

MARINE TRAFFIC ACT 1981

(Act 2/1981)

To regulate marine traffic in the Republic of South Africa; and to provide for matters connected therewith.

Gazetted: GN282/7408/13Feb1981
Commencement: 28 December 1984 (Proc211/9538/28Dec1984)

as amended by

Marine Traffic Amendment Act 1983 (Act 5/1983)

Gazetted: GN440/8571/2Mar1983
Commencement: 28 December 1984 (Proc211/9538/28Dec1984)

Marine Traffic Amendment Act 1993 (Act 38/1993)

Gazetted: GN561/14701/2Apr1993
Commencement: 2 April 1993 (on publication)

Maritime Zones Act 1994 (Act 15/1994)

Gazetted: GN1952/16083/11Nov1994
Commencement: 11 November 1994 (on publication)

Shipping General Amendment Act 1997 (Act 23/1997)

Gazetted: GN942/18130/18Jul1997
Commencement: inter alia ss 19 to 26, 1 September 1997 (ProcR50/18246/29Aug1997)

South African Maritime Safety Authority Act 1998 (Act 5/1998)

Gazetted: GN468/18796/31Mar1998
Commencement: 1 April 1998 (ProcR35/18806/31Mar1998)

Ship Registration Act 1998 (Act 58/1998)

Gazetted: GN1211/19288/28Sep1998
Commencement: 25 April 2003 (ProcR39/24788/25Apr2003)

Note: "Authority" substituted for "Minister", except in definitions of **Minister** and **safety zone** in section 1, and in sections 7, 8C, 11(3), 12, 14, 15 and 16, by Act 5/1998 s 2 (Sch item 54).

Definitions

1. In this Act, unless the context otherwise indicates—

Authority means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act 1998 (Act 5/1998);

Definition of **Authority** inserted by Act 5/1998 s 2 (Sch item 49(a))

authorized person means—

- (a) any officer as defined in section 1(1) of the Public Service Act 1994 (Proclamation 103/1994), designated by the Minister;
- (b) any officer of the South African Navy;
- (c) any member of the South African Police Service above the rank of sergeant;
- (d) any officer of the Authority;
- (e) any member of the South African National Defence Force above the rank of sergeant employed on police duties in terms of section 3(2)(b) of the Defence Act 1957 (Act 44/1957);
- (f) any person accompanying any person referred to in paragraph (a), (b), (c), (d) or (e) and acting under his instructions;

Definition of **authorized person** substituted by Act 5/1983 s 1(a), Act 23/1997 s 19(a) and Act 5/1998 s 2 (Sch item 49(b))

Director-General means the Director-General: Transport or any officer of the Department of Transport acting on his authority;

Definition of **Director-General** inserted by Act 5/1983 s 1(b) and substituted by Act 23/1997 s 19(b)

exclusive economic zone means the exclusive economic zone referred to in section 7 of the Maritime Zones Act 1994 (Act 15/1994);

Definition of **exclusive economic zone** inserted by Act 23/1997 s 19(c)

fishing harbour means a fishing harbour as defined in section 1 of the Sea Fishery Act 1988 (Act 12/1988);

Definition of **fishing harbour** inserted by Act 5/1983 s 1(b) and substituted by Act 23/1997 s 19(d)

foreign, in relation to any ship, submarine or other underwater vehicle, means a ship, submarine or other underwater vehicle not having South Africa nationality by virtue of section 3 of the Ship Registration Act 1998 (Act 58/1998);

Definition of **foreign** substituted by Act 5/1983 s 1(c), Act 23/1997 s 19(e) and Act 58/1998 s 60(b) (Sch 2 item 25)

harbour means a harbour of which Transnet Limited has become the owner in terms of section 3 of the Legal Succession to the South African Transport Services Act 1989 (Act 9/1989);

Definition of **harbour** inserted by Act 5/1983 s 1(d) and substituted by Act 23/1997 s 19(f)

immobilize means to render a ship temporarily incapable of sailing or manoeuvring under its own power;

