
GENERAL NOTICES ALGEMENE KENNISGEWINGS

NOTICE 2279 OF 2004

SOUTH AFRICAN MARITIME SAFETY AUTHORITY

DRAFT COURTS OF MARINE ENQUIRY (AMENDMENT) REGULATIONS: PUBLICATION FOR COMMENT

The South African Maritime Safety Authority (SAMSA), acting on the authority of the Minister of Transport, publishes for comment the proposed regulations set out in the accompanying Schedule. Interested persons are invited to submit written comment to SAMSA on or before 30 November 2004 (NB: late submissions may be disregarded). Submissions should be addressed to the Chief Executive Officer, SAMSA, for the attention of Mr C Briesch, and may be either:

- hand-delivered to SAMSA, Block E Hatfield Gardens, 333 Grosvenor Street, Hatfield, Pretoria; or
- mailed to SAMSA, PO Box 13186 Hatfield 0028; or
- faxed to (012) 342 3160; or
- e-mailed to cbriesch@samsa.org.za.

Enquiries should be directed to Mr C Briesch at (012) 342 3049. Attention is invited to the explanatory note following the regulations.

SCHEDULE

DRAFT COURTS OF MARINE ENQUIRY (AMENDMENT) REGULATIONS, 2004

(under section 356 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951))

Title and commencement

1. These regulations are called the Courts of Marine Enquiry (Amendment) Regulations, 2004, and come into operation upon publication in the *Gazette*.

Interpretation

2. In these regulations "the Regulations" means the Courts of Marine Enquiry Regulations, 1961, published by Government Notice No. R. 1067 of 24 November 1961, as amended by Government Notices Nos. R. 1419 of 11 September 1964, R. 3055 of 8 August 1969, R. 215 of 16 February 1973, R. 1287 of 20 June 1980, R. 2584 of 23 December 1988, R. 1713 of 19 December 1997, and R. 241 of 26 February 1999.

Insertion of regulation 2A in Regulations

3. The following regulation is inserted in the Regulations after regulation 2:

"Powers and duties of Director-General

2A. All powers conferred and all duties imposed upon the Director-General in terms of these regulations may be exercised or performed by the Director-

General personally or by an officer under the control or direction of the Director-General."

Amendment of regulation 3 of Regulations

4. Regulation 3 of the Regulations is amended by the substitution for the expression "Authority", wherever it occurs, of the expression "Director-General".

Amendment of regulation 5 of Regulations

5. Regulation 5 of the Regulations is amended by the substitution for the expression "Authority", wherever it occurs, of the expression "Director-General".

Amendment of regulation 7 of Regulations

6. Regulation 7 of the Regulations is amended by the substitution in paragraph (2) for the expression "Authority" of the expression "Director-General".

Amendment of regulation 8 of Regulations

7. Regulation 8 of the Regulations is amended by the substitution in paragraph (1) for the expression "Authority" of the expression "Director-General".

Amendment of regulation 9 of Regulations

8. Regulation 9 of the Regulations is amended by the substitution in subparagraph (a) of paragraph (2) for the expression "Authority" of the expression "Director-General".

Amendment of regulation 10 of Regulations

9. Regulation 10 of the Regulations is amended by the substitution in paragraph (2) for the expression "Authority" of the expression "Director-General".

Amendment of regulation 12 of Regulations

10. Regulation 12 of the Regulations is amended by the substitution in paragraph (2) for the expression "Authority" of the expression "Director-General".

Amendment of regulation 13 of Regulations

11. Regulation 13 of the Regulations is amended by the substitution for paragraphs (1) and (2) of the following paragraphs, respectively:

"(1) After the Court has been opened, and before any evidence is given, the Director-General shall state in open court the questions in reference to the allegation or event upon which the finding of the Court is required. In formulating the questions for the finding of the Court, the Director-General may make such modifications in, additions to or omissions from the questions set forth in the letter referred to in regulation 5, as amended in terms of that regulation, as, having regard to the information then known to him, he may think fit.

(2) The Director-General may at any stage of the investigation, with the approval of the presiding officer, make such further modifications in, additions to or omissions from any of the questions so formulated as, having regard to any evidence which may have been given, he may think fit."

Amendment of regulation 15 of Regulations

12. Regulation 15 of the Regulations is amended by the substitution for the expression "Authority", wherever it occurs, of the expression "Director-General".

Amendment of regulation 17 of Regulations

13. Regulation 17 of the Regulations is amended by the substitution in paragraph (1) for the expression "Authority", wherever it occurs, of the expression "Director-General".

Amendment of regulation 20 of Regulations

14. Regulation 20 of the Regulations is amended by the substitution for paragraphs (4), (5), (6) and (7) of the following paragraphs, respectively:

"(4) The Director-General may cause such minutes to be recorded by mechanical or other suitable means either *verbatim* or in narrative form.

