICO shall be provided with such resources, including human resources, as the Government considers are reasonably required to discharge the duties imposed on him under these Regulations.

Appointment of Deputy MAICO.

5A.(1) The Government may appoint a fit and proper person to be a Deputy MAICO—

- (a) who shall act under the direction of or on behalf of the MAICO; and

- (b) on such terms and conditions as may be specified in the instrument of his appointment.
- (2) The Government may appoint multiple Deputy MAICOs.

MAICO and inspectors' powers and duties.

6.(1) Upon receipt of notification of a casualty it shall be the duty of the MAICO to immediately respond to it in the manner and to the extent provided for in these Regulations.

- (2) The MAICO and an inspector shall have the power to—
 - (a) have free access to any relevant area or casualty site as well as to any ship, wreck or structure including cargo, equipment or debris;
 - (b) ensure immediate listing of evidence and controlled search for and removal of wreckage, debris or other components or substances for examination or analysis;
 - (c) require examination or analysis of the items referred to in paragraph (b), and have free access to the results of such examinations or analysis;
 - (d) have free access to, copy and have use of any relevant information and recorded data, including data from VDR, pertaining to a ship, voyage, cargo, crew or any other person, object, condition or circumstance;
 - (e) have free access to the results of examinations of the bodies of victims or of tests made on samples taken from the bodies of victims;
 - (f) require and have free access to the results of examinations of, or tests made on samples taken from, people involved in the operation of a ship or any other relevant person;
 - (g) interview witnesses in the absence of any person whose interests could be considered as hampering the safety investigation;
 - (h) obtain survey records and relevant information held by the flag State, the owners, classification societies or any other relevant party, whenever those parties or their representatives are established in Gibraltar; and
 - (i) call for the assistance of the relevant, including flag-State and port-State surveyors, coastguard officers, vessel traffic service operators, search and rescue teams, pilots or other port or maritime personnel.

1995-13 Gibraltar Merchant Shipping (Safety, etc.)
2012/023 Gibraltar Merchant Shipping (Accident Reporting and
Investigation) Regulations 2012

(3) The MAICO may—

- (a) gather data relating to maritime safety and analyse such data, for prevention purposes, insofar as these activities do not affect his independence or entail responsibility in regulatory, administrative or standardisation matters; and
- (b) combine its duties under these Regulations with the investigation of occurrences other than marine casualties if such investigations do not endanger its independence.

(4) The Government must ensure that the MAICO and an inspector, where appropriate in collaboration with an authority responsible for any judicial inquiry, are provided with any information pertinent to the conduct of the safety investigation.

(5) The MAICO must ensure, and where appropriate through collaboration with any authority undertaking a judicial enquiry, that a safety investigation under these Regulations is—

- (a) independent of criminal or other parallel investigations held to determine liability or to apportion blame; and
- (b) not unduly precluded, suspended or delayed by reason of such investigations.

(6) Notwithstanding subregulation (5), the MAICO or an inspector must not refrain from fully reporting the causes of a marine casualty or incident on the ground that fault or liability may be inferred from the findings.

(7) For the purposes of conducting an investigation under these Regulations, the MAICO shall ensure that he and any inspector has ready access to appropriate expertise, as necessary.

Appointment of inspectors.

7.(1) The MAICO may appoint inspectors to assist him in the discharge of any duty or obligation imposed on him.

(2) The MAICO shall ensure that every inspector appointed pursuant to subregulation (1)—

- (a) is a suitably qualified investigator and competent in matters relating to marine casualties and incidents; and

(b) has a working knowledge of, and practical experience in, those subject areas pertaining to their normal investigative duties.

(3) The inspectors appointed under this regulation must, as soon as possible, undergo such dedicated training as may be prescribed by the MAICO, in order to be qualified as accident investigators.

(4) The MAICO must maintain a list of inspectors who are qualified to conduct safety investigation under these Regulations.

Impartiality.

8. The MAICO and any inspector in the discharge of any duty, and in particular when making any decision in relation to carrying out any safety investigation under these Regulations, must be impartial, unbiased and independent.

Duty to report accidents and serious injuries.

9.(1) When an accident takes place the following persons associated with the ship shall notify the MAICO as soon as is practicable following the accident and by the quickest means available—

- (a) the master or, if he has not survived, the senior surviving officer; and
- (b) the ship's owner, unless he has ascertained to his satisfaction that the master or senior surviving officer has reported the accident in accordance with paragraph (a).

(2) In addition to any notification made under subregulation (1), the following persons shall report to the MAICO as soon as is practicable and by the quickest means available any accident of which they are aware—

- (a) in the case of an accident within or adjacent to the limits of any port, the port authority for that port; or
- (b) in respect of an accident within the port or BGTW an official of the port of Gibraltar.

(3) A person making a notification pursuant to subregulation (1) or (2) shall, in so far as is practicable, include the following information in a report to be sent as soon as possible thereafter—

- (a) name of ship and IMO, official or fishing vessel number;

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

2012/023 Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

- (b) name and address of owner;
- (c) name of the master, skipper or person in charge;
- (d) date and time of the accident;
- (e) where from and where bound;
- (f) latitude and longitude or geographical position in which the accident occurred;
- (g) part of ship where accident occurred if on board;
- (h) weather conditions;
- (i) name and port of registry of any other ship involved;
- (j) number of people killed or injured, together with their names, addresses and gender;
- (k) brief details of the accident, including, where known, the sequence of events leading to the accident, extent of damage and whether the accident caused pollution or a hazard to navigation;
- (l) if the ship is fitted with a voyage data recorder, the make and model of the recorder.

(4) In addition to making a report under subregulation (3), the persons specified in subregulation (1) shall, 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 prevent a recurrence, shall be provided to the MAICO as soon as is practicable.

