

Accident Reporting and Investigation

Notice to all Owners, Masters, Skippers, Officers and Crews of Merchant Ships, Fishing Vessels and Pleasure Vessels

This Notice supersedes Notice No. MGN.115 (M+F)

GUIDANCE NOTE

Summary

This note is to inform all seafarers and vessel owners of the requirements of the new Merchant Shipping (Accident Reporting) (Bailiwick of Guernsey) Regulations 2009.

Key Points

- A definition of the people and organisations given a duty to report accidents and serious injuries.
- Inclusion of a definition of a 'preliminary examination'. The stages and process of an investigation are clearly outlined. The Chief Inspector now decides whether, following a preliminary examination, further investigation leading to a published report is appropriate.
- A regulation regarding the disclosure of records is included, and clarification of confidentiality requirements that the Chief Inspector has to keep.
- A regulation which specifies that reports are not to be used in judicial proceedings for purposes of litigation or blame, unless a Court orders otherwise.
- The powers of inspectors to exclude any person (except a professional legal adviser solely representing the interviewee) from an interview, if they have substantial reason to believe that the presence of that person would hamper the investigation, are outlined.
- A regulation enabling the inspector to ensure that a ship, crew and evidence involved in an accident remain accessible to inspectors until the process of collecting or preserving all evidence has been completed.
- A closed-loop recommendations system has been introduced. It requires those addressed in recommendations to respond to those recommendations. The Chief Inspector will publish the status of implementation of recommendations annually.

The relevant Bailiwick of Guernsey legislation closely mirrors the equivalent UK legislation and the content of this Guidance Note is broadly similar to the UK Marine Guidance Note MGN 289 (M+F).

Introduction

1. The Chief Inspector of Marine Accidents (CIMA) is responsible for the investigation of all types of marine accidents, both to vessels and to those on board. The CIMA is based within the Public Services Department. The CIMA reports directly to the Board of Public Services on accident investigation. He and his professional staff, who are drawn from the various related marine disciplines, are appointed by the Board under the provisions of the Merchant Shipping (Bailiwick of Guernsey) Law 2002.

2. The CIMA's sole objective in investigating an accident under the Regulations is the prevention of future accidents by establishing its causes and circumstances; it is not the purpose to apportion liability, nor, except so far as is necessary to achieve the objective, to apportion blame. **The CIMA is not an enforcement or prosecuting agency.**

3. Procedures are governed mainly by the Merchant Shipping (Bailiwick of Guernsey) Law 2002, and by The Merchant Shipping (Accident Reporting) (Bailiwick of Guernsey) Regulations 2009. They define the accidents to which they apply, set out the purpose of investigation, and make provisions for the ordering and conduct of investigations.

4. The Regulations apply generally to all ships, including fishing vessels and (except for reporting exemptions listed at Annex A) to pleasure vessels. These vessels are covered by the Regulations whether at sea or in a port. The Regulations also set out requirements for reporting accidents, major injuries, and serious injuries. They do not cover formal investigations or other public inquiries, the rules for which are set out elsewhere.

5. The Regulations also allow for the investigation of “hazardous incidents” – broadly any unspecified events which might have led to an accident – though they do not require such incidents to be reported.

6. Annex B, (2) and (3) reproduce the definitions of major and serious types of injury. Reports of minor incidents that posed no danger are not required. Nor are reports required of injuries to shore-based workers in a Bailiwick port or shipyard; such injuries should be reported by the employer to the Health and Safety Executive (HSE).

Reporting

7. Accidents (see definition at Annex B) must be reported by the quickest means available and should contain the information noted in Annex C section 3(1).

8. When an accident occurs, the Master or senior surviving officer must send a report to the Chief Inspector as soon as is practicable following the accident.

9. When an accident occurs, the owner must send a report to the Chief Inspector as soon as is practicable following the accident unless the owner has ascertained that the report has already been made by the Master or senior surviving officer.

10. Persons named in 8 and 9 above must, so far as is reasonably practicable, ensure that the circumstances of every accident are examined. A single report giving the findings of such an examination, stating any measures taken or proposed to prevent a recurrence, must be provided to the Chief Inspector as soon as is practicable, irrespective of any investigation that may be conducted by the CIMA.