Definition of **immobilize** inserted by Act 5/1983 s 1(d)

innocent passage means passage which is not prejudicial to the peace, good order or security of the Republic;

internal waters excludes those waters in respect of which the right of innocent passage exists by virtue of section 3(3) of the Maritime Zones Act 1994;

Definition of **internal waters** amended by Act 5/1983 s 1(e) and substituted by Act 15/1994 s 15(1) and Act 23/1997 s 19(g)

lay-up means to anchor or moor a ship which is temporarily withdrawn from service;

Definition of **lay-up** inserted by Act 5/1983 s 1(f)

master, in relation to any ship, means any person (other than a pilot) having charge or command of such ship;

Definition of **master** substituted by Act 4/1983 s 1(g)

Minister means the Minister of Transport;

Definition of **Minister** substituted by Act 23/1997 s 19(h)

offshore installation means any of the following situated within the internal waters, territorial waters or the exclusive economic zone or on or above the continental shelf:

- (a) Any installation, including a pipeline, which is used for the transfer of any substance to or from—
 - (i) a ship;
 - (ii) a research, exploration or production platform; or
 - (iii) the coast of the Republic;
- (b) any exploration or production platform used in prospecting for or the mining of any substance;
- (c) any exploration or production vessel used in prospecting for or the mining of any substance;
- (d) a telecommunications line as defined in section 1 of the Post Office Act 1958 (Act 44/1958);
- (e) any vessel or appliance used for the exploration or exploitation of the seabed;

Definition of **offshore installation** amended by Act 5/1983 s 1(h) and substituted by Act 38/1993 s 1 and Act 23/1997 s 19(i)

passage means navigation through the territorial waters in a continuous and expeditious manner for the purpose of—

- (a) traversing those waters without entering internal waters or calling at a roadstead or offshore installation outside internal waters; or
- (b) proceeding to or from internal waters or a call at any such roadstead or offshore installation,

Para (b) substituted by Act 23/1997 s 19(k)

and includes stopping and anchoring, in so far as such stopping or such anchoring is incidental to ordinary navigation or is rendered necessary by vis major or distress or is for the purpose of rendering assistance to persons, ships or aircraft in danger or distress;

Definition of **passage** substituted by Act 5/1983 s 1(i) and amended by Act 23/1997 s 19(j)

regulation means a regulation made under section 14;

safety zone means—

- (a) the area within a distance of 500 m measured outward from any point on the exterior side of an offshore installation referred to in paragraphs (a) and (b) of the definition of offshore installation (other than a pipeline); or
- (b) the area determined by the Minister under section 8C;

Definition of **safety zone** inserted by Act 23/1997 s 19(l)

ship means a waterborne craft or structure of any type irrespective of the manner of propulsion or movement thereof, including a non-displacement craft and a submarine or other underwater vehicle, but does not include a vessel propelled by oars;

Definition of **ship** substituted by Act 5/1983 s 1(j)

territorial waters includes those waters in respect of which the right of innocent passage exists by virtue of section 3(3) of the Maritime Zones Act 1994.

Definition of **territorial waters** substituted by Act 23/1997 s 19(m)

Right of innocent passage

2. Subject to the provisions of this Act, every ship shall enjoy the right of innocent passage through the territorial waters.

S 2 substituted by Act 5/1983 s 2

Certain vessels to show flag

3. (1) Save as otherwise authorized by the Authority, the master of any foreign submarine or other foreign underwater vehicle shall not cause it to navigate the territorial waters or internal waters otherwise than on the surface and with its flag being shown.

(2) The master of such submarine or vehicle who contravenes the provisions of subsection (1) shall be guilty of an offence.

S 3 substituted by Act 5/1983 s 3

Entry into and departure from internal waters

4. (1) Subject to the provisions of this Act the master of any ship shall not, except as prescribed by regulation, cause it to enter or leave internal waters other than a harbour or a fishing harbour.

(2) The master of a ship who contravenes the provisions of subsection (1) shall be guilty of an offence.

S 4 substituted by Act 5/1983 s 4

Immobilizing, laying-up, stopping or anchoring outside harbours or fishing harbours

5. (1) Except with the permission of the Authority and in accordance with any condition prescribed by regulation or imposed by the Authority in a particular case, no person shall within the territorial waters or internal waters immobilize or lay-up a ship outside a harbour or fishing harbour.

