

Amendment of section 259 of Act 57 of 1951, as substituted by section 15 of Act 18 of 1992

10. Section 259 of the Merchant Shipping Act, 1951, is hereby amended—

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

“(1 A) (a) Whenever a stevedore, a shore contractor or incidental persons are involved in a casualty resulting in loss of life or serious injury to any person, or in an accident, their employer shall, in the form and stating the particulars referred to in subsection (1), forthwith report the event to the nearest proper officer by the fastest means of communication available.

(b) In paragraph (a)—

‘incidental person’ means persons other than the master and crew, and stevedores and shore contractors on board a vessel in the course and scope of their duties;

‘shore contractor’ means a person temporarily employed to effect general or specific repairs, alterations, renovations, improvements, painting, maintenance of vessel or machinery, tank or hatch cleaning and related tasks on or in a vessel;

‘stevedore’ means a person employed in the loading or unloading of a vessel or in related activities.”;

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

“(2) [Subsection] Subsections (1) and (1A) shall, subject to subsection (3), apply to every ship which is registered or licensed in the Republic or which is in terms of this Act required to be so registered or licensed and to or in respect of or on board of which any such event as is referred to in [subsection] subsections (1) and (1A) has occurred anywhere, and [it] shall apply to a ship registered in a country other than the Republic only while [she] the ship is within the Republic or the territorial waters thereof and if any such event has occurred to or in respect of or on board of the ship during a voyage to a port in the Republic or within the Republic or the territorial waters thereof.”;

(c) by the addition to subsection (4) of the following paragraph the existing subsection becoming paragraph (a):

“(b) The owner or master of any ship concerned and any employee or user who learns about an event referred to in subsection (1A), shall forthwith notify the employer concerned of such event.”; and

(d) by the addition of the following subsection:

“(5) No person shall disturb or remove anything from the scene of an accident required to be reported in terms of this section unless permitted by the proper officer, or if a person has been appointed under section 264 to hold a preliminary enquiry into the accident, by that person.”.

Amendment of section 261 of Act 57 of 1951, as amended by section 33 of Act 30 of 1959, section 7 of Act 25 of 1985 and section 4 of Act 16 of 1995

11. (1) Section 261 of the Merchant Shipping Act, 1951, is hereby amended—

(a) by the substitution for paragraphs (a), (b) and (c) of subsection (1) of the following paragraphs:

(a) if no claim for damages in respect of loss of or damage to property or rights arises, be liable for damages in respect of loss of life or personal injury to an aggregate amount exceeding [an amount equivalent to two thousand six hundred and thirty-five gold francs] 206,67 special drawing rights for each ton of the ship’s tonnage; or

(b) if no claim for damages in respect of loss of life or personal injury arises, be liable for damages in respect of loss of or damage to property or rights to an aggregate amount exceeding [an amount

equivalent to eight hundred and fifty gold francs] 66,67 special drawing rights for each ton of [a] the ship's tonnage; or

- (c) if claims for damages in respect of life or personal injury and also claims for damages in respect of loss of or damage to property or rights arise, be liable for damages to **an aggregate amount exceeding [an amount equivalent to two thousand six hundred and thirty-five gold francs] 206,67 special drawing rights** for each ton of [a] the ship's tonnage: Provided that in such a case claims for damages in respect of loss of life or personal injury shall, to the extent of an aggregate amount equivalent to [one thousand seven hundred and eighty-five gold francs] **140 special drawing rights** for each ton of the ship's tonnage, have priority over claims for damages in respect of loss of or damage to property or rights, and, as regards the balance of the aggregate amount **equivalent to [two thousand six hundred and thirty-five gold francs] 206,67 special drawing rights** for each ton of the ship's tonnage, the unsatisfied portion of the first-mentioned claims shall rank *pari passu* with the last-mentioned claims."; and

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

"(4) (a) **The amounts mentioned in subsection (1) shall be converted** into South African currency on the basis of the value of such currency on the date of the judgment or the date agreed upon by the parties.

(b) For the purpose of converting from special drawing rights into South African currency the amounts mentioned in subsection (1) in respect of which a judgment is given, one special drawing right shall be treated as equal to such a sum in South African currency as the International Monetary Fund have fixed as being the equivalent of one special drawing right for—

- (i) the day on which the judgment is given; or
(ii) if no sum has been so fixed for that day. the last day before that day for which a sum has been so fixed.

(c) A certificate given by or on behalf of the Treasury stating—

- (i) that a particular sum in South African currency has been so fixed for a particular day: or
(ii) that no sum has been so fixed for that day and that a particular sum in South African currency has been so fixed for a day which is the last day for which a sum has been so fixed before the particular day. shall be *prima facie* proof of those matters for the purposes of subsection (1): and a document purporting to be such a certificate shall, in any proceedings, be admissible in evidence and, in the absence of evidence to the contrary, be deemed to be such a certificate."