11. Persons named in 8 and 9 above must also, so far as is reasonably practicable, ensure that the circumstances of every serious injury (see definition at Annex B) are examined. A single report giving the findings of such an examination, stating any measures taken or proposed to prevent a recurrence, must be provided to the Chief Inspector within 14 days of the injury occurring.

12. Reports should be sent by the quickest means available, including telephone, facsimile, telex or e-mail to the CIMA.

13. In addition, the Harbour Master (including Deputy Harbour Master, the Alderney Harbour Master, and Sark Harbour Master) must report any accident of which he is aware, to the Chief Inspector, by the quickest means available.

14. The reporting requirements apply to merchant ships, fishing vessels, and vessels in commercial use for sport or pleasure.

15. The reporting requirements also apply to hired recreational craft, together with boats in commercial use, where the accident involves explosion, fire, death, major injury, capsizing of a power-driven craft or boat, or pollution causing serious harm to the environment.

16. The CIMA Incident Report Form (IRF 1) can be used to provide an initial report of any accident; it can also be used for serious injuries. It can be found on the Guernsey Harbours website or obtained directly from the CIMA.

17. The CIMA welcomes the voluntary reporting of accidents to or on pleasure craft used only for recreation purposes and not for commercial gain, but there is no statutory requirement for this.

18. Accidents involving divers whilst diving are not covered by and are not reportable under these Regulations.

19. Accidents on board ships in ports, with the exception of those involving stevedores or shore-based workers, are covered by the Regulations and must be reported. Incidents involving shore-based workers should be reported to the Health and Safety Executive.

20. Although there is no requirement to report hazardous incidents, the CIMA strongly urges any person to do so voluntarily, since useful lessons can always be learned. Examples are “near misses”, including failure of procedures in shipboard operations, material defects, fatigue, and human failures. The critical question in deciding whether or not to report an incident is whether it had the potential to lead to an accident. These reports should also be sent using IRF 1, or if preferred, in narrative form.

Many incidents occur which do not cause injury or damage, but have the potential to be hazardous or to have serious consequences.

21. When making reports, whether on IRF 1 or in narrative, the content of the descriptive text is particularly important. Lessons can be learned from the positive as well as negative aspects. Details of actions taken to minimise the effects of the accident or, in the case of a hazardous incident, to prevent it developing into an accident, are particularly helpful. A description of actions taken or recommendations made to prevent a recurrence are also of value. Much is gained from the information provided by those most closely involved in the event at the time it occurred.

22. Annex C includes a summary of reporting procedures, and details of the CIMA's address and contact numbers.

Investigations

23. An accident or serious injury may be investigated by the CIMA if it involves a Guernsey ship anywhere in the world, or (with few exceptions), any other ship in Bailiwick waters, or if the CIMA agrees to a request to undertake an investigation on behalf of another flag state. Hazardous incidents may also be investigated.

24. In some cases, the vessel's own investigation will be sufficient, but the CIMA may seek further details if necessary.

25. Before deciding whether to carry out any form of investigation, the Chief Inspector may seek to obtain such information as he considers necessary concerning the accident, and any remedial action taken. Any person mentioned in 8 and 9 above, or any other person holding such information shall provide it to the Chief Inspector to the best of their ability and knowledge.

26. If the Chief Inspector decides that an investigation will be carried out, it will be undertaken by inspector(s) at a time and place, and in such a manner, as appears appropriate to achieve the sole objective of the CIMA.

27. Following a decision to investigate, the Chief Inspector will notify the master and / or owners within 28 days. Public notice that an investigation has started may be given in such manner as the Chief Inspector thinks fit.

28. The initial part of an investigation seeks to establish the causes and circumstances of an accident, with a view to deciding whether any further investigation is warranted, and is called a 'preliminary examination'. When a preliminary examination is complete, the Chief Inspector will decide whether it is appropriate to conduct further investigation leading to a published report.

29. Where an inspector is appointed to carry out an investigation, his powers are extensive, and are set out in detail in Sections 249 and 257 of the Merchant Shipping (Bailiwick of Guernsey) Law 2002. Subject to these powers, the Inspector has wide discretion as to how he carries out his investigation. If possible, much of it will take place on board the vessel involved. He may wish to visit the owners or ship managers. He may also prohibit, pending investigation, access to or interference with anything involved in an accident.