(2) The Authority may require the master or owner of a ship immobilized or laid-up or to be immobilized or laid-up to find security to the satisfaction of the Authority in an amount determined by it for the recovery of any costs incurred by the Authority in enforcing any condition applicable to the immobilizing or laying-up of the ship, or in the exercise of its powers under this Act.

Subs (2) substituted by Act 5/1998 s 2 (Sch item 50)

(3) No person shall stop or anchor a ship for repairs within the territorial waters or internal waters outside a harbour or fishing harbour except with the main engine thereof

kept in readiness for immediate use and in accordance with any condition prescribed by regulation or imposed by the Authority in a particular case.

(4) Any person who contravenes the provisions of subsection (1) or (3) shall be guilty of an offence.

S 5 substituted by Act 5/1983 s 5

Ships and wreckage not to be sunk or abandoned

6. (1) No person shall within the territorial waters or internal waters intentionally—

- (a) sink, dump or dispose of, or cause to be sunk, dumped or disposed of, a ship, a wreck or a hulk except at a place agreed to by the Authority; or
- (b) abandon a ship which is not in distress, a wreck, a hulk or an object which may interfere with navigation.

Subs (1) substituted by Act 5/1983 s 6

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

Suspension of passage

7. (1) Notwithstanding the other provisions of this Act, if the Minister after consultation with the Minister of Defence considers it essential for the protection of the security of the Republic, he may for a specified period suspend the passage of ships in specified areas of the territorial waters or prohibit entry into internal waters.

(2) Such suspension or prohibition shall not take effect before it is given notice of as provided in section 15.

(3) The master of a ship who wilfully fails to observe such suspension or prohibition shall be guilty of an offence.

Passage deemed to be not innocent

8. Notwithstanding the provisions of section 16, the passage of a ship which carries or has on board in the territorial waters cargo or any appliance or apparatus the use of which or persons who may constitute a threat against the sovereignty, territorial integrity or political independence of the Republic, shall be deemed to be not innocent, and that ship and cargo and those persons may be dealt with as provided by section 9.

S 8 substituted by Act 5/1983 s 7

Suppression of illicit traffic in drugs on board foreign ships in territorial waters

8A. If the Authority on reasonable grounds suspects that the provisions of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act 1971 (Act 41/1971) relating to dependence-producing drugs are or have been contravened by any person on board a foreign ship in the territorial waters or in relation to any such drug carried by or on board such ship, such ship and its cargo and such person may for the purpose of applying the said provisions be dealt with mutatis mutandis as provided in section 9(1) and (2) of this Act.

S 8A inserted by Act 5/1983 s 8

Offences in respect of offshore installations

8B. (1) (a) The master; or

(b) any person on board a ship in charge of the navigation of such ship,

shall be guilty of an offence if—

- (i) through his act or omission in connection with the navigation of the ship in question an offshore installation or any part thereof is damaged;
- (ii) the ship, except while rendering an emergency service or previously agreed service to the offshore installation in question, enters a safety zone, or drops or drags anchor nearer than 500 m to a pipeline or a telecommunications line; or
- (iii) while engaged in fishing, the ship bottom trawls nearer than 500 m to such a pipeline or telecommunications line.

(2) No liability arises in terms of subsection (1) where the master or person on board the ship in charge of the navigation thereof acted for the purpose of securing the safety of the ship, any other ship or an offshore installation or of preventing damage to the ship, any other ship or the cargo thereof or an offshore installation, or of saving life, and such action was necessary for that purpose or was reasonable in the circumstances.

S 8B inserted by Act 38/1993 s 2 and substituted by Act 23/1997 s 20

Minister may determine safety zone

8C. Subject to compliance with Article 60(5) of the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982, the Minister may, in respect of an offshore installation referred to in paragraphs (a) and (b) of the definition of offshore installation (other than a pipeline), by notice in the Gazette determine that the area specified in the notice shall be the safety zone for the offshore installation in question.

