



Number 8 of 2022

Merchant Shipping (Investigation of Marine Casualties) (Amendment) Act 2022



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**MERCHANT SHIPPING (INVESTIGATION OF MARINE CASUALTIES)
(AMENDMENT) ACT 2022**

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ACTS REFERRED TO

Civil Service Regulation Act 1956 (No. 46)

Data Protection Acts 1988 to 2018

Defence Act 1954 (No. 18)

Freedom of Information Act 2014 (No. 30)

Merchant Shipping (Investigation of Marine Casualties) Act 2000 (No. 14)

Merchant Shipping (Registration of Ships) Act 2014 (No. 43)

Merchant Shipping (Safety Convention) Act 1952 (No. 29)

Merchant Shipping Acts 1894 to 2015

Ministers and Secretaries (Amendment) (No. 2) Act 1977 (No. 28)

Public Service Management (Recruitment and Appointments) Act 2004 (No. 33)

Public Service Management Act 1997 (No. 27)



Number 8 of 2022

**MERCHANT SHIPPING (INVESTIGATION OF MARINE CASUALTIES)
(AMENDMENT) ACT 2022**

An Act to amend the Merchant Shipping (Investigation of Marine Casualties) Act 2000 to provide for an amendment to the composition of the Marine Casualty Investigation Board; to provide for notification of marine casualties to the Board; to provide for notification of marine casualties to the Marine Survey Office; to amend the definition of “Safety Convention” in the Merchant Shipping (Safety Convention) Act 1952; and to provide for related matters. [16th May, 2022]

Be it enacted by the Oireachtas as follows:

Interpretation

1. In this Act, “Act of 2000” means the Merchant Shipping (Investigation of Marine Casualties) Act 2000.

Amendment of section 2 of Act of 2000

2. Section 2 of the Act of 2000 is amended by the deletion of the definition of “Chief Surveyor”.

Amendment of section 9 of Act of 2000

3. The Act of 2000 is amended by the substitution of the following section for section 9:
 - “9. (1) The Board shall consist of not fewer than 5 members and not more than 7 members who shall be appointed by the Minister.
 - (2) The members of the Board appointed under subsection (1) shall be persons who, in the opinion of the Minister, have particular knowledge of, and experience and expertise in, (but not limited to) one or more of the following matters:
 - (a) corporate governance and management;
 - (b) accident investigation;
 - (c) marine engineering, nautical science or navigation, or naval architecture;
 - (d) health and safety management;

- (e) maritime law and regulation;
 - (f) legal and legislative matters;
 - (g) risk management, finance, business or administration;
 - (h) other matters relevant to the functions of the Board.
- (3) The following persons shall not be eligible for appointment as a member of the Board under subsection (1):
- (a) a person who holds, or held at any time during the 5 year period immediately before the relevant date—
 - (i) an established position as a civil servant as an officer of the Minister, or
 - (ii) an unestablished position as a civil servant as an officer of the Minister;
 - (b) a person who is, or was at any time during the 5 year period immediately before the relevant date, a special adviser to the Minister or to a Minister of State appointed under section 1 of the Ministers and Secretaries (Amendment) (No. 2) Act 1977 and assigned to act as Minister of State at the Department of Transport.
- (4) Of the members of the Board appointed under subsection (1), the Minister shall appoint one member to be the Chairperson of the Board and another member to be the Deputy Chairperson of the Board to perform the functions of the Chairperson during any vacancy in the office of the Chairperson or where the Chairperson is absent from, or for any reason is unable to perform the functions of, his or her office.
- (5) When appointing the members of the Board under subsection (1), the Minister shall have regard to the objective that at least 40 per cent of the members of the Board shall be women and at least 40 per cent shall be men.
- (6) In this section—
- ‘Act of 2004’ means the Public Service Management (Recruitment and Appointments) Act 2004;
 - ‘civil servant’ has the meaning assigned to it by the Civil Service Regulation Act 1956;
 - ‘established position’ has the meaning assigned to it by the Act of 2004;
 - ‘relevant date’ means the date on which the vacancy in the membership of the Board occurs or, if there is more than one vacancy to be filled, the date of the vacancy which first occurred;

‘special adviser’ means a person appointed as a special adviser under section 11 of the Public Service Management Act 1997;

‘unestablished position’ has the meaning assigned to it by the Act of 2004.”.

Amendment of section 10 of Act of 2000

4. Section 10 of the Act of 2000 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) Subject to this section, the Chairperson and other members of the Board appointed under section 9 shall hold office for a period, not exceeding 5 years from the date of the appointment, as shall be determined by the Minister and, where the term of office of a member expires by the effluxion of time, he or she may, subject to subsection (1A), be reappointed to the Board.”,

(b) by the insertion of the following subsection after subsection (1):

“(1A) A member of the Board who has served 2 terms of office shall not be eligible for reappointment to the Board.”,

(c) in subsection (2), by the substitution of “section 9” for “section 9(1)(a)”, and

(d) by the deletion of subsection (3).