30. In particular, those persons mentioned in 8 and 9 above should ensure that all charts, log books, voyage data and other records, electronic and magnetic recording and video tapes and all documents which might reasonably be considered pertinent to a reportable accident are kept intact. No alterations should be made to recordings or entries, and any equipment associated or involved in an accident should remain undisturbed until:

- (a) notification is received from the Chief Inspector that no investigation is to take place or that the investigation has been completed; or
- (b) unless advised otherwise, 28 days after receipt by the Chief Inspector of a report referred to in (16) above; or
- (c) the Chief Inspector or an inspector carrying out the investigation indicates that they are no longer required.

31 Persons mentioned in 13 above are not specifically required to retain documents. The current safety provisions under ISPS are sufficient to cover any documents or evidence that these parties may hold.

32. The Chief Inspector may, if he considers it reasonably necessary for the collection or preservation of evidence, require that any persons mentioned in 8, 9 and 13 above, ensure that a ship is accessible within Bailiwick waters if there are serious grounds for concern that the ship, crew, or evidence will be inaccessible to CIMA should the vessel leave Bailiwick waters. The ship must remain accessible until the process of collecting or preserving evidence has been completed.

33. If this power were to be used, the CIMA would be likely to request written assurance that access to the ship, crew, and any evidence would be granted at the nearest port, and that the evidence would not be disturbed during the voyage. If this written assurance were not granted, then the Chief Inspector could use his discretion in applying the power described above. Should a ship be required to remain in a UK port, then the ship could be moved to a suitable anchorage to ensure that the availability of berths is not affected.

34. If this power were ever used, then the CIMA will not unreasonably require a ship to remain in Bailiwick waters any longer than is necessary. Evidence will be collected or preserved as quickly as possible and with the minimum amount of delay to the ship.

35. The Inspector can require any person who may be able to help the investigation to attend an interview, answer questions, and sign a declaration of the truth of their answers.

36. A solicitor or other professional legal adviser acting solely on behalf of the person being interviewed may not be excluded from an interview. Any other person allowed or nominated to be present at an interview by an interviewee, may be excluded from being present by the inspector. To use this power, both the inspector and the Chief Inspector must have substantial reason to believe that the presence of the nominee would hamper the investigation.

37. If this power was used, the interviewee can then nominate another person to be present. At the request of the person being interviewed, the interview would be suspended until the second nominee was present.

38. The Board of the Public Services Department may also require the Chief Inspector to expand the scope of an investigation into the further consequences of an accident, including salvage and pollution aspects; or the conduct of search and rescue operations. The investigation into the further consequences could be completely separate and distinct from the investigation into the initial accident.

Disclosure of Records

39. **Unless a Court determines otherwise**, the names, addresses and any other details of anyone who has given evidence to an inspector shall not be disclosed.

40. Some documents or records shall not be made available for purposes other than the investigation unless a Court determines otherwise. These include any declarations taken by an inspector or supplied to him during the course of his investigation; any notes or voice recordings of any interviews; medical or confidential information regarding persons involved in an accident or hazardous incident; and any report made under (16), copies of a draft report, or a report which is not the final report of the investigation. But a person who has given evidence to the CIMA may disclose his own declaration, if he so wishes.

41. If any part of a report is based on information obtained pursuant to an inspector's powers under sections 249 and 257(8) of the Act, the report shall be inadmissible in any judicial proceedings, with the exception of an inquest or Fatal Accident Inquiry, unless a Court determines otherwise.

42. Independent technical analysis commissioned by the Chief Inspector, and opinions expressed in that analysis of information, may be made available if the Chief Inspector considers it appropriate to do so. Copies of information ("raw data") obtained from voyage data recorders or from other recording systems, including voice recordings, 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 Chief Inspector to the police or other official authorities. This does not include recordings of interviews.

CIMA Reports of Investigations

43. The Chief Inspector may, at his discretion and to promulgate any lessons learned, publish collective short reports of accidents that have not been the subject of a full investigation and published report.