(5) Any party shall be entitled to a transcript of any such record certified as correct by the transcriber on payment of a fee to be fixed by the Director-General, having regard to the costs to the Director-General of such transcript.

(6) In the event of an appeal being noted and set down for hearing such record shall, so far as relevant to the appeal, be transcribed and certified on oath by the transcriber as a true record of the proceedings and such transcript shall thereafter form part of the record.

(7) Any party may apply to the presiding officer to correct any errors in the record. Such application shall be made not later than seven days after the decision of the Court has been declared: Provided that if the application is for a correction of any errors in the record made under paragraph (4) the transcript of which has not been completed before the decision of the Court is declared, it shall be made not later than seven days after the transcript has been completed. Upon being satisfied

that reasonable notice of the application has been given by the applicant to every other interested party, the presiding officer may, after consideration of any representations that may be made to him by any such party, and, if he thinks it necessary, after consultation with one or more of the other members of the Court, correct any such errors."

Amendment of regulation 21 of Regulations

15. Regulation 21 of the Regulations is amended by the addition of the following paragraph:

"(3) The Authority shall, within seven days of receipt thereof by it, cause to be transmitted to the Director-General for safe-keeping the record of proceedings, including the notes of evidence, the decisions, the report by the presiding officer and any reasons or other documents transmitted to it in terms of section 286 of the Act."

Substitution of regulation 22 of Regulations

16. The following regulation is substituted for regulation 22 of the Regulations:

"Appeal to High Court

22. (1) Any person aggrieved by a decision of a Court of Marine Enquiry who contemplates appealing to a High Court under section 292 of the Act may apply to the Director-General for a copy of the report transmitted to him in terms of regulation 21(3). Such application shall be made in writing, shall state an address to which the report may be posted or the name of the person to whom it may be delivered and shall be delivered at the office of the Director-General or posted so as to reach the Director-General not later than fourteen days after the delivery of the decision of the Court at the conclusion of the investigation. The Director-General shall cause a copy of the report to be posted to the applicant at the address stated or to be delivered to the person named, upon payment by the applicant of a fee calculated at R1,10 per A4 page, but subject to a minimum fee of R35.

(2) An appeal may be noted by any person other than the Director-General within thirty days after the posting to him or the delivery to the person named of the copy of the report, and by the Director-General within thirty days after the receipt by him of the report transmitted in terms of regulation 21(3).

(3) An appeal shall be noted by the service upon the Director-General and every other person who was a party to the proceedings of a notice of appeal and, unless the High Court to which appeal is made otherwise directs, by giving security to the satisfaction of the Registrar of that Court for the respondent's costs of appeal to the amount of R10 000: Provided that no security shall be required from the State or the Authority.

(4) A notice of appeal shall state—

- (a) the High Court to which the appeal is noted;
- (b) whether the whole or part only of the decision is appealed against, and if part only, then what part; and

- (c) the grounds of appeal, specifying the findings of fact or rulings of law appealed against.

(5) Whenever an appeal has been noted, the Director-General shall forthwith transmit a copy of the notice of appeal to the person who was the presiding officer of the Court, who shall, within seven days of the receipt thereof by him, transmit to the Director-General a statement, in writing, showing (so far as may be necessary having regard to any written decision already delivered by him or by the Court and to the report referred to in regulation 21)—

- (i) the facts the Court found to be proved;
- (ii) the grounds upon which the Court arrived at any finding of fact specified in the notice of appeal as appealed against; and
- (iii) his reasons for any ruling of law so specified as appealed against.

The statement shall become part of the record.

(6) Any party may apply to the Director-General for a copy of the statement referred to in paragraph (5). The application shall be made in writing, shall state an address to which the statement may be posted or the name of the person to whom it may be delivered, and shall be accompanied by a fee of R35. The Director-General shall cause a copy of the statement to be posted to the applicant at the address stated or to be delivered to the person named.

(7) The Director-General shall, within seven days after he receives notice that the appeal has been set down for hearing, cause to be transmitted to the Registrar of the High Court the record of the proceedings before the Court of Marine Enquiry, including the notes of evidence, the decisions, the report by the presiding officer and any reasons and other documents transmitted to the Director-General in terms of regulation 21(3), and the statement referred to in paragraph (5).

(8) Subject to the provisions of this regulation, an appeal shall be prosecuted within the period and in accordance with the practice and rules which apply in the High Court to which appeal is made in respect of appeals in civil cases from Magistrates' Courts, and if the appeal is to a Local Division of the High Court which has no jurisdiction to hear appeals in civil cases from the Magistrates' Courts, the appeal shall be prosecuted within the period and in accordance with the practice and rules which apply in respect of such appeals in the Provincial Division of the Province within which that Local Division exercises jurisdiction, and in default of such prosecution, the appeal shall be deemed to have lapsed, unless that High Court shall see fit to make an order to the contrary.

