

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.



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 327.

3 Maart 1982.

No. 327.

3 March 1982.

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

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

No. 3 van 1982: Wysigingswet op Handelskeepvaart, 1982.

No. 3 of 1982: Merchant Shipping Amendment Act, 1982.

MERCHANT SHIPPING AMENDMENT ACT, 1982

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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 further define the functions of certain officers in relation to the crews of ships; to further regulate the disposal of wages payable to seamen; and to provide for the application in the Republic of conventions relating to merchant shipping matters; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 16 February 1982.)

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

1. Section 2 of the Merchant Shipping Act, 1951 (hereinafter referred to as the principal Act), is hereby amended—
- 5 (a) by the substitution in subsection (1) for the definition of “collision regulations” of the following definition:
- “‘collision regulations’ means the regulations made under paragraph (b) of subsection (2) of section 356 to give effect to the relative provisions of the
- 10 International Collision Regulations Convention and Annexures thereto, or such regulations as applied under subsection (3) of that section;” and
- (b) by the substitution in subsection (1) for the definition of “International Collision Regulations” of the following definition:
- 15 “‘International Collision Regulations Convention’ means the **[regulations]** convention set out in the Third Schedule to this Act;”.
- 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 and section 1 of Act 3 of 1981.
2. Section 86 of the principal Act is hereby amended by the 20 deletion of subsection (1).
- Amendment of section 86 of Act 57 of 1951, as amended by section 18 of Act 40 of 1963.
3. Section 90 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:
- 25 “(2) The **[proper officer]** owner or master of any such ship shall not permit the agreement with the crew to be signed by any person who is to be employed as a cadet unless he is satisfied that the provisions of subsection (1) are being complied with.”.
- Amendment of section 90 of Act 57 of 1951, as amended by section 43 of Act 69 of 1962 and section 6 of Act 13 of 1965.

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4. Section 97 of the principal Act is hereby amended by the deletion of paragraphs (b) and (c) and the proviso.

Amendment of section 97 of Act 57 of 1951, as amended by section 19 of Act 40 of 1963.

5. Section 103 of the principal Act is hereby amended—

(a) by the substitution for paragraphs (a), (b), (c), (d) and (e) of the following paragraphs, respectively:

Amendment of section 103 of Act 57 of 1951, as amended by section 20 of Act 40 of 1963.

- “(a) subject to the provisions of this Act as to substitutes, the agreement shall be signed by each seaman in the presence of **[the proper officer]** a witness;
- 10 (b) the **[proper officer]** master, owner or authorized agent of the owner shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that each seaman understands the same before he signs it **[and]** in the presence of a witness, who shall attest each signature;
- 15 (c) when the crew is first engaged the agreement shall be signed in duplicate, and one agreement shall be **[retained by]** delivered to the proper officer and the other shall be **[delivered to]** retained by the master, and shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequent to the first departure of the ship;
- 20 (d) if a substitute is engaged in the place of a seaman who has duly signed the agreement and whose services are terminated, within twenty-four hours before the ship proceeds to sea, by death, desertion, absence without leave or other unforeseen cause, the engagement of the substitute shall **[whenever possible]** be effected before **[a proper officer, or if it be not possible to effect the engagement of the substitute before a proper officer]** the master, who shall before the ship proceeds to sea or as soon thereafter as is practicable, cause the agreement to be read over and explained to the substitute, and the substitute shall thereupon sign the same in the presence of a witness, who shall attest the signature;
- 25 (e) the **[proper officer]** master shall not proceed with the engagement of the crew until he is satisfied that the particulars required by paragraph (b) of subsection (3) of section 102 have been inserted in the agreement;”; and
- 30 (b) by the substitution for paragraph (h) of the following paragraph:
- 35 “(h) on every return to a port in the Republic before the final termination of a running agreement, the master shall endorse on the agreement particulars of the engagement or discharge of any seaman, or that no engagements or discharges have been made or are intended to be made before the ship leaves port, and also that any engagements or discharges made have been according to law **[and the master shall deliver the running agreement so endorsed to the proper officer, who shall, if the provisions of this Act relating to agreements have**
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been complied with, sign the endorsement and return the agreement to the master].”.