44. Reports of full investigations will be made publicly available in the shortest time possible, and in such a manner as the Chief Inspector sees fit. The report shall set out conclusions relating to the facts of the accident, or where the facts cannot be clearly established, analysis and professional judgement to determine the probable facts; and recommendations for future safety.

45. All reports of full investigations are published on the Guernsey Harbours website, [www.guernseyharbours.gov.gg].

46. Provision is made for any person likely to be affected by a report to see the draft and to comment on the facts and analysis therein, before it is finalised and made publicly available. The Chief Inspector will consider representations relating to the facts and analysis contained in the report that may be made to him by or on behalf of the persons served with such notice.

Recommendations

47. Recommendations can be made as a result of one or more investigations, whether completed or not, by the Chief Inspector. If a preliminary examination has been conducted they will be in the form of a letter from the Chief Inspector. If an investigation has been conducted, the recommendation(s) would be included in the final report. Recommendations are addressed to those considered best fitted to implement them.

48. Any person to whom a recommendation is addressed, should take the recommendation into consideration. They should also send full details of any measures that are being or will be taken to implement the recommendation and, if appropriate, the timetable for securing implementation. Notice should be given to the Chief Inspector if at any time this information is rendered inaccurate by a change of circumstances.

49. Any person to whom a recommendation is addressed should, after taking the recommendation into consideration, provide a full explanation to the Chief Inspector as to why the recommendation is not going to be implemented, if that is the case.

50. The Chief Inspector shall, annually or at such intervals as he sees fit, make information received in response to recommendations publicly available and shall inform the Board of Public Services. If a person has failed to comply with a recommendation addressed to him, he will be allowed a further opportunity to make representations before the information is published.

Penalties

51. The Regulations lay down penalties for breaches of the requirements. These offences include a failure to report an accident or serious injury; not providing information as required; falsely claiming to have additional information or new evidence, and a failure to preserve evidence. In addition, penalties for obstructing an Inspector or otherwise impeding his investigation are laid down in Section 250 of the Merchant Shipping (Bailiwick of Guernsey) Law 2002.

Further Information:

Chief Inspector of Marine Accidents
C/O Guernsey Harbours
PO Box 631
St Julian's Emplacement
St Peter Port
Guernsey, Channel Islands
GY1 3DL

Tel: 01481 720229
Fax: 01481 714177
24 Hour Reporting Line: 01481 720672
E-Mail: CIMA@gov.gg
Website: www.guernseyharbours.gov.gg

REPORTING REQUIREMENTS

1. Accidents involving or occurring on board –

(a) any Guernsey ship

must be reported to the CIMA under the Regulations.

2. Accidents involving or occurring on board –

(a) a pleasure vessel

(b) a recreational craft hired on a bareboat basis

(c) any other craft or boat, other than one carrying passengers, which is in commercial use in a harbour and is less than 8m in length

do not need to be reported to the CIMA, unless the accident involves

- (i) explosion;
- (ii) fire;
- (iii) death;
- (iv) major injury;
- (v) capsize of a power-driven craft or boat, or
- (vi) pollution causing significant harm to the environment.

3. Accidents involving or occurring on board –

(a) any ship within the jurisdiction of a harbour master

(b) any ship carrying passengers to or from a port in the Bailiwick

must be reported to the CIMA under the Regulations.

4. Accidents involving shore-based workers while a ship is in port or in a shipyard within the Bailiwick should be reported by the person's employer to the Health and Safety Executive. No report to the CIMA is required.

5. Accidents involving divers whilst diving are not covered by the Regulations. No report to the CIMA is required.

ACCIDENTS AND MAJOR & SERIOUS INJURIES

1. Accident means any occurrence on board a ship or involving a ship whereby –

(a) there is loss of life or major injury to any person on board, or any person is lost or falls overboard from, the ship or one of its ship's boats;

(b) a ship –

- (i) causes any loss of life, major injury or material damage;
- (ii) is lost or presumed to be lost;
- (iii) is abandoned;
- (iv) is materially damaged by fire, explosion, weather or other cause;
- (v) grounds;
- (vi) is in collision;
- (vii) is disabled; or
- (viii) causes significant harm to the environment.