(5) The master and ship's owner shall, so far as is reasonably practicable, ensure that the circumstances of every serious injury are examined and one of them shall, within 14 days, provide the MAICO with a report giving the findings of such examination and stating any measures taken or proposed to prevent a recurrence.

(6) *Deleted*

(7) In the case of an accident, any person reporting to the MAICO under this regulation shall, without delay, also inform the Maritime Administrator of the occurrence of that accident.

Gibraltar Merchant Shipping (Safety, etc.) **1995-13**
Gibraltar Merchant Shipping (Accident Reporting and
Investigation) Regulations 2012 **2012/023**

Obligation to investigate.

10.(1) Save where subregulations (7) to (9) apply, the ordering of an investigation of an accident shall be at the discretion of the MAICO.

(2) In considering whether to order an investigation into an accident the MAICO may have regard to any advice given to him by the Maritime Administration.

(3) Where a notification has been received under subregulation (1) of regulation 9, or a report under subregulation (2), (4) or (5) of regulation 9, the MAICO shall—

- (a) decide whether or not an investigation, including any preliminary assessment, should be carried out; and
- (b) notify the Maritime Administration and the parties to the accident of his decision within 28 days following of the report by him.

(4) Before deciding as to whether an investigation should be carried out, and if so, what form it should take, the MAICO may request for such information as he considers necessary concerning the accident and any remedial action taken as a result.

(4A) Any person referred to in subregulation (1) or (2) of regulation 9, and any other person who is in possession of the information requested by the MAICO under sub-regulation (4), shall provide such information to the MAICO to the best of his ability and knowledge.

(5) In the case of an accident where there is loss of life or serious injury to any person on board, or any person is lost or falls overboard from the ship or one of its boats, the MAICO may decide not to order an investigation if he is satisfied, or it is otherwise established to his satisfaction, that—

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

and in such circumstances he may order the discontinuation of any investigation which has already been commenced.

(6) Public notice that an investigation has been commenced may be given in such manner as the MAICO may think fit, and may invite any persons who so desire to present relevant evidence to the inspector in such a manner and within such a time as is specified in the notice.

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

2012/023 Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

(7) Whenever a very serious casualty occurs, the MAICO must ensure that a safety investigation is carried out if it-

- (a) involves a ship flying the flag of Gibraltar, irrespective of the location of the casualty;
- (b) occurs within BGTW, irrespective of the flag of the ship or ships involved in the casualty; or
- (c) involves a substantial interest of Gibraltar, irrespective of the location of the casualty and of the flag of the ship or ships involved.

(8) The MAICO shall, in the case of a serious casualty, carry out a preliminary assessment in order to decide whether or not a safety investigation should be undertaken and where the MAICO decides not to undertake a safety investigation, the MAICO shall record the reasons for that decision and issue a relevant notification in accordance with regulation 26.

(9) In the case of any other marine casualty or incident the MAICO shall decide whether or not a safety investigation should be undertaken.

(10) In considering whether to investigate any matter to which subregulations (8) and (9) refers, the MAICO must take into account-

- (a) the seriousness of the marine casualty or incident;
- (b) the type of vessel or cargo or both involved; and
- (c) the potential for the findings of the safety investigation to lead to the prevention of future casualties and incidents.

(11) The scope and practical arrangements for the conduct of the safety investigation must be determined by the MAICO in cooperation with the equivalent bodies of other substantially interested States, if any, in such manner as appears to him most conducive to achieving the objective of these Regulations, and with a view to preventing future casualties and incidents.

(12) When carrying out a safety investigation, the MAICO must follow the common methodology for investigating marine casualties and incidents as set out in Schedule 2.

(13) An inspector may depart from the methodology referred to in subregulation (12) in a specific case where this can be justified as necessary, in his professional judgment and with the consent of the MAICO, and if needed to achieve the aims of the investigation.

(14) The MAICO shall ensure that a safety investigation under this Regulation is commenced as promptly as is practicable after the marine casualty or incident occurs and in any event no later than two months after its occurrence.

Leading of, and participation in, safety investigations.

11.(1) Subject to subregulation (3), only one safety investigation in respect of each marine casualty or incident shall be carried out, and where relevant, the safety investigation may involve the participation of any other substantially interested State.

(2) Where the safety investigation involves Gibraltar and any other substantially interested State, the MAICO must—

- (a) cooperate with his counterpart in that substantially interested State with a view to rapidly agreeing which of them is to lead the safety investigation;
- (b) make every effort to agree on the procedures to investigate;
- (c) if he leads the safety investigation, ensure that any substantially interested State—
 - (i) is afforded equal rights and access to witnesses and to the evidence, and
 - (ii) has any point of view raised in the safety investigation taken into consideration.

(3) The MAICO must ensure that the conduct of parallel safety investigations into the same marine casualty or incident are strictly limited to exceptional cases and in such cases, he must immediately inform the Minister.

(4) When parallel safety investigations are conducted in Gibraltar and in another substantially interested State, the MAICO must—

- (a) cooperate with the investigating body of that State; and
- (b) exchange any pertinent information gathered in the course of his respective investigations, in particular in order to reach, as far as possible, shared conclusions.

(5) The MAICO, an inspector and the Maritime Administration must abstain from any measure which could unduly preclude, suspend or delay the conduct of a safety investigation falling within the scope of these Regulations.

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

2012/023 Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

Subsequent or reopened investigations.

12.(1) Notwithstanding a decision by the MAICO under regulation 10(3) not to investigate, he may at any subsequent time after obtaining the advice from the Maritime Administration cause an investigation to be carried out if he is then satisfied there is good reason in the interests of future safety to do so.

(2) The MAICO may cause any investigation to be re-opened if, following its completion, he receives advice from the Maritime Administration which indicates in his opinion new and important evidence has been discovered which could have a material effect on any safety recommendations made.