6. Section 104 of the principal Act is hereby amended by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively: Amendment of section 104 of Act 57 of 1951, as amended by section 18 of Act 30 of 1959 and section 10 of Act 42 of 1969.
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- “(a) before the ship leaves the port where the agreement was entered into, sign and render to the proper officer at that port a full and accurate statement in a form approved by the Director-General of every change that has taken place in the crew **[without the authority of the proper officer]** since the agreement was entered into; and
- (b) before the ship leaves any port subsequently entered by her during the currency of the agreement, sign and render to the proper officer at that port a full and accurate statement in a form approved by the Director-General of every change that has taken place in the crew **[without the authority of the proper officer]** since he last rendered a statement in terms of this section.”.
7. Section 105 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 105 of Act 57 of 1951.
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- “(1) In the case of a foreign-going South African ship—
- (a) on the due execution of an agreement with the crew; or
- (b) where the agreement is a running agreement, on compliance by the master with paragraph (h) of section 103,
- [the proper officer shall grant the master a certificate] the master shall issue a certificate** to that effect.”.
8. Section 106 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph: Amendment of section 106 of Act 57 of 1951, as amended by section 21 of Act 40 of 1963.
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- “(b) crews or single seamen shall be engaged **[before a proper officer]** in the same manner as they are required to be engaged for foreign-going ships and the provisions of section 103 with regard to substitutes shall apply;”.
9. Section 112 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection: Amendment of section 112 of Act 57 of 1951, as amended by section 23 of Act 40 of 1963 and section 4 of Act 3 of 1981.
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- “(6) The **[proper officer] master or owner** in whose presence a seaman is engaged in a South African ship after the date referred to in subsection (1) shall **[refuse to] not** enter the seaman as an able seaman on the agreement with the crew unless the seaman produces a certificate of qualification as able seaman issued under this Act or produces **[such] other proof** that he is the holder of such certificate or **[such] proof** that in terms of this Act he is deemed to be the holder of such a certificate **[as satisfies the proper officer]**.”.
10. The following section is hereby substituted for section 113 of the principal Act: Substitution of section 113 of Act 57 of 1951, as amended by section 11 of Act 42 of 1969.
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- “Discharge of seamen. **113.** (1) The master of a South African ship shall not discharge a seaman who has signed the agreement with the crew from the ship, except before a proper officer, **where the seaman does not consent to his discharge,** and in accordance with the provisions of this Act.

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(2) Upon the discharge of a seaman the master shall issue to the seaman a certificate of his discharge in the prescribed form.

5 (3) Upon the discharge of a seaman the master shall return to him any certificate of competency or qualification belonging to him which may have been in the custody of the master.

10 (4) When a seaman is discharged and the master declines to express an opinion on the conduct, character and **[qualifications]** ability of the seaman, the discharge shall be made before a proper officer, to whom he shall furnish [to the proper officer before whom the discharge is made] a report in the prescribed form stating that he so declines, and the proper officer shall, if the seaman so desires, give to him or endorse on his certificate of discharge a copy of such report. The master shall enter in the official log-book his reasons for so declining, and shall, upon the request of the seaman, read out to him, in the presence of the proper officer, the reasons so entered. The proper officer shall, whenever practicable, give the seaman a reasonable opportunity to make a statement upon such report.

25 (5) The proper officer shall transmit the report, together with the seaman's statement, if any, furnished to him in terms of subsection (4) to the **[Director-General]** proper officer at the port where the agreement with the crew was entered into [who shall record it]."

30 11. Section 115 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 115 of Act 57 of 1951.