Amendment of section 11 of Act of 2000

5. Section 11 of the Act of 2000 is amended by the substitution of “section 9” for “section 9(1)(a)”.

Amendment of section 14 of Act of 2000

6. Section 14 of the Act of 2000 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) (a) Subject to paragraph (b), the quorum for a meeting of the Board shall be 3 members of the Board.

(b) For the purposes of paragraph (a), the quorum of 3 members may consist of—

(i) the Chairperson and 2 other members,

(ii) the Chairperson, the Deputy Chairperson and one other member,

(iii) the Deputy Chairperson and 2 other members, or

(iv) 3 members of the Board, other than the Chairperson or Deputy Chairperson, who are present at the meeting, in circumstances where—

- (I) the Chairperson is not present at the meeting or that office is vacant,
 - (II) the Deputy Chairperson is not present at the meeting or that office is vacant, or
 - (III) both the Chairperson and Deputy Chairperson are present at the meeting and are required to withdraw at the same time under section 17(1)(c),
- and those members who are present shall choose one of their number to be chairperson of the meeting.”,
- (b) in subsection (3), by the substitution of “section 9” for “section 9(1)(a)”, and
 - (c) by the deletion of subsection (4).

Amendment of section 16 of Act of 2000

7. Section 16 of the Act of 2000 is amended—

- (a) by the substitution of the following subsection for subsection (1):
 - “(1) The Board may, from time to time, engage such consultants, advisers, investigators and providers of other skills or expertise as it considers necessary for the performance of its functions and any fees due to a consultant, adviser, investigator or other person so engaged shall be paid by the Board out of moneys made available by the Oireachtas.”,
- (b) in subsection (2), by the substitution of “consultant, adviser, investigator or a provider of other skills or expertise” for “consultant, adviser or investigator”, and
- (c) in subsection (3), by the insertion of “consultant, adviser, investigator or a provider of other skills or expertise” for “consultant, adviser or investigator” in each place where it occurs.

Amendment of section 17 of Act of 2000

8. Section 17 of the Act of 2000 is amended, in subsection (1), by the substitution of “a consultant, adviser, investigator or provider of other skills or expertise engaged by the Board under section 16” for “a consultant, adviser or investigator engaged by the Board”.

Amendment of section 18 of Act of 2000

9. The Act of 2000 is amended by the substitution of the following section for section 18:

- “18. (1) Subject to this section, a person shall not, unless authorised by the Board or required or permitted by law to do so, disclose confidential information obtained by the person in his or her capacity, or while performing functions, as any of the following:
- (a) Chairperson or other member of the Board;

- (b) secretary of the Board;
 - (c) a consultant, adviser, investigator or provider of other skills or expertise engaged by the Board under section 16, or an employee of such a consultant, adviser, investigator or provider;
 - (d) a person engaged by the Board in any other capacity.
- (2) Nothing in this section shall operate to prevent the disclosure of information to the Board.
- (3) The High Court, on application to it under this section by a person whom the Court is satisfied has a sufficient interest in the disclosure of the information the subject of the application, may disclose, or authorise the disclosure of, any information that is confidential information where, in the view of the Court, there is an overriding public interest in the disclosure of the particular information concerned.
- (4) Where, under this section, the Court orders the disclosure of information that is confidential information, it shall determine the terms and extent of such disclosure as it considers appropriate.
- (5) A person who contravenes subsection (1) shall be guilty of an offence.
- (6) In this section, and without prejudice to the Data Protection Acts 1988 to 2018, ‘confidential information’ includes the following:
- (a) all witness evidence and other statements, accounts and notes taken or received by the Board in the course of an investigation;
 - (b) records revealing the identity of persons who have given evidence in the context of an investigation;
 - (c) information relating to persons involved in a marine casualty that is of a particularly sensitive and private nature, including information concerning the health of such persons;
 - (d) subject to the Freedom of Information Act 2014, information that is expressed by the Board to be confidential either as regards particular information or as regards information of a particular class or description.”.

Amendment of section 23 of Act of 2000

10. Section 23 of the Act of 2000 is amended, in subsection (1), by the substitution of “the Board” for “the Chief Surveyor or any other marine surveyor in the Marine Survey Office of the Department of the Marine and Natural Resources”.

Amendment of section 26 of Act of 2000

11. Section 26 of the Act of 2000 is amended, in subsection (1)(b), by the deletion of “after

consultation with the Minister.”.