(3) Any investigation may be re-opened either in whole or as to any part of it and a re-opened investigation shall be subject to and conducted in accordance with the provisions of these Regulations.

Preservation of evidence.

13.(1) Except where subregulation (2) applies, following an accident involving a Gibraltar ship which is reportable under regulation 9, the persons referred to in subregulation (3) shall so far as is practicable ensure that all—

- (a) charts;
- (b) log books;
- (c) electronic and magnetic recording and video tapes, including information from a VDR or recording system relating to the period preceding, during and after the accident; 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 recordings or entries in them.

(2) In the case of an accident involving a Gibraltar ship and for the purposes of compliance with regulation 15, the persons referred to in subregulation (3) shall make every effort to—

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

1995-13

Gibraltar Merchant Shipping (Safety, etc.)

2012/023

Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

- (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.
- (3) The persons referred to in subregulations (1) and (2) are—
- (a) the master or, if he has not survived, the senior surviving officer; and
 - (b) the ship's owner, unless he has ascertained to his satisfaction that the master or senior surviving officer has taken the action in question.
- (4) The duty under subregulation (1) to ensure that documents, information or records are kept and not altered and to ensure under subregulation (2) that information is saved and preserved, or that equipment is left undisturbed, shall continue until—
- (a) notification is received on behalf of the MAICO that no safety investigation is to take place or that the safety investigation has been completed;
 - (b) 28 days have passed since the MAICO received the report referred to in regulation 9(1) and no notice has been sent on behalf of the MAICO that he has decided to investigate the matter; or
 - (c) the inspector carrying out the investigation gives written notification that he no longer requires them.
- (5) Following an accident in BGTW involving a ship which is not a Gibraltar ship, the persons referred to in subregulation (3) shall comply with the requirements of subregulations (1) and (2) if requested to do so by or on behalf of the MAICO or an inspector.
- (6) The MAICO or an inspector may, pending investigation, prohibit persons from gaining access to, or interfering with, any ship, ship's boat or other equipment involved in an accident.
- (7) Following an accident in BGTW, the MAICO if he considers it reasonably necessary for the collection or preservation of evidence in connection with any investigation, including a preliminary assessment, relating to the accident and a safety assessment, require any of the master or, if he has not survived, the senior surviving officer and the ship's owner to ensure that a ship is accessible within BGTW to any inspector engaged in the investigation of such

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

2012/023 Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

accident, until the process of collecting or preserving the evidence has been completed to the MAICO's satisfaction.

(8) The MAICO shall not require a ship to remain in BGTW any longer than is necessary for the collection or preservation, as the case may be, of the evidence referred to in subregulation (7) and shall take all reasonable steps to ensure that such evidence is collected or preserved expeditiously.

(9) No requirement under subregulation (7) shall be made unless the MAICO has reasonable grounds for concern that if the ship leaves BGTW, access to it, to any member of the crew, or to any evidence on board relating to the investigation may subsequently be denied to him or any other inspector conducting such investigation.

Conduct of investigations.

14.(1) If the MAICO decides that an investigation shall be carried out, it shall be undertaken by one or more inspectors at such times and places and in such manner as appear to him or them to be most conducive to achieving the objectives set out in regulation 4.

(2) An investigation may extend to cover all events and circumstances preceding the accident together with subsequent events and circumstances which in the opinion of an inspector may have been relevant to its cause or outcome.

(3) Every person required to attend before an inspector shall be allowed the reasonable expenses of attending, payable by the Government.

(4) Any person, not being a solicitor or other professional legal adviser acting solely on behalf of the person required to attend, who—

- (a) has been allowed by an inspector to be present; or
- (b) has been nominated to be present at an oral examination before an inspector, may at any time be excluded from being present—
 - (i) by the inspector if he has substantial reason to believe that his presence would hamper the investigation with the result that the objective in regulation 4 is likely to be hindered and future safety thereby endangered; or
 - (ii) by the MAICO if he is satisfied, having regard to all the circumstances, that it is proper to exclude that person.

(5) Where a person nominated to be present has been excluded in accordance with subregulation (4), the person required to attend shall be entitled to nominate another person to be present at the oral examination in place of the excluded person and subregulation (4) shall then apply to that other person.

(6) Any document, record or information referred to in regulation 10, properly required by an inspector to be produced for the purposes of an investigation (whether on board the ship involved or otherwise), may be retained by him until the investigation is completed.

(8) In relation to any investigation—

- (a) where a preliminary assessment has been conducted the inspector, having regard to the objectives set out in regulation 4, shall advise the MAICO whether it is appropriate in all the circumstances to conduct further investigations leading to publication of a report; and
- (b) the inspector may provide advice to the MAICO for him to discontinue the investigation at any time; and
- (c) where an investigation is discontinued, the MAICO shall make his reasons for doing so publicly available.

Co-operation with the substantially interested States.

15.(1) Notwithstanding regulation 11 the MAICO shall remain responsible for the safety investigation and coordination with substantially interested States until such time as it is mutually agreed who will lead the safety investigation.

(2) Without prejudice to its obligations under these Regulations and any applicable international law, the MAICO may, on a case-by-case basis, delegate by mutual agreement with his equivalent counterpart in a substantially interested State the task of leading a safety investigation or specific tasks for the conduct of such an investigation.

(3) Where a ro-ro ferry or high-speed passenger craft is involved in a marine casualty or incident the MAICO shall launch the safety investigation procedure where-

- (a) the marine casualty or incident occurs in BGTW; or
- (b) that vessel sailed through BGTW immediately prior to the marine accident or incident occurred and it occurred in waters where Gibraltar or the substantially interested State has no jurisdiction.

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

2012/023 Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

(4) Where subregulation (3) applies, the MAICO shall remain responsible for the safety investigation and co-ordination with substantially interested States until it is mutually agreed who will lead the safety investigation.