(2) Section 261 of the Merchant Shipping Act, 1951, as amended by subsection (1), shall not apply in respect of a cause of action that arose before the date of commencement of this section.

Amendment of section 264 of Act 57 of 1951, as substituted by section 16 of Act 18 of 1992

12. Section 264 of the Merchant Shipping Act, 1951, is hereby amended—

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

"(2) The Director-General may request the Director-General of **[Manpower] Labour** to assign a person designated as an inspector under section [20] 28 of the **[Machinery and Occupational Safety Act, 1983 (Act No. 60~983)] Occupational Health and Safety Act, 1993 (Act No. 85 of 1993)**, to assist a person appointed under subsection (1) to hold a preliminary enquiry."; and

(b) by the addition of the following subsection:

"(3) **A ship referred to in subsection (1)(a), (b) or (d) on board of which loss of life or serious injury to any person has occurred may be**

detained for purposes in relation to the holding of a preliminary enquiry thereunder, provided the ship is not thereby unduly delayed.”.

Amendment of section 265 of Act 57 of 1951, as amended by section 17 of Act 18 of 1992 and section 5 of Act 16 of 1995

13. Section 265 of the Merchant Shipping Act, 1951, is hereby amended by the deletion of subsection (2). 5

Amendment of section 335 of Act 57 of 1951

14. Section 335 of the Merchant Shipping Act, 1951, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A proper officer may cause a vessel or a share in a ship or arty goods which by this Act is declared to be liable to detention, to be detained.” 10

Amendment of section 356 of Act 57 of 1951, as amended by section 42 of Act 30 of 1959, section 59 of Act 40 of 1963, section 6 of Act 24 of 1974, section 11 of Act 5 of 1976, section 19 of Act 3 of 1982, section 9 of Act 25 of 1985, section 32 of Act 18 of 1992 and section 7 of Act 16 of 1995 15

15. Section 356 of the Merchant Shipping Act, 1951, is hereby amended—

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

“(i) [prescribing] for and in connection with, including the approval of, the books, forms and other documents to be used for the convenient and effective carrying out of the provisions of this Act, and of the particulars which shall be contained therein;” 20

(b) by the substitution for subparagraph (a) of paragraph (xxxviA) of subsection (1) of the following subparagraph:

“(a) requiring such life-saving appliances to comply with specifications determined by the South African Bureau of Standards mentioned in the Standards Act, [1982 (Act No. 30 of 1982)] 1993 (Act No. 29 of 1993); and” 25

(c) by the substitution for paragraph (xlA) of subsection (1) of the following paragraph:

“(xlA) as to the design, construction, [licensing] operation. use and maintenance of dynamically supported craft and any other matter which may be reasonably necessary for the safe and orderly operation of such craft;” 30

(d) by the substitution for paragraph (xliB) of subsection (1) of the following paragraph:

“(xliB) as to the safety measures to be taken [on] in relation to vessels by employers, employees, owners and users;” 35

(e) by the substitution for subsections (2) and (3) of the following subsections:

“(2) The Minister may make such notifications, declarations and regulations as may be reasonably necessary to give effect, subject to such exemptions, restrictions and modifications as may be desirable, to the provisions of— 40

(a) *the* Safety Convention;

(b) the International Collision Regulations Convention; 45

(c) the Load Line Convention; [and

(d) **any other convention relating to merchant shipping ratified or acceded to on behalf of the Republic and set out in any Schedule to this Act**

(d) the Tonnage Convention; and 50

(e) the STCW Convention.

The regulations made under this subsection may include other and more extensive provisions than those contained in the said conventions, provided they relate to the same or similar matters as are dealt within the said conventions.

(3) The Minister may by regulation apply, subject to such exemptions, 5
restrictions and modifications as may be desirable, [in] any of the
regulations made under subsection (2), to ships to which and in
circumstances in which the provisions of the [Safety Convention, the
International Collision Regulations Convention, the Load Line
Convention and any convention referred to in subsection (2)(d)] 10
conventions mentioned in that subsection do not apply.”.

Substitution of section 356bis of Act 57 of 1951, as substituted by section 8 of Act 16 of 1995

16. The following section is hereby substituted for section 356bis of the Merchant Shipping Act, 1951: 15

“Conventions in Schedules to have force of law

356bis. (1) The provisions of the Safety Convention and the STCW Convention shall, subject to the provisions of this Act, have the force of law in the Republic.