S 8C inserted by Act 23/1997 s 21

Authority's powers relating to ship on non-innocent passage

9. (1) The Authority may require the master of a ship of which the passage is in terms of section 8 deemed to be not innocent or is believed by the Authority to be not innocent—

- (a) to stop or anchor the ship;
- (b) to declare the ship's name, official number, flag, type, gross tonnage, destination and cargo;
- (c) to move the ship to a place specified by the Authority;
- (d) to produce for inspection by an authorized person all papers or documents relative to the ship and its cargo and allow him to make copies thereof;
- (e) to allow authorized persons on board the ship to inspect the ship, its equipment and cargo;
- (f) to deliver any person referred to in section 8 to an authorized person having powers of arrest, in order to be dealt with according to the law.

Para (f) amended by Act 5/1983 s 9 and Act 5/1998 s 2 (Sch 51(a))

(2) If the master of the ship fails to perform, within the time specified by the Authority, any act which he has in terms of subsection (1) been required to perform, the Authority may cause such act to be performed, with the employment of such force as may be necessary.

(3) If the Authority is satisfied that the passage of the ship is not innocent, it may cause the ship and its cargo or part thereof, to be detained on such conditions as may be prescribed by regulation, for a period not exceeding seven days or such further period as an order of a division of the Supreme Court of South Africa may authorize.

Subs (3) substituted by Act 5/1998 s 2 (Sch item 51(b))

(4) The Authority may, in respect of the ship and its cargo or part thereof detained in terms of subsection (3)—

- (a) cause the ship and cargo or part thereof to be released from such detention;
- (b) subject to any order referred to in subsection (3), cause the ship and cargo or part thereof, to be seized and dealt with in such manner as may be directed by it.

Subs (3) substituted by Act 5/1998 s 2 (Sch item 51(b))

(5) If the ship and cargo or part thereof, or the ship or cargo or part thereof, is sold by virtue of the provisions of subsection (4)(b), the proceeds of such sale shall be paid into the Maritime Fund established by section 38 of the South African Maritime Safety Authority Act 1998 (Act 5/1998).

Subs (5) amended by Act 23/1997 s 22 and substituted by Act 5/1998 s 2 (Sch item 51(b))

(6) Notwithstanding the provisions of subsections (1) and (2) the Authority may require the master of a ship referred to in subsection (1), or who fails to comply with any provision of this Act or any other law, to remove his ship from the territorial waters immediately.

Subs (6) added by Act 5/1983 s 9(b)

(7) The provisions of this section, save subsection (6), do not apply to a foreign warship or a foreign ship owned or used by a government for non-commercial purposes.

Subs (7) added by Act 5/1983 s 9(b)

Notice to be given of proceedings in respect of foreign ships

10. If any action in terms of this Act is contemplated or taken in respect of any foreign ship, or if any proceedings in terms of this Act are contemplated or taken against the master or owner or a member of the crew of or any person on board of any foreign ship, the Authority shall, if the master of the ship so requests, forthwith advise the agents of the ship and the consular representative of the country whose flag the ship flies at the nearest harbour to such ship, of the action or proceedings taken or contemplated and of the grounds therefor.

Penalties

- 11.** (1) Any person shall be liable on conviction of—
- (a) any offence in terms of section 3(2), to a fine or to imprisonment for a period not exceeding twelve months;
 - (b) any offence in terms of section 4(2) or 5(4), to a fine or to imprisonment for a period not exceeding two years;

- (c) any offence in terms of section 6(2) or 7(3), to a fine or to imprisonment for a period not exceeding three months;
- (d) any offence in terms of section 8B(1), to a fine not exceeding R200 000, or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) If any person—

- (a) admits to the Authority that he has contravened or failed to comply with any provision of this Act, which contravention or failure constitutes an offence;
- (b) agrees to abide by the decision of the Authority; and
- (c) deposits with the Authority such sum as may be required of him, but not exceeding the maximum fine which may be imposed upon a conviction for the contravention or failure in question,

the Authority may, after such enquiry as it deems necessary, determine the matter summarily and may, without legal proceedings, order by way of penalty the whole or any part of the said deposit to be forfeited.