16. *Repealed.*

Cooperation with substantially interested other States.

17.(1) The MAICO must cooperate, to the maximum extent possible, with other substantially interested States in safety investigations.

(2) Substantially interested other States shall be allowed at any stage of the investigation to participate in a safety investigation led by the MAICO, by mutual agreement.

(3) The cooperation of the MAICO in a safety investigation conducted by a substantially interested other State shall be without prejudice to the conduct and reporting requirements of a safety investigation under these Regulations.

(4) Where a substantially interested other State is leading a safety investigation involving Gibraltar, the MAICO may decide not to carry out a parallel safety investigation, if the safety investigation led by the substantially interested State is conducted in accordance with the IMO Code.

Disclosure of records.

18.(1) Subject to subregulations (2) to (7), the names, addresses or any other details which may reveal the identity of anyone who has given evidence to the MAICO or an inspector shall not be disclosed.

(2) The following documents or records shall not be made available for purposes other than the investigation, unless a court orders otherwise—

- (a) subject to subregulation (3), all declarations or statements taken from persons by an inspector or supplied to him in the course of his investigation, together with any notes or voice recordings of interviews;
- (b) information relating to persons involved in a marine casualty or incident which is of a particularly sensitive and private nature including information concerning their health;
- (c) any report made under regulation 9(4) or (5);

1995-13

Gibraltar Merchant Shipping (Safety, etc.)

2012/023

**Gibraltar Merchant Shipping (Accident Reporting and
Investigation) Regulations 2012**

- (d) the final report except as referred to in regulation 19(4)(a), (5), or (9).
- (3) A person who has given a declaration or statement to an inspector in the course of an investigation may make available a copy of his declaration or statement to another person as he sees fit.
- (4) Any independent technical analysis commissioned by the Maritime Administration will be provided to the MAICO and opinions expressed in such analysis may be made publicly available if the MAICO considers it appropriate to do so.
- (5) Subject to subregulation (6), no order shall be made under subregulation (2) unless the court is satisfied, having regard to the views of the MAICO, that the interests of justice in disclosure outweigh any prejudice, or likely prejudice, to-
- (a) the investigation into the accident to which the document or record relates;
 - (b) any future safety investigation undertaken in Gibraltar; or
 - (c) relations between Gibraltar and any State, territory or international organisation.
- (6) The provisions of this regulation shall be without prejudice to any rule of law which authorises or requires the withholding of any document or record or part thereof on the ground that disclosure of it would be injurious to the public interest.
- (7) Copies of information obtained from a VDR or from other recording systems, pertinent to the accident, including voice recordings (other than any recordings referred to in subregulation (2)(a)), video recordings and other electronic or magnetic recordings and any transcripts made from such information or recordings may be provided at the discretion of the MAICO to the police or other official authorities.
- (8) Nothing in this regulation shall be construed as a derogation of the applicable provisions of the Data Protection Act 2004.

Reports of investigations.

19.(1) Subject to subregulation (3), the MAICO shall cause a report of an investigation into an accident conducted pursuant to regulation 14(8)(a), to be prepared containing the information set out in Schedule 1.

- (2) The report shall set out-
- (a) conclusions relating to the facts of the accident;

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

2012/023 Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

- (b) where the facts cannot be clearly established, analysis and professional judgement to determine the probable facts; and
 - (c) recommendations for future safety.
- (3) The MAICO may make the report publicly available in such manner as he thinks fit but in the case of an accident to which regulation 20 applies the MAICO must publish the report in accordance with the provisions of that regulation.
- (4) The MAICO shall not make the report publicly available until he has—
- (a) served a notice under this regulation upon any person who, or organisation which, could be adversely affected by the report or, if that person is deceased, upon such person or persons as appear to the MAICO, at the time he proposes to serve notice pursuant to this sub-regulation, as best to represent the interests and reputation of the deceased in the matter; and
 - (b) considered the representations relating to the facts or analysis contained in the report which may be made to him in accordance with subregulation (6) by or on behalf of the persons served with such notice.
- (5) The notice referred to in subregulation (4)(a) shall be accompanied by a draft copy of the report.
- (6) The representations referred to in subregulation (4)(b) shall be in writing and shall be served on the MAICO within 28 days of service of the notice referred to in subregulation (4)(a) or within such further period as may be allowed under regulation 23.
- (7) Subject to any court order under regulation 18, no person shall disclose any information—
- (a) which has been furnished to him pursuant to subregulation (5); or
 - (b) which has otherwise been furnished to him by or on behalf of the MAICO in advance of the publication of a report and whose confidentiality is protected by regulation 18, or permit such information to be disclosed, save with the prior consent in writing of the MAICO, to any other person, except to such advisers as are necessary in order to make representations to the MAICO referred to in sub-regulation (4)(b), and those advisers shall similarly be subject to the duty not to disclose the information or permit it to be disclosed.
- (8) A copy of the report when made publicly available shall be given by the MAICO to—

Gibraltar Merchant Shipping (Safety, etc.) **1995-13**
Gibraltar Merchant Shipping (Accident Reporting and
Investigation) Regulations 2012 **2012/023**

- (a) any person who has been served with a notice pursuant to subregulation (4)(a);
- (b) those persons or bodies to whom recommendations have been addressed in that report;
- (c) the IMO;
- (d) *Deleted.*
- (e) any person or organisation whom the MAICO considers may find the report useful or of interest.

(9) Where an inquest or fatal accident inquiry is to be held following an accident which has been subject to investigation, a draft report may be made available in confidence to the coroner by the MAICO.

(10) If any part of the report or analysis therein is based on information obtained pursuant to an inspector's powers under section 91(3) of the Act, the report shall be inadmissible in any judicial proceedings whose purpose or one of whose purposes is to attribute or apportion liability or blame unless a court or tribunal, having regard to the factors referred to in regulation 18(5)(b) or (c), determines otherwise.

