

SUBSIDIARY LEGISLATION 234.10**COURT OF SURVEY RULES**

13th August, 1974

LEGAL NOTICE 93 of 1974, as amended by Legal Notice 411 of 2007.

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| <p>1. The title of these rules is Court of Survey Rules.</p> | Title. |
| <p>2. In these rules -</p> <p>"the Act" means the Merchant Shipping Act;</p> <p>"Chairman" means the person appointed by the Minister to be Chairman of the Court under article 326(2) of the Act;</p> <p>"Court" means the Court of Survey constituted under article 326 of the Act;</p> <p>"Minister" has the same meaning as is assigned to it in the Act;</p> <p>"registrar" means the person appointed from time to time by the Minister to be the registrar of the court under article 326(4) of the Act.</p> | <p>Interpretation.</p> <p>Cap. 234.</p> |
| <p>3. Where the owner or master of a ship (hereinafter referred to as "the appellant") desires to appeal to the court, he shall file at the office of the registrar a notice of appeal in the form appearing as Form No. 1 in the First Schedule.</p> | Notice of appeal. |
| <p>4. (1) Immediately upon the filing of a notice of appeal, the registrar shall communicate the fact to the Minister and to the Chairman.</p> <p>(2) The registrar shall select a person to act as assessor on the appeal out of the list of assessors approved for the time being by the Minister under article 315 of the Act.</p> <p>(3) The Minister, on receiving notice of the appeal, shall appoint the other assessor, and shall forthwith send the name and address of such assessor to the registrar.</p> <p>(4) If the ship to which the appeal refers is a foreign ship, the registrar shall give notice to the consular officer of the country to which the ship belongs, if that country has a consular officer in Malta, that, at the request of the appellant, some competent person be selected by the consular officer to act as assessor in lieu of the assessor selected by the registrar under sub-rule (2).</p> <p>(5) As soon as the registrar has ascertained by whom the appeal will be heard, he shall summon the court in the form appearing as Form No. 2 in the First Schedule, and he shall, at the same time, send notice thereof to the Minister and to the appellant in the form appearing as Form No. 3 in the said Schedule.</p> <p>(6) If the survey to which the appeal refers has been made on the complaint of any person, hereinafter called the complainant, the Minister shall send to him notice of the time and place appointed for the hearing.</p> | <p>Summoning of court.</p> |

- (7) Previous to the hearing, the Minister shall forward to the registrar, to be produced as evidence at the hearing, an official copy of the report of the surveyor.
- (8) The court shall, if practicable, be summoned to hear the appeal on a day not later than fourteen days from the filing of the notice of appeal.
- 5.** The Minister and the appellant shall be parties to the proceedings, and any other person, on entering an appearance, may by leave of the court be made a party to the proceedings.
- 6.** A party may give to any other party notice in writing to produce any documents (saving all just exceptions) relating to the matter in question, and which are in the possession or under the control of such other party, and, if such notice be not complied with, secondary evidence of the contents of the said documents may be given by or on behalf of the party who gave such notice.
- 7.** Subpoenas to witnesses shall be issued to witnesses by the court, and such subpoenas shall, as far as practicable, be in the form used for summoning witnesses before the Court of Appeal for the hearing of appeals from the Court of Magistrates, Civil Jurisdiction, and shall be subject to the same rules.
- 8.** Affidavits and solemn declarations may, by leave of the court, be used as evidence at the hearing.
- 9.** (1) At the hearing, the Minister shall first call his witnesses, the complainant (if he has appeared) shall then call his witnesses, and, finally, the appellant shall then call his witnesses.
- (2) After the appellant has examined all his witnesses, the Minister and the complainant may, on cause shown to the satisfaction of the court, call further witnesses in reply.
- (3) After all the witnesses have been examined, the court shall first hear the appellant, then the complainant (if any), and afterwards the Minister.
- (4) The court may adjourn the hearing from time to time and from place to place.
- (5) The decision of the court may be delivered either *viva voce* or in writing, and it shall not be necessary to hold a sitting merely for the purpose of giving a decision.
- (6) As soon as possible after it has come to its decision, the court shall issue an order for the release or for the detention (either absolutely or on condition) of the ship in the form appearing as Form No. 4 in the First Schedule, and a copy thereof shall be sent or delivered to the respective parties.
- (7) The court shall report to the Minister in the form appearing as Form No. 5 in the First Schedule.
- 10.** The court may, if the parties consent thereto in writing, decide whether damages are due, and to and from whom, and may assess the amount thereof.
- 11.** Any notice, summons or other document issued under these rules may be served either personally or by sending the same by

Parties to proceedings.