Subs (2) substituted by Act 5/1998 s 2 (Sch item 52)

(3) There shall be a right of appeal to the Minister from a determination or order by the Authority under subsection (2) whereby a penalty exceeding R2 000 is imposed, provided such right is exercised within a period of three months from the date of such determination or order.

Subs (3) substituted by Act 5/1998 s 2 (Sch item 52)

(4) The imposition of a fine under subsection (2) shall be deemed not to be a conviction for an offence, but no prosecution in respect of the offence in question may thereafter be instituted.

S 11 substituted by Act 23/1997 s 23

Jurisdiction

11A. (1) Any offence in terms of this Act shall, for purpose in relation to jurisdiction of a court to try the offence, be deemed to have been committed within the area of jurisdiction of the court in which the prosecution is instituted.

(2) Notwithstanding anything to the contrary in any law contained, a magistrates' court shall have jurisdiction to impose any penalty prescribed by this Act.

S 11A inserted by Act 23/1997 s 24

Delegation of powers

12. The Minister may delegate any power conferred upon him by this Act, other than a power conferred upon him by section 14, to one or more persons in the service of the State, but shall not thereby be divested of any power so delegated and may amend or withdraw any decision of any such person.

Limitation of liability

13. Any person in the service or acting on the authority of the State or the Authority or any other person exercising any power under this Act shall not be liable in respect of any

loss or damage resulting from anything done or not done in good faith in terms of the provisions of this Act.

S 13 substituted by Act 5 /1998 s 2 (Sch item 53)

Regulations

14. (1) The Minister may make regulations—

- (a) regulating marine traffic in the territorial and internal waters, including the prescribing of ship reporting procedures, sea lanes and traffic separation schemes for ships in general or for any class of ship or for ships carrying nuclear or other dangerous or noxious substances;

Para (a) substituted by Act 23/1997 s 25(a)

- (b) providing for the protection of navigational aids and facilities and offshore installations;

- (bA) prescribing measure to be taken on or in respect of offshore installations, including the equipment to be installed and maintained thereon, in the interests of the safety of navigation;

Para (bA) inserted by Act 23/1997 s 25(b)

- (c) exempting any ship or class of ship from any provision of this Act;
- (d) as to any matters which in terms of this Act are required or permitted to be prescribed by regulation,

and, in general, for the better achievement of the objects of this Act.

Subs (1) amended by Act 23/1997 s 25(c)

(2) Regulations made under subsection (1) may—

- (a) prescribe for any contravention thereof or failure to comply therewith a penalty of a fine or imprisonment for a period not exceeding two years;
- (b) be applicable outside the Republic.

Subs (2) added by Act 23/1997 s 25(d)

Notification of regulations made or other action under Act

15. The Minister may, instead of causing regulations under section 14, or any suspension or prohibition referred to in section 7(1), or any requirement under section 9(1), to be published in the Gazette, give notice thereof to the persons concerned in such manner as he may deem fit.

Craft to which Act does not apply

16. The provisions of this Act do not apply to—

- (a) ships owned or used by the Government of the Republic for non-commercial purposes; or
- (b) any other ship or class of ship exempted by the Minister by regulation from any provision of this Act in so far as it is so exempted.

S 16 substituted by Act 5/1983 s 11

Operation of Act in relation to other laws

17. The provisions of this Act are in addition to and not in substitution of any other law which is not in conflict with or inconsistent with this Act.

Application of Act to Prince Edward Islands

17A. This Act shall also apply to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act 1948 (Act 43/1948) and any reference in this Act to the Republic shall include a reference to those Islands.

S 17A inserted by Act 23/1997 s 26

Agreement with government of certain state or territory

18. If agreed upon between the Government of the Republic and the government of any other state or territory of which the territorial waters are contiguous to the territorial waters of the Republic, the Authority may for and in respect of that state or territory perform any function which he would be capable of performing in the Republic in terms of this Act, as if that state or territory formed part of the Republic.

Short title and commencement

19. This Act shall be called the Marine Traffic Act 1981 and shall come into operation on a date fixed by the State President by proclamation in the Gazette.