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

Publication of accident reports.

20.(1) Safety investigations carried out under these Regulations, shall result in a published report presented in a format defined in accordance with the relevant sections of Schedule 1 by the MAICO.

(2) Where a safety investigation does not concern a very serious or, as the case may be, a serious marine casualty, the findings of which do not have the potential to lead to the prevention of future casualties and incidents, the MAICO shall publish a simplified report in place of the report referred to in subregulation (1).

(3) The MAICO must make every effort to ensure that the reports referred to in subregulations (1) and (2), including its conclusions and any possible recommendations, is made available to the public, and especially to the maritime sector, within 12 months of the

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

2012/023 Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

date of the casualty and if it is not possible to produce the final report within that time, an interim report shall be published within 12 months of that date.

(4) The MAICO must ensure that a copy of the final report into serious and very serious casualties is submitted to the IMO.

Publications other than reports of investigations.

21.(1) The MAICO may, at his discretion and to promulgate any lessons learned, from time to time publish collective short reports of accidents which have not been the subject of a report submitted under regulation 18(1).

(2) The MAICO may, at his discretion, submit a report to the Minister on any matter arising from his analysis of marine accident investigations.

Recommendations.

22.(1) The MAICO may, as a result of one or more investigations, whether or not completed, at any time make recommendations as to how future accidents may be prevented.

(2) The actions recommended shall be addressed to those persons or bodies who, in the opinion of the MAICO, are most fitted to implement them.

(3) Recommendations shall be made publicly available if the MAICO considers that to do so is in the interests of safety or preventing pollution.

(4) Any person to whom a recommendation is addressed pursuant to subregulation (2) shall, without delay—

(a) take that recommendation into consideration;

(b) send to the MAICO—

(i) details of the measures, if any, he has taken or proposes to take to implement the recommendation and, in a case where he proposes to implement measures, the timetable for securing that implementation, or

(ii) an explanation as to why the recommendation is not to be the subject of measures to be taken to implement it,

and any details or timetable pursuant to subparagraph (i) or explanation pursuant to subparagraph (ii) shall be provided to the MAICO within 28 days following receipt of the recommendation; and

- (c) give notice to the MAICO if at any time any information provided to the MAICO in pursuance of subregulation (4)(b)(i) concerning the measures he proposes to take or the timetable for securing their implementation is rendered inaccurate by any change of circumstances.
- (5) Subject to subregulations (6) and (7) the MAICO shall, annually or at such other intervals as he sees fit, make information publicly available in respect of the matters, including any explanation, referred to in paragraphs (b) and (c) of subregulation (4) which have been communicated to him and he shall inform the Minister of those matters.
- (6) The MAICO shall not publish information under subregulation (5) unless he has first notified any person referred to in the information and he has considered any representations relating to the information which may have been made to him in accordance with subregulation (7) by or on behalf of any person so notified, and amended the information in such manner as he thinks fit.
- (7) Any representations made pursuant to subregulation (6) shall be in writing and shall be served on the MAICO within 28 days of receipt of the notification referred to in that subregulation or within such further period as may be allowed under regulation 23.
- (8) The MAICO must ensure that safety recommendations are duly taken into account by the addressees and, where appropriate, the MAICO shall follow these up.
- (9) Where appropriate, the MAICO must make safety recommendations on the basis of an abstract data analysis and of the overall results of safety investigations carried out.
- (10) A safety recommendation shall in no circumstances determine liability or apportion blame for a casualty.

Extension of time.

23.(1) The MAICO shall have the power to extend the period of 28 days prescribed in regulation 19(6) for only another 28 days, but the MAICO shall do so only if he considers that there are good reasons warranting such an extension having regard to the requirement in regulation 19(1) for a report of an investigation to be made available in the shortest time possible.

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

2012/023 Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

(2) The MAICO may extend the period of 28 days prescribed in regulation 22(4)(b) where he considers it appropriate to do so.

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

Service of documents.

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

- (a) by delivering it to that person;
- (b) by leaving it at his usual or last-known residence or place of business, whether in Gibraltar or elsewhere;
- (c) by sending it to him by post at that address; or
- (d) by sending it to him at the address by telex, facsimile, or other means which produces a document containing a text of the communication, or by electronic mail in which event the document shall be regarded as having been served when it is sent.

25. *Repealed.*

26. *Repealed.*

Costs.

27.(1) Where any safety investigation involves Gibraltar and a substantially interested State, the respective activities shall be free of charge.

(2) Where assistance is requested of Gibraltar by a substantially interested State that is not involved in the safety investigation, the Government and the substantially interested State concerned must agree on the reimbursement of costs incurred.

Fair treatment of seafarers.

28. In the event of an accident in BGTW, the Government and any person exercising any duty or responsibility under these Regulations must, in the light of any applicable laws, take into account the relevant provisions of the IMO guidelines on the fair treatment of seafarers.

1995-13

Gibraltar Merchant Shipping (Safety, etc.)

2012/023

**Gibraltar Merchant Shipping (Accident Reporting and
Investigation) Regulations 2012**

Offences and penalties.

29.(1) A person shall be guilty of an offence if—

- (a) being a person referred to in regulation 9(1) or (2) he fails without reasonable cause to report an accident as required by those provisions;
- (b) being a master or ship's owner, he fails without reasonable cause to comply with regulation 9(5);
- (c) being a person referred to in regulation 9(1) or (2), he fails without reasonable cause to provide information as required by regulation 10(4); or
- (d) he falsely claims to have any additional information or new evidence pertaining to any accident or serious injury,

and such a person shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If any person fails without reasonable cause to comply with any requirement, duty or prohibition in regulation 13(1), (2) or (5) to (7), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale and on conviction on indictment to a fine.