Notice to produce documents.

Witnesses.

Affidavits, etc.

Proceedings in court.

Damages.

Service of notice.

registered letter to the address of the person to be served, and the service of any notice, summons or other document may be proved by the oath or affidavit of the person by whom it was served.

12. The court may, before the appeal is heard, require the appellant to give security to the satisfaction of the court for costs which he may become liable to pay. Security for costs.

13. (1) The fees payable to the assessors appointed under rule 4 shall be fixed by the court and collected on their behalf by the registrar. Fees.

(2) The registrar shall also levy and collect, in the name and on behalf of the Government, the fees set out in the Second Schedule.

FIRST SCHEDULE

(Rule 3)

FORM No. 1

Notice of appeal

To the Registrar of the Court of Survey.

I hereby give notice that I (name and address), the master (or owner of shares) of the ship of the port of do appeal -

- (1) from the report of, the surveyor appointed by the Minister to survey the said ship.
- or (2) from the declaration given by, ship surveyor OR engineer surveyor OR radio surveyor (OR from the refusal of, ship surveyor OR engineer surveyor OR radio surveyor to give a declaration) under the provisions of article 214 of the Merchant Shipping Act.
- or (3) from the refusal of, surveyor of ships to give a certificate of clearance, under article 294 of the Merchant Shipping Act, that the said ship is properly provided with lights and with the means of making fog signals.

The address at which all notices and documents may be served by post or otherwise on me is

Dated this day of,

.....
(Signature of appellant)

FORM No. 2

Rule 4(5)

Summons to Court

Court of Survey

In the matter of an appeal by from the report of , the surveyor appointed by the Minister to survey the (name of ship) (or as the case maybe).

In pursuance of the Merchant Shipping Act, I hereby summon you to attend as Chairman (or assessor) on this appeal, at on the day of at the hour of

Dated this day of,

Registrar

I will attend as summoned

.....
(Signature of person summoned)

FORM No. 3

Rule 4(5)

Notice of Sitting of Court of Survey

The Court of Survey

In the matter of an appeal by from the report of
....., the surveyor appointed by the Minister to
survey the (name of ship) (or as the case may
be).

To, the master (OR owner of shares)
of the ship (name of ship) the appellant (OR the
Minister).

I hereby give you notice that the Court of Survey will meet at
..... on day of, at the hour
of to hear the appeal in the above matter.

Dated this day of,

Registrar.

FORM No. 4

Rule 9(6)

Order of Court for Release or Detention of Ship

The Court of Survey

In the matter of an appeal by from the report of, the surveyor appointed by the Minister to survey the (name of ship) (or as the case may be).

I do, with the concurrence of, order the said ship to be released (OR detained) (absolutely or conditionally upon).

Given under my hand this day of,

Chairman.

We (OR I) concur in the above report.

Assesor.

Assesor.

FORM No. 5

Rule 9(7)

Report of Court of Survey

The Court of Survey

In the matter of an appeal by from the report of the surveyor appointed by the Minister to survey the (name of ship (or as the case may be)).

I do report that, having heard this appeal, I did with the concurrence of order the said ship to be released (OR detained) (absolutely or conditionally upon) for the reasons set forth in the annexed statement.

I am also of opinion that the cost of this appeal should be paid by (OR that all parties shall pay their own costs).

Dated this day of,

Chairman.

We (OR I) concur in the above report.

Assessor.

Assessor.

*Substituted by:
L.N. 411 of 2007.*

SECOND SCHEDULE

(Rule 13)

Fees of the Court of Survey

On filing of notice of appeal	€34.94
On entering an appearance	€1.65
On every copy of the Court's report, or of any of the proceedings in the appeal, per 100 words	70c subject to a minimum of €4.66.