(c) any of the following occur –

- (i) a collapse or bursting of any pressure vessel, pipeline or valve;
- (ii) a collapse or failure of any lifting equipment, access equipment, hatch-cover, staging or boatswain's chair or any associated load-bearing parts;
- (iii) a collapse of cargo, unintended movement of cargo or ballast sufficient to cause a list, or loss of cargo overboard;
- (iv) a snagging of fishing gear which results in the vessel heeling to a dangerous angle;
- (v) a contact by a person with loose asbestos fibre except when full protective clothing is worn; or
- (vi) an escape of any harmful substance or agent,

if the occurrence, taking into account its circumstances, might have been liable to cause serious injury or to cause damage to the health of any person.

The terms "disabled" and "grounds" are separately defined.

2. Major injury means –

- (a) any fracture, other than to a finger, thumb or toe;
- (b) any loss of a limb or part of a limb;
- (c) dislocation of the shoulder, hip, knee or spine;
- (d) loss of sight, whether temporary or permanent;
- (e) penetrating injury to the eye; or
- (f) any other injury –

- (i) leading to hypothermia or to unconsciousness, or
- (ii) requiring resuscitation, or
- (iii) requiring admittance to a hospital or other medical facility as an inpatient for more than 24 hours.

3. Serious injury means any injury, other than a major injury, to a person employed or carried in a ship which occurs on board or during access which results in incapacity for more than three consecutive days excluding the day of the accident or as a result of which the person concerned is put ashore and the ship sails without that person, unless the incapacity is known or advised to be of three consecutive days or less, excluding the day of the accident.

REPORTING PROCEDURES

1. Summary (Regulation 5)

Incident - Accident (includes Major Injury)

- Initial requirement. The master or senior surviving officer (being either the senior surviving officer in the deck department or if there is no senior surviving officer in the deck department, the senior surviving engineer officer), and the ship's owner are responsible for sending a report to the Chief Inspector by the quickest means available. On board examination by ship's safety officer, if carried.
- Follow-up. An additional report must be sent to the CIMA using the quickest means available.

Incident - Serious Injury

- Initial requirement. No requirement - on board examination of the serious injury.
- Follow-up. A report outlining the circumstances of the serious injury to be sent to the Chief Inspector within 14 days of the incident.

Incident - Hazardous Incident (non-specified)

- Initial requirement. No requirement.
- Follow-up. It is strongly recommended that a report (IRF 1 or narrative) is sent to the CIMA.

2. The CIMA's address is:

Chief Inspector of Marine Accidents
 C/O Guernsey Harbours
 PO Box 631
 St Julian's Emplacement
 St Peter Port
 Guernsey, Channel Islands
 GY1 3DL

Telephone: (Office hours) 01481 720229 (UK) / + 44 1481 720229 (Outside UK)
 Fax: 01481 714177 (UK) / + 44 1481 714177 (Outside UK)
 E-mail: CIMA@gov.gg
 Internet: <http://www.guernseyharbours.gov.gg>

3. Information needed in Reports:

(1) **Initial reports of accidents** should include as much of the following as possible:

- (a) name of vessel and IMO, official or fishing vessel number;
- (b) name and address of owners;
- (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 sequence of events leading to the accident, extent of damage and whether accident caused pollution or hazard to navigation;
- (l) if the vessel is fitted with a voyage data recorder, the make and model of the recorder.

(2) **Follow-up accident reports and initial reports of serious injuries** should include the above information as well as the conclusions of any on-board examination covering the cause, how a future similar incident might be avoided, and what action has been taken or recommended. The CIMA's Incident Reporting Form (IRF 1) provides a convenient format for reports but plain narrative giving the above information may be used if the form is not available. As full an account as possible should be given whether or not the form is used; the list of items above is not intended to be limiting and any matter should be included which will help to make the circumstances clear or to show how similar incidents may be prevented. Sketches, plans and photographs of the damaged areas, taken both before and after the event, are often helpful and may be attached to the report.

(3) **The reports in (2) above** should be signed by the master, skipper or the owner's representative, and by the ship's safety officer if one is carried.

4. IRF's are available on the Guernsey Harbours website - www.guernseyharbours.gov.gg