(3) If any person without reasonable cause discloses or permits to be disclosed any information in contravention of regulation 18(1) or 19(7), or makes available any documents or records in contravention of regulation 18(2), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Repeal.

30. The Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2006 are repealed.

Savings and transitional provisions.

31.(1) In this regulation a reference to the “repealed Regulations” shall be construed as a reference to the regulations repealed by regulation 30.

(2) Any proceedings which have been instituted under the repealed Regulations (including any appeal) which have not been concluded at the time of the coming into operation of these Regulations shall be continued as though the repealed Regulations had not been repealed.

1995-13 Gibraltar Merchant Shipping (Safety, etc.)
2012/023 Gibraltar Merchant Shipping (Accident Reporting and
Investigation) Regulations 2012

(3) Where proceedings for an offence committed under the repealed Regulations have not been commenced at the commencement of these Regulations—

- (a) if there is an equivalent offence under these Regulations proceedings must be brought under these Regulations;
- (b) if there is no equivalent offence proceedings cannot be brought.

(4) Any order, instruction direction, exemption, notice, permit, complaint or other non-legislative instrument made or issued by any person or body under the repealed Regulations which could be made or issued by an equivalent person or body under these Regulations continues to have effect as if made or issued by that person or body under these Regulations until it expires, it is varied or revoked under these Regulations.

Application of sections 56 and 91 of Act.

32. Sections 56 and 91 of the Act shall not apply to a safety investigation undertaken in accordance with the provisions of these Regulations.

SCHEDULE 1

Regulation 19 (1)

Information to be included, where relevant, in reports in relation to an accident

Summary

1. An outline of the basic facts of the marine casualty or incident, including what happened, when, where and how it happened.
2. Summary information about any deaths or injuries, or any damage to the ship, cargo, third parties or environment that occurred.

Factual information

3. Particulars about the vessel concerned, including details of its-
 - (a) flag and register;
 - (b) identification;
 - (c) main characteristics;
 - (d) ownership and management;
 - (e) construction;
 - (f) minimum safe manning;
 - (g) authorised cargo.
4. Particulars about the voyage, including-
 - (a) ports of call;
 - (b) the type of voyage;
 - (c) cargo information;
 - (d) manning.

1995-13 Gibraltar Merchant Shipping (Safety, etc.)
2012/023 Gibraltar Merchant Shipping (Accident Reporting and
Investigation) Regulations 2012

5. Marine casualty or incident information, including-
- (a) the type of marine casualty or incident;
 - (b) the date and time of casualty or incident;
 - (c) the position and location of the marine casualty or incident;
 - (d) information about the external and internal environment;
 - (e) information about the vessel's operation and voyage segment;
 - (f) the place on board the ship where the casualty or incident occurred;
 - (g) human factors data;
 - (h) information about its consequences (for people, any ship, cargo, the environment or other).
6. Information about shore authority involvement and emergency response, including-
- (a) who was involved in the response;
 - (b) the means used to respond to the casualty or incident;
 - (c) the speed of response;
 - (d) actions taken;
 - (e) results achieved.

Narrative details

7. A description or reconstruction of the marine casualty or incident setting out, in chronological order, the sequence of events leading up to, during and following the marine casualty or incident and the involvement of relevant actors or factors (persons, material, environment, equipment or external agents).
8. Relevant details of the safety investigation conducted, including the results of any examinations or tests.

Analysis

9. Analysis and comment, as necessary, to enable the report to reach logical conclusions, establishing all of the contributing factors, including those with risks for which existing defences aimed at preventing an accidental event, and those aimed at eliminating or reducing its consequences, are assessed to be either inadequate or missing, including-

- (a) an analysis of each accidental event, with comments relating to the results of any relevant examinations or test conducted during the course of the safety investigation and to any safety action that might have been taken to prevent marine casualties in relation to the incident;
- (b) the context of, and the environment in relation to, the accident or incident;
- (c) human errors and omissions;
- (d) events involving hazardous material;
- (e) environmental effects of the accident or incident;
- (f) equipment failures;
- (g) external influences or factors;
- (h) contributing factors involving person-related functions, shipboard operations, shore management or regulatory influence.

Conclusions

10. The main conclusions, including conclusions as to the established contributing factors and missing or inadequate defences (material, functional, symbolic or procedural) for which safety actions should be developed to prevent marine casualties.

Safety Recommendations

11. Any safety recommendations derived from the analysis and conclusions and related to particular subject areas, such as legislation, design, procedures, inspection, management, health and safety at work, training, repair work, maintenance, shore assistance and emergency response.

12. Safety recommendations must be addressed to those that are best placed to implement them, such as ship owners, managers, recognised organisations, maritime authorities, vessel

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

2012/023 Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

traffic services, emergency bodies and international maritime organisations with the aim of preventing marine casualties and incidents.

13. Any interim safety recommendations that may have been made, or any safety actions taken, during the course of the safety investigation.

Appendices

14. If appropriate, the following non-exhaustive list of information may be attached to the report (in paper or electronic form)-

- (a) photographs, moving images, audio recordings, charts, drawings;
- (b) applicable standards;
- (c) technical terms and abbreviations used;
- (d) special safety studies;
- (e) miscellaneous information.

Gibraltar Merchant Shipping (Safety, etc.) 1995-13
Gibraltar Merchant Shipping (Accident Reporting and
Investigation) Regulations 2012 2012/023

SCHEDULE 2

Regulation 10(12)

COMMISSION REGULATION (EU) No 1286/2011 of 9 DECEMBER 2011

adopting a common methodology for investigating marine casualties and incidents developed pursuant to Article 5(4) of Directive 2009/18/EC of the European Parliament and of the Council as modified by Part 3 of the Gibraltar Merchant Shipping (Accident Reporting and Investigation) (Amendment) (EU Exit) Regulations 2019.