35 “(2) The certified copy made in terms of subsection (1) shall be transmitted by the master to the **[Director-General]** proper officer at the port where the agreement was entered into and shall be admissible in evidence.”

40 12. Section 122 of the principal Act is hereby amended by the substitution in paragraph (a) for the words preceding the proviso of the following words: Amendment of section 122 of Act 57 of 1951, as amended by section 19 of Act 30 of 1959.

“the owner or master of a ship shall pay to each seaman at the time when he lawfully leaves the ship at the end of his engagement, the sum of **[ten pounds]** 50 rand or one-half of the balance of wages due to him, whichever amount is the lesser, and shall pay to him the remainder of his wages within two days after he so leaves the ship.”

45 13. Section 124 of the principal Act is hereby amended by the substitution for the first sentence of subsection (1) of the following sentence: Amendment of section 124 of Act 57 of 1951, as amended by section 19 of Act 30 of 1959.

50 “When settlement of the wages of a seaman of a South African ship is required to be and is completed before a proper officer, the said seaman shall sign in the presence of the proper officer a release, in the prescribed form, of all claims in respect of the period of service concerned.”

14. The following section is hereby substituted for section 125 of the principal Act: Substitution of section 125 of Act 57 of 1951.

55 “Decision by proper officer on question as to wages. 125. Whenever a question as to wages is raised **[before a proper officer]** between the owner or master of a South African ship and a seaman or apprentice-officer, and the parties concerned agree in writing to submit such matter for adjudication to **[the]** a proper officer, he may hear and decide the

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question so submitted, and his decision shall be final.”.

15. The following section is hereby substituted for section 128 of the principal Act:

Substitution of section 128 of Act 57 of 1951.

5 “Master to give facilities to seaman for remitting wages.
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128. If the balance of wages earned by but not yet payable to a seaman of a South African ship is more than **[ten pounds]** 50 rand and the seaman expresses to the master of the ship his desire to have facilities afforded to him for remitting all or any part of the balance to a savings bank, or to a near relative in whose favour an allotment note may be made, the master shall give to the seaman all reasonable facilities for so doing so far as regards so much of the balance as is in excess of **[ten pounds]** 50 rand, but shall be under no obligation to give those facilities while the ship is in port if the sum will become payable before the ship leaves the port, or otherwise than conditionally upon the seaman going to sea in the ship.”.

20 16. Section 130 of the principal Act is hereby amended—
(a) by the substitution for subsection (1) of the following subsection:

Amendment of section 130 of Act 57 of 1951.

25 “(1) Subject to the provisions of subsection (2), a seaman engaged on a South African ship may before the commencement of a voyage make stipulations **[subject to the approval of the proper officer as to terms and conditions]** for the **[allotment]** payment during his absence by means of an allotment note to a near relative or a savings bank or a body engaged in the promotion of the welfare of seamen and registered under the **[Welfare Organizations Act, 1947 (Act No. 40 of 1947)]** National Welfare Act, 1965 (Act No. 79 of 1965), of any portion of the wages which he may earn during the voyage.”; and

35 (b) by the substitution for subsection (5) of the following subsection:

40 “(5) The **[proper officer]** master, owner or authorized agent of the owner before whom a seaman is engaged shall, after the seaman has signed the agreement, enquire of the seaman whether he requires a stipulation for the allotment of part of his wages by means of an allotment note. If the seaman requires such stipulation, the **[proper officer]** master, owner or authorized agent of the owner shall insert it in the agreement with the crew, and every such stipulation shall be deemed to have been agreed to by the **[master]** parties thereto.”.

17. Section 153 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

Amendment of section 153 of Act 57 of 1951.