(2) The Minister shall, as soon as practicable after the entry into force for the Republic of any amendment to the Safety Convention or the STCW Convention, by notice in the *Gazette* amend the appropriate Schedule to reflect such amendment. 20

(3) In interpreting the Safety Convention and the STCW Convention—
(a) references to the Administration shall, in relation to ships of South African nationality, be construed as a reference to the Director-General or any officer or organization acting on his authority; and 25
(b) the English text shall prevail in the event of conflict between the English and Afrikaans texts.”.

Amendment of section 356ter of Act 57 of 1951, as inserted by section 34 of Act 18 of 1992 30

17. Section 356ter of the Merchant Shipping Act, 1951, is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) The provisions of section [33] 31 of the Standards Act, [1982 (Act No. 30 of 1982)] 1993 (Act No. 29 of 1993), shall not affect any incorporation of a safety standard or of any amendment or substitution of a safety standard, under this section.”.

Repeal of Third, Fourth and Sixth Schedules to Act 57 of 1951

18. The Third, Fourth and Sixth Schedules to the Merchant Shipping Act, 1951, are hereby repealed. 40

Amendment of section 1 of Act 2 of 1981, as amended by section 1 of Act 5 of 1983, section 1 of Act 38 of 1993 and section 15 of Act 15 of 1994

19. Section 1 of the Marine Traffic Act, 1981, is hereby amended—

(a) by the substitution for the definition of “authorized person” of the following definition: 45

“ ‘authorized person’ means—

(a) any officer as defined in section [1] 1(1) of the Public Service Act, [1957 (Act No. 54 of 1957)] 1994 (Proclamation No. 103 of 1994), designated by the Minister;

(b) any officer of the South African Navy; 50

- (c) any member of the South African Police Service above the rank of sergeant:
- [(d) any member of the South African Railways Police Force above the rank of sergeant;]**
- (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) **[(d)] (b)** of the Defence Act, 1957 (Act No. 44 of 1957);
- (f) any person accompanying **any person** referred to in paragraph (a), (b), (c) [(d)] or (e) and acting under **his** instructions;”;
- (b) by the substitution for the definition of “Director-General” of the following definition:
- “‘Director-General’ means the Director-General: Transport or **any officer of the Department of Transport acting on his authority;** ““;
- (c) by the insertion after the definition of “Director-General” of the following definition:
- ‘exclusive economic zone’ means the exclusive economic zone referred to in section 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);”;
- (d) by the substitution for the definition of “fishing harbour” of the following definition:
- “‘fishing harbour’ means a fishing **harbour** as defined in section 1 of the Sea **[Fisheries Act, 1973 (Act No. 58 of 1973)] Fishery Act, 1988 (Act No. 12 of 1988);”;**
- (e) by the substitution for the definition of “foreign” of the following definition:
- “‘foreign’, in relation to any ship, submarine or other underwater vehicle, means a **ship, submarine or other underwater vehicle [which is not registered or licensed in the Republic] not having South African nationality by virtue of section 64 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951);”;**
- (f) by the substitution for the definition of “harbour” of the following definition:
- “‘**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 No. 9 of 1989);”;**
- (g) by the substitution for the definition of “internal waters” of the following definition:
- “‘**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;**”;
- (h) by the substitution for the definition of “Minister” of the following definition:
- “‘Minister’ means the Minister of Transport **[Affairs];”;**
- (i) by the substitution for the definition of “offshore installation” of the following definition:
- “‘**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 No. 44 of 1958);
- (e) any vessel or appliance used for the exploration or exploitation of **the seabed;**”;
- (j) by the substitution in the definition of “passage” for the words preceding paragraph (a) of the following words:
- “‘passage’ means navigation through the territorial waters in a continuous and expeditious reamer **[on a normal and customary route]** for the purpose of—”;

(k) by the substitution for paragraph (b) of the definition of "passage" of the following paragraph:

"(b) proceeding to or from [a harbour, whether through] internal waters [or not,] or a call at any such roadstead or offshore installation.";

(l) by the insertion before the definition of "ship" of the following definition:

" 'safety zone' means—

(a) the area within a distance of 500 meters 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;"; and

(m) by the substitution for the definition of "territorial waters" of the following definition:

" '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."

Substitution of section 8B of Act 2 of 1981, as inserted by section 2 of Act 38 of 1993

20. The following section is hereby substituted for section 8B of the Marine Traffic Act, 1981:

"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 meters to a pipeline or a telecommunications line; or

(iii) while engaged in fishing, the ship bottom trawls nearer than 500 meters 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."

Insertion of section 8C in Act 2 of 1981

21. The following section is hereby inserted in the Marine Traffic Act, 1981, after section 8B:

"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."