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council (1), and in particular Article 5(4) thereof,

Whereas:

- (1) Directive 2009/18/EC requires the Commission to adopt a common methodology for investigating marine casualties and incidents to be followed by investigative bodies when carrying out safety investigations.
- (2) The common methodology for investigating marine casualties and incidents should provide for common standards applicable in principle to all investigations carried out in accordance with Directive 2009/18/EC in order to achieve a high level quality investigation.
- (3) The general rules as provided for by the common methodology should be directly used by the investigative bodies of the Member States.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Safe Seas and the Prevention of Pollution from Ships,

HAS ADOPTED THIS REGULATION:

Article 1

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

2012/023 Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

The common methodology for investigating marine casualties and incidents is set out in the Annex to this Regulation.

Article 2

(omitted)

ANNEX

COMMON METHODOLOGY FOR INVESTIGATING MARINE CASUALTIES AND INCIDENTS

A. PURPOSE, SCOPE AND APPLICATION

The purpose of safety investigations into marine accidents is to reduce the risk of future casualties and incidents and reduce their serious consequences including loss of life, loss of ships and pollution of the marine environment.

The purpose of this document is to provide a common methodology for investigative bodies to conduct marine safety investigations.

The methodology aims to establish common approach in principle applicable in all investigations and it outlines the characteristics of a good safety investigation. It is not a check list. The investigators shall exercise their professional judgment and training to take into account the circumstances of each case.

In this way, through application of this common methodology and an objective and systemic approach to the investigation, the investigative body should best be able to draw lessons from each accident and so enhance maritime safety.

Proper identification of the causes of a marine casualty or incident requires timely and methodical investigation, going beyond the immediate evidence and looking for underlying conditions which may cause other future occurrences. Investigation may therefore be seen as a means of identifying not only immediate causes, but also issues in the total environment from regulation and policy through to implementation.

A. CONTENT

1. Operational readiness

1.1 Each investigative body shall plan in advance in order to ensure that unnecessary delays, after the notification and during the initiation of any investigation, do not occur as a result of a lack of relevant/prerequisite information, preparedness or knowledge. Such preparedness

plan shall ensure resources and procedures are, as far as possible, immediately available to meet the requirements, including sufficient suitably qualified investigators and any necessary co-ordination, nationally and internationally, to enable initial actions to be taken promptly, after notification of a casualty or incident is first received.

1.2 Arrangements shall be put in place to ensure prompt receipt of casualty and incident notifications by the accident investigation body on a twenty-four hour basis.

2. Initial assessment and response

2.1 On being notified, the investigative bodies shall assess the situation. The initial assessment is critical for investigative bodies to gather an overview as quickly as possible, minimise the potential loss of evidence, and determine the scope of information required to decide the appropriate action.

2.2 This assessment shall include, as far as possible, an understanding of-

- (a) the overall events;
- (b) key timings;
- (c) the personnel involved; and
- (d) the category of the event.

2.3 In addition to the seriousness of the marine casualty or incident, the type of vessel and cargo involved, and the potential for the findings of the safety investigation to lead to the prevention of future casualties and incidents, the following may amongst others also be considered in deciding which non very serious casualties or incidents to investigate:

- (a) the potential safety value that may be gained by conducting an investigation;
- (b) the public profile of the casualty;
- (c) whether the casualty is part of an identifiable trend;
- (d) the potential consequences of the casualty;
- (e) the extent of resources available and projected to be available in the event of conflicting priorities and the extent of any investigation backlog;
- (f) any risks associated with not investigating;

1995-13 Gibraltar Merchant Shipping (Safety, etc.)
2012/023 Gibraltar Merchant Shipping (Accident Reporting and
Investigation) Regulations 2012

- (g) serious injuries occurring on-board to crew and/or passengers;
- (h) the pollution of environmentally sensitive areas;
- (i) ships subject to significant structural damages;
- (j) casualties which disrupt, or have the potential to disrupt, major port operations.

2.4 After a decision is taken to investigate a serious casualty or another marine casualty or incident, the investigation shall normally be conducted with the same immediacy as that for a very serious casualty.

2.5 Where an investigation is to be carried out, the investigative bodies shall take immediate action as far as practicable to ensure preservation of evidence, coordination with other substantially interested parties and the appointment of a lead investigating state.

3. Strategy and evidence collection

3.1 The investigative body of the lead investigating other States, in close liaison with those of the other substantially interested States, shall expeditiously develop a strategy for the scope, direction and timing of the investigation.

3.2 The investigative body shall keep the plan under review during the course of the investigation; by the end of the evidence collection phase the investigative body shall, as far as practicable, have ensured the completeness of evidence from all areas that could have influenced the casualty or incident.

3.3 The scope of a safety investigation and the procedure to be followed shall be sufficient as to eliminate uncertainty and ambiguity to the maximum extent possible and so enable robust logical assessments to be made of what led to the marine casualty or incident.

3.4 If Gibraltar is substantially interested, the MAICO shall provide support to the lead investigating other State, in a timely fashion, to the extent practicable.

3.5 The lead investigative body shall nominate an investigator to carry out the investigation, deploy appropriate resources and start the collection of evidence as soon as possible, as the quality of evidence, particularly that relying on the accuracy of human recollection, can deteriorate rapidly with time; and also in recognition that any ship involved in a marine casualty or incident should not be delayed more than is absolutely necessary by the need to gather evidence.

3.6 During the initial stage of every investigation, investigators shall collect as much of the relevant evidence as possible which may help understanding the incident and determining its causes, keeping in mind the possible breadth of any investigation.

3.7 In addition to that gained during the initial notification stage, investigators shall obtain appropriate background and reference information. This can include evidence or data requested from any monitoring system, from the traffic control system, from the maritime administration, from the rescue services, from the shipping company and the casualty vessel.