(9) The judgment of the High Court to which appeal is made may be enforced as if it had been given in the Court appealed from."

Amendment of regulation 23 of English text of Regulations

17. Regulation 23 of the English text of the Regulations is amended by the substitution for the expression "Marine Court" of the expression "Maritime Court".

Substitution of Annexes A, B and C to Regulations

18. Annexes A, B and C to these regulations are substituted for Annexes A, B and C, respectively, to the Regulations.

ANNEX A

(Regulation 6)

ALLOWANCES TOWARDS SUBSISTENCE AND TRANSPORT PAYABLE TO MEMBERS OF COURTS OF MARINE ENQUIRY

1. A member shall receive an allowance for every day on which he attends an investigation in respect of expenditure necessarily and actually incurred in respect of meals, liquid refreshments, accommodation, bedding and laundry and ironing but excluding alcoholic beverages and dry-cleaning—

- (i) when he is not absent from his usual place of residence or employment overnight: R80 per day or part of a day calculated from midnight to midnight; and
- (ii) when he is absent from his usual place of residence or employment overnight: R550 per day or part of a day calculated from midnight to midnight: Provided that if this allowance is insufficient the actual expenditure may be refunded to the member plus an amount of R50 per day to cover additional expenditure.

2. In addition to the allowance payable under paragraph 1 a member shall receive a special allowance for every day on which he attends an investigation and on which the case is wholly or partly heard of R750 per day or part of a day calculated from midnight to midnight.

3. For journeys undertaken by a member from his usual place of residence or employment to the place where the investigation is held, he may make use of public transport or his own motor vehicle or a hired motor vehicle.

4. A member is entitled to travel first class by train and in the economic class by air.

5. The actual cost will be refunded to a member in the case of public transport and, if the Director-General considers it reasonable, in the case of hired transport.

6. For the use of his own motor vehicle a member shall be reimbursed at the rate of R1,80 per kilometre for the distance travelled to and from the place of the investigation or the place from where the journey was continued by public transport.

ANNEX B

COURT OF MARINE ENQUIRY

SUBPOENA

(Regulation 10)

To—

(1) of

(2) of

(3) of

(4) of

You are hereby required to appear in person before the Court of Marine Enquiry at on the day of 20....., at the hour of, which has been appointed to investigate the circumstances attending the

..... and to bring with you and then produce to the Court the several documents specified in the list hereunder:

Date	Description	Original or Copy

Place

.....
Clerk of the Court

Date

Attention is invited to section 9, read with section 313 of Act 57/1951, which provides that any person who fails to attend at the time and place specified in a subpoena and remain in attendance; or to answer fully and satisfactorily, to the best of his ability, all questions lawfully put to him; or, upon his being required to do so, to produce any document in his possession or control shall be liable to a penalty of a fine, or imprisonment for a period not exceeding six months, or both.

ANNEX C**REPORT OF COURT OF MARINE ENQUIRY**

(Regulation 21)

In the matter of a formal investigation by a Court of Marine Enquiry held at on the
 (here state all the days on which the Court sat)
 before, Presiding Officer, and
 and, Members, into the circumstances attending the
 (here state briefly the substance of the allegation or describe the event for the investigation of which the Court was convened)

The Court, having carefully inquired into the circumstances attending the matter to be investigated, finds for the reasons stated in the Appendix hereto, that the
 (here state the finding of the Court)

Dated at this day of 20.....

.....
 Presiding Officer

We (or I) concur in the above report.

.....
 Member

.....
 Member

APPENDIX TO THE REPORT

(Here state fully the circumstances of the case, the opinion of the Court touching the truth of the allegation or the causes of the event and the conduct of any persons implicated therein, and whether the certificate of any officer has been either suspended or cancelled, and the reasons for the said opinion, and if the certificates of any officer has been suspended or cancelled the reasons for such suspension or cancellation.)

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations amend the Courts of Marine Enquiry Regulations, 1961, made under section 356 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951). The amendments have the following main objects:

- to make the Department of Transport responsible for matters relating to the convening and conduct of courts of marine enquiry; these courts are convened by the Minister of Transport, and the responsibility for related administrative matters belongs properly in the Department; also, it is considered appropriate that the formal inquiry function be entrusted to an entity, such as the Department, that is not usually directly involved in the subject matter of such inquiries;
- to delete obsolete provisions;
- to increase the allowances and other amounts payable to members of a court of marine enquiry;
- to revise the fees payable in respect of copies of certain records; and
- to make certain editorial changes.