

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

REPUBLIEK VAN SUID-AFRIKA

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 743.

10 April 1985

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

—No. 25 of 1985: Merchant Shipping Amendment Act, 1985.

No. 743.

10 April 1985

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 25 van 1985: Wysigingswet op Handelskeepvaart, 1985.

Act No. 25, 1985

MERCHANT SHIPPING AMENDMENT ACT, 1985

GENERAL EXPLANATORY NOTE:

- [** **]** Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Merchant Shipping Act, 1951, so as to amend the definition of "port" to distinguish for certain purposes between ports in and outside the Republic; to amend the definition of "ship" to include certain other vessels; to apply certain provisions to ships and small vessels used solely for sport or recreation; to authorize the Director-General: Transport to have certain of his functions performed by other persons or organizations; to exempt certain vessels and ships used solely for sport or recreation from the requirement of licensing; to extend the class of unseaworthy ships not permitted to leave port; to adjust the liability of the owner of a ship for certain losses or damage, by virtue of the accession of the Republic to the International Convention on Tonnage Measurement of Ships, 1969; and to provide for incidental matters.

(Afrikaans text signed by the State President.)
(Assented to 18 March 1985.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 2 of Act 57 of 1951, as amended by section 3 of Act 30 of 1959, section 31 of Act 69 of 1962, section 1 of Act 40 of 1963, section 1 of Act 13 of 1965, section 1 of Act 42 of 1969, section 1 of Act 24 of 1974, section 1 of Act 5 of 1976, section 1 of Act 3 of 1981 and section 1 of Act 3 of 1982.

1. Section 2 of the Merchant Shipping Act, 1951 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the substitution in subsection (1) for the definition of "port" of the following definition:
- "port", in relation to—
- (a) a port in a country other than the Republic, means a place, whether proclaimed a public harbour or not, and whether natural or artificial, to which ships may resort for shelter or to ship or unship goods or passengers; and
- (b) a port in the Republic, means a harbour contemplated in the definition of 'harbours' in section 1 of the South African Transport Services Act, 1981 (Act No. 65 of 1981), or a fishing harbour contemplated in section 1 of the Sea Fisheries Act, 1973 (Act No. 58 of 1973), or any place which has under this Act or any other law been designated as a place from or at which any vessel or a vessel of a particular type may be launched, beached, moored or berthed;"

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- (b) by the insertion in subsection (1) after the definition of "special load line certificate" of the following definition:
- "sport or recreation' means any sporting or recreational activity carried on in, on or under the water, irrespective of whether that activity is of a competitive nature or whether prizes are involved, provided it is not carried on for commercial purposes;" 5
- (c) by the substitution in subsection (1) for the definition of "ship" of the following definition: 10
- "ship' means any [kind of] vessel used [in navigation not propelled by oars] for transportation or for any other purpose on or under the surface of the water;" and 15
- (d) by the insertion in subsection (1) after the definition of "timber cargo regulation" of the following definition: 20
- "Tonnage Convention" means the International Convention on Tonnage Measurement of Ships, 1969;" 20

Amendment of section 3 of Act 57 of 1951, as amended by section 4 of Act 30 of 1959, section 32 of Act 69 of 1962, section 2 of Act 40 of 1963 and section 2 of Act 13 of 1965.

2. Section 3 of the principal Act is hereby amended by the substitution for subsection (7) of the following subsection:

"(7) The provisions of this Act shall **[not, except those of sections sixty-eight, sixty-nine, seventy, seventy-one, seventy-two, one hundred and ninety, one hundred and ninety-one, one hundred and ninety-four, one hundred and ninety-five, one hundred and ninety-seven, one hundred and ninety-eight, one hundred and ninety-nine, two hundred and fifty-four, two hundred and fifty-nine (except paragraph (e) of subsection (1) thereof) and two hundred and sixty, together with section three hundred and twelve and subsection (1) of section three hundred and thirteen in their application to section seventy-two]** apply to **[any pleasure yacht which has been exempted under the provisions of subsection (3) of section thirteen]** any vessel or ship contemplated in section 68 (3) (b) as if such vessel or ship were licensed in terms of this Act."

Amendment of section 5 of Act 57 of 1951, as amended by section 5 of Act 30 of 1959.

3. Section 5 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) All powers conferred and all duties imposed upon the Director-General may be exercised or performed by the Director-General personally or by an officer or, with respect to conditions prescribed under section 68 (3) (b), by a person or organization under a delegation from or under the control or direction of the Director-General."