3.8 Where appropriate, the MAICO shall query databases, and other sources of information to help identify potential safety issues that may be relevant to the marine casualty or incident under investigation.

3.9 In principle, investigators shall, if feasible visit the casualty and/or occurrence site in order to obtain undisturbed evidence and to gain an initial appreciation of the incident. Where it has not been possible to preserve the site, arrangements shall, where possible, be made to obtain appropriate documentation of the scene for example by photographs, audio-visual recordings, sketches or any other means available with the object of gathering important evidence and possibly recreating the circumstances at a later stage.

3.10 Where a VDR is fitted, the investigators shall make every effort in order to obtain and preserve the information recorded on it. In particular they shall take early action to ensure that the VDR is "saved" to prevent it being overwritten. They also shall make every effort to obtain any relevant information from electronic sources, both on the ship and ashore. They shall review, in the order they find appropriate, any available, relevant documents, procedures and records.

3.11 Interviews shall be conducted with all available witnesses considered by the lead investigative body to be relevant. Investigators shall identify which witnesses they wish to interview initially and develop an interview plan. This plan shall, among other things, take into account fatigue (of both the witness and the investigator), the fragility of human evidence and the intended movements of the prospective witnesses.

3.12 Potential witnesses may include, among others:

- (a) persons directly involved in the marine casualty or incident and its consequences;
- (b) eyewitnesses to the marine casualty or incident;
- (c) emergency response personnel;
- (d) company personnel, port officials, designers, repair personnel technical experts.

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

2012/023 Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

3.13 If it is not possible to speak directly with some witnesses, the lead investigative body shall take steps to gain the evidence by other means.

3.14 Evidence may be obtained from them through telephone interviews or by asking other trained safety investigators to conduct the interview on behalf of the lead investigative State. In the latter case, the person conducting the interview will need to be carefully briefed by the investigator carrying out the investigation. Many key witnesses may need to be re-interviewed perhaps more than once.

3.15 Information shall be verified whenever possible. Statements made by different witnesses may conflict and further supporting evidence may be needed. To ensure that all of the relevant facts are uncovered, the broad questions of “who”, “what”, “when”, “how” and “why” shall be asked.

3.16 Human factors form an integral part of most investigations, and safety investigators must be trained appropriately. The success of the investigation of human factors depends largely on the type and quality of the information collected. As no two occurrences are the same, the investigative body shall determine the type and quality of data to be collected and reviewed. As a rule, the investigator shall be over-inclusive in gathering information initially and set aside superfluous data as the investigation unfolds.

3.17 If need be, the investigative body will have to secure some physical evidence in particular in order to obtain a scientific examination, inspection or testing ashore. In these cases, the investigators shall keep in mind that the passage of time could pollute the available evidence and therefore proceed with their removal as soon as appropriate. Prior to removal, such evidence shall be if possible photographed in situ. Their removal and their preservation shall be made with all the appropriate precautions in order to avoid affecting their examination.

3.18 If they appear to be relevant to the occurrence as part of their investigation, the investigative bodies may have to conduct or to order specialist examination, in particular technical examination of the vessel and of the different systems and equipment on board, if necessary by appropriate experts.

3.19 While gathering evidence, the investigative bodies shall try to identify any evidence that may be missing.

4. Analysis

4.1 Having collected evidence and related additional data, the investigative body of the lead investigating other State in cooperation with other substantially interested States as appropriate, shall analyse it with a view to identifying causal and contributing factors.

4.2 In that respect, the investigators shall take into account the variable value of the evidences they have collected and shall consider how best to resolve any ambiguities or conflicts of evidence.

4.3 Proper identification of causal factors requires timely and methodical investigation, going beyond the immediate evidence and looking for underlying conditions, which may be remote from the site of the marine casualty or incident, and which may cause other future marine casualties and marine incidents. Marine safety investigations should therefore in principle serve as a means of identifying not only immediate causal factors but also conditions that may be present in the whole operational process. To achieve this, the analysis of the evidence collected shall be thorough and iterative.

4.4 If a gap of information cannot be resolved and is filled in by logical extrapolation and reasonable assumptions, such extrapolation and assumptions shall be made clear in the wording of the report. A useful tool in this process can be the identification of all options and their analytical reduction to reach the most likely hypotheses.

5. Safety recommendations

5.1 Any safety recommendations shall be based on the analysis. They shall be addressed to those organisations or individuals best placed to take remedial action.

5.2 They may be based on safety investigations, or on research and abstract data analysis. Their formulation may be achieved in cooperation and consultation with the relevant stakeholders since these are often well-placed to identify and implement appropriate safety actions. The final decision on the content and addressees of safety recommendations shall, however, rest with the lead investigative body.

5.3 Where a causal or contributing factor is considered so serious that it should be addressed urgently, appropriate follow-up action shall be taken such as, for instance, issuing an interim safety recommendation.

5.4 To facilitate as much as possible acceptance and implementation by the recipients, any recommendation shall be:

- (a) necessary;
- (b) likely to be effective;
- (c) practicable;

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

2012/023 Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012

- (d) relevant;
- (e) targeted;
- (f) stated in a clear, concise and direct manner;
- (g) stated so that it can be the basis for corrective action plans, highlighting the safety gap that needs to be addressed.

6. Reports

6.1 The investigative body of the lead investigating other State shall produce a draft report in liaison with other substantially interested States. It shall clearly present, in a consistent and concise style, the facts and analysis which are used to support the conclusions and recommendations.

6.2 Where practicable, the draft report, or appropriate parts thereof, shall be circulated in confidence for consultation to any person or organisation that could be affected by it. The investigative body shall publish the final report, amended as appropriate.

7. Follow-up

The investigative bodies shall endeavour to ascertain details of action taken in response to safety recommendations.