50 “(4) Any duplicate agreement with the crew **[retained by]** delivered to a proper officer in terms of paragraph (c) of section 103 or any statement of a change of the crew transmitted to a proper officer in terms of section 104 at the time of the departure of the ship from the port last visited, and any certificate purporting to be a certificate **[from a proper officer at any port]** issued in terms of section 105 (1), stating that certain seamen and apprentice-officers joined the ship at the said port shall, if produced by the Director-General or any person thereto authorized by him,

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be taken in the absence of proof to the contrary as sufficient proof that the seamen and apprentice-officers therein named as belonging to the ship were on board at the time of the loss.”.

- 5 18. The following section is hereby substituted for section 185 of the principal Act: Substitution of section 185 of Act 57 of 1951.

“Delivery of official log-books to proper officer.”

10 185. The master of every ship on board of which an official log-book is required to be kept in terms of this Act shall within forty-eight hours after the ship’s arrival at its final port of destination in the Republic or upon the discharge of the crew, whichever first happens, deliver the official log-book of the voyage to the proper officer **【before whom】** at the port where the crew is discharged.”.

- 15 19. Section 356 of the principal Act is hereby amended—
- (a) by the substitution for paragraph (b) of subsection (2) of the following paragraph: 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 and section 11 of Act 5 of 1976.
- 20 “(b) the International Collision Regulations Convention; [and]”;
- (b) by the addition in subsection (2) to paragraph (c) of the word “and”;
- (c) by the insertion in subsection (2) after paragraph (c) of the following paragraph:
- 25 “(d) any other convention relating to merchant shipping ratified on behalf of the Republic and set out in any Schedule to this Act.”;
- (d) by the substitution for subsection (3) of the following subsection:
- 30 “(3) The Minister may by regulation apply, subject to such exemptions, restrictions and modifications as appear to him to be desirable, 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
- 35 Convention, [and] the Load Line Convention and any convention referred to in subsection (2) (d) do not apply.”;
- (e) by the substitution in subsection (5) for the words preceding the proviso of the following words:
- 40 “Any regulations made under subsections (1) and (2) may prescribe penalties for contravention thereof or failure to comply therewith, but no such penalty shall exceed a fine of **【two hundred pounds】** R400 or imprisonment for the period of one year or both such fine and such imprisonment.”; and
- 45 (f) by the deletion of subsection (7).

20. The following section is hereby substituted for section 356bis of the principal Act: Substitution of section 356bis of Act 57 of 1951, as inserted by section 60 of Act 40 of 1963.

50 “Ratification of certain conventions and of certain amendments of conventions.”

356bis. (1) The State President may by proclamation in the Gazette add to this Act any Schedule setting out any convention relating to merchant shipping and ratified on behalf of the Republic.

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[(1)] (2): The State President may do all things necessary—

- 5 (a) to ratify or cause to be ratified on behalf of the Republic any amendments of the International Collision Regulations Convention, the Load Line Convention, **[or]** the Safety Convention or any convention referred to in section 356 (2) (d), which may from time to time be made; or
- 10 (b) to ratify or cause to be ratified on behalf of the Republic any **[regulations or]** convention which may from time to time be adopted in substitution for the International Collision Regulations Convention, the Load Line Convention, **[or]** the Safety Convention or any convention referred to in section 356 (2) (d),

and may by proclamation in the *Gazette*—

- 15 (i) amend the appropriate Schedule to this Act to give effect to any amendment ratified in terms of paragraph (a); and
- 20 (ii) substitute for **[the regulations or]** the convention appearing in the appropriate Schedule to this Act **[the regulations which have or]** the convention which has been ratified in terms of paragraph (b).

25 **[(2)] (3)** The Minister shall lay a copy of any proclamation issued under subsection (1) or (2) on the Table of the **[Senate and of the]** House of Assembly within fourteen days after publication of such proclamation in the *Gazette* if **[Parliament]** the House of Assembly is then in ordinary session or, if **[Parliament]** the House of Assembly is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.”.

35 **21.** (1) This Act shall be called the Merchant Shipping Amendment Act, 1982, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*. Short title and commencement.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.