Amendment of section 34 of Act of 2000

12. Section 34 of the Act of 2000 is amended—

(a) by the substitution of the following subsection for subsection (2):

“(2) The Board shall endeavour to publish the report not later than 12 months from the date on which the marine casualty, notified to it under section 23, occurred.”,

(b) in subsection (3), by the substitution of “during the period of 12 months referred to in subsection (2)” for “within the 9 month period”, and

(c) by the substitution of the following subsection for subsection (4):

“(4) (a) Subject to paragraph (b), the Board may, at any time during an estimated period indicated by it under subsection (3), publish one or more interim report or reports of the investigation.

(b) Where the Board is unable to publish the report of an investigation of a marine casualty, notified to it under section 23, during the period of 12 months referred to in subsection (2), it shall publish at least one interim report of the investigation during that period.”.

Notification of marine casualties to Marine Survey Office

13. (1) An owner, charterer, master, skipper, person in charge, ship’s agent, ship’s manager or ship’s husband of a vessel involved in a marine casualty shall, by using the quickest feasible means, notify the Chief Surveyor or any other marine surveyor in the Marine Survey Office of the Department of Transport of the casualty immediately he or she is aware that the marine casualty has occurred or commenced, or as soon as practicable thereafter.

(2) There shall be included in the notification such relevant information as is known to the person notifying the marine casualty, including the name and description of the vessel, its position, the number of persons on board and as accurate a summary as possible of the marine casualty.

(3) A person required by *subsection (1)* to notify a marine casualty who, without reasonable excuse, fails to do so shall be guilty of an offence and shall be liable—

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

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

(4) A summary offence under this section may be prosecuted by the Minister for Transport.

(5) This section shall not apply to vessels of the Naval Service of the Defence Forces or to warships of another state.

(6) In this section—

“Chief Surveyor” means the person from time to time holding (including temporarily), or performing the functions of, the position with the designation Chief Surveyor in the Marine Survey Office of the Department of Transport;

“Defence Forces” means the defence forces raised and maintained under the Defence Act 1954;

“marine casualty”, “owner” and “vessel” shall have the meanings assigned to them by section 2(1) of the Act of 2000;

“warship” has the meaning assigned to it in Article 29 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and means a ship belonging to the armed forces of a state bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the state and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

Transitional provision - continuation of ongoing investigations etc.

14. (1) Where, immediately prior to the enactment of this Act, an investigation of a marine casualty in accordance with Part 3 of the Act of 2000 had commenced but had not been completed, the investigation shall be continued and completed under and in accordance with the Act of 2000, as amended by this Act.
- (2) Where, immediately prior to the enactment of this Act, the preparation of a report of an investigation into a marine casualty had commenced but had not been completed, the preparation of the report shall be continued, and the report shall be completed and published, under and in accordance with the Act of 2000, as amended by this Act.
- (3) A person holding office as a member of the Board under section 9(1)(a), and the Chairperson and the Deputy Chairperson holding office following appointment as such Chairperson or Deputy Chairperson under section 9(2), of the Act of 2000, immediately prior to the enactment of this Act, shall continue as such member, Chairperson and Deputy Chairperson for the unexpired term of his or her appointment under and in accordance with the Act of 2000, as amended by this Act.
- (4) In this section, “Chairperson”, “investigation”, “marine casualty” and “report” shall have the meanings assigned to them by section 2(1) of the Act of 2000.

Amendment of Merchant Shipping (Safety Convention) Act 1952

15. Section 3(1) of the Merchant Shipping (Safety Convention) Act 1952 is amended by the substitution of the following definition for the definition of “Safety Convention” (inserted by section 69 of the Merchant Shipping (Registration of Ships) Act 2014):

“ ‘Safety Convention’ means the International Convention for the Safety of Life at Sea signed in London on behalf of the Government on 1 November 1974 together with the Protocol to the International Convention for the Safety of Life at Sea signed in London on behalf of the Government on 17 February 1978 and the Protocol to the International Convention for the Safety of Life at Sea signed in London on behalf of the Government on 11 November 1988 and any amendments made to it up to and including those adopted by the 99th session of the Maritime Safety Committee of the International Maritime Organisation held between 16 and 25 May 2018 and which have entered into force in respect of the State pursuant to Article VIII prior to the passing of the *Merchant Shipping (Investigation of Marine Casualties) (Amendment) Act 2022*;”.

Short title, collective citation and construction

16. (1) This Act may be cited as the Merchant Shipping (Investigation of Marine Casualties) (Amendment) Act 2022.
- (2) The Merchant Shipping Acts 1894 to 2015 and this Act may be cited together as the Merchant Shipping Acts 1894 to 2022 and shall be construed together as one.