Amendment of section 64 of Act 57 of 1951, as amended by section 8 of Act 40 of 1963.

4. Section 64 of the principal Act is hereby amended by the substitution for paragraph (e) of the following paragraph:

"(e) any **[pleasure yacht of less than twenty-five gross tons]** vessel or ship contemplated in section 68 (3) (b)—

(i) the whole of which is owned by persons all of whom in terms of section *eleven* are qualified to own a South African ship; and 50

(ii) the majority of the owners of which, either in number or extent of ownership, are persons resident in the Republic."

Amendment of section 68 of Act 57 of 1951, as amended by section 14 of Act 30 of 1959, section 10 of Act 40 of 1963, section 3 of Act 13 of 1965 and section 2 of Act 3 of 1981.

5. Section 68 of the principal Act is hereby amended— 55

(a) by the substitution for subsection (3) of the following subsection:

"(3) The provisions of this section shall not apply in respect of any ship or vessel—

(a) unless the whole of the ship or vessel is owned— 60

[a] (i) by the Government of the Republic; or

[(b)] (ii) by persons all of whom in terms of section *eleven* are qualified to own a South African ship; and

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- (i) (aa) a majority of the owners of the ship or vessel, either in number or extent of ownership, are persons resident in the Republic or bodies corporate having their principal place of business within the Republic; or
- (ii) (bb) the ship or vessel is, as to her management and use, principally controlled in the Republic;
- (b) used, subject to such conditions as may be prescribed, solely for sport or recreation.”; and
- (b) by the deletion of subsection (4).

Amendment of section 240 of Act 57 of 1951.

6. The following section is hereby substituted for section 240 of the principal Act:

- “Unseaworthy ships not permitted to leave port.”
240. No person, including the owner or master, shall cause or permit—
- (a) any ship (other than a **[South African ship] to go to sea**) ship of South African nationality to be navigated away from any port in the Republic;
- (b) **[a South African ship to go to sea]** any ship of South African nationality to be navigated away from any port whatsoever, in an unseaworthy state.”
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Amendment of section 261 of Act 57 of 1951, as amended by section 33 of Act 30 of 1959.

7. Section 261 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(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 **[three thousand one hundred] two thousand six hundred and thirty-five** gold francs for each ton of the ship’s tonnage; or”;
- (b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
- “(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 **[one thousand] eight hundred and fifty** gold francs for each ton of a ship’s tonnage; or”;
- (c) by the substitution for paragraph (c) of subsection (1) of the following paragraph:
- “(c) if claims for damages in respect of loss 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 **[three thousand one hundred] two thousand six hundred and thirty-five** gold francs for each ton of a 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 **[two thousand one hundred] one thousand seven hundred and eighty-five** gold francs 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 **[three thou-**
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sand one hundred] two thousand six hundred and thirty-five gold francs 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

(d) by the substitution for subsection (3) of the following subsection:

“(5) The Director-General may from time to time by notice in the *Gazette* specify the amounts which for the purposes of this section shall be taken as equivalent to **[three thousand one hundred]** two thousand six hundred and thirty-five and **[one thousand]** eight hundred and fifty gold francs, respectively.”.

Amendment of section 262 of Act 57 of 1951, as amended by section 51 of Act 69 of 1962.

8. Section 262 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) For the purpose of section *two hundred and sixty-one*, the tonnage of a ship shall be her **[register tonnage with the addition of any engine-room space deducted for the purpose of ascertaining that tonnage and the tonnage of a sailing ship shall be her register tonnage]** gross register tonnage.”.

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 and section 19 of Act 3 of 1982.

9. Section 356 of the principal Act is hereby amended—

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

“(xli)*bis* prescribing the conditions contemplated in section 68 (3) (b)”; and

(b) by the addition of the following subsection:

“(7) Before any regulations are made under section 356 (1) (xli)*bis*, such regulations shall be published by the Minister in the *Gazette* together with a notice intimating that it is proposed to issue such regulations as regulations under this section within a stated period, but not less than four weeks as from the date of the said publication, and inviting interested persons to submit any objections to or representations concerning the proposed regulations: Provided that, if the Minister thereafter determines on any alterations in the regulations published as aforesaid, as a result of any objections or representations submitted thereanent, it shall not be necessary to publish such alterations, before finally issuing the regulations in terms of subsection (1).”.

Short title and commencement.

10. (1) This Act is called the Merchant Shipping Amendment Act, 1985, and comes into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act.