



**REPUBLIC OF SOUTH AFRICA**

# **GOVERNMENT GAZETTE**

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## **STAATSKOERANT**

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OFFICE OF THE PRIME MINISTER

KANTOOR VAN DIE EERSTE MINISTER

No. 440.

2 March 1983

No. 440.

2 Maart 1983

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

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

⇒. 5 of 1983: Marine Traffic Amendment Act, 1983.

No. 5 van 1983: Wysigingswet op Seeverkeer, 1983.

Act No. 5, 1983

MARINE TRAFFIC AMENDMENT ACT, 1983

## 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 Marine Traffic Act, 1981, so as to amend certain definitions and insert certain new definitions; to extend the right of innocent passage through the territorial waters to all ships; to regulate the immobilizing and laying-up of ships and further regulate the stopping and anchoring of ships outside harbours and fishing harbours; to further regulate the sinking and abandoning of ships and other objects; to amend the provisions relating to passage deemed to be non-innocent by making other provision for the suppression of illicit traffic in drugs on board foreign ships in the territorial waters; and to further regulate the Minister's powers relating to ships on non-innocent passage; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)*  
*(Assented to 18 February 1983.)*

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

Amendment of  
section 1 of  
Act 2 of 1981.

1. Section 1 of the Marine Traffic Act, 1981 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the substitution for the definition of “authorized person” of the following definition: 5  
 “‘authorized person’ means—  
 (a) any officer as defined in section 1 of the Public Service Act, 1957 (Act No. 54 of 1957), designated by the Minister; 10  
 (b) any officer of the South African Navy;  
 (c) any member of the South African Police above the rank of sergeant;  
 (d) any member of the South African Railways Police Force above the rank of sergeant; **[or]** 15  
 (e) any member of the South African Defence Force above the rank of sergeant employed on police duties in terms of section 3 (2) (d) of the Defence Act, 1957 (Act No. 44 of 1957);  
**[(e)] (f)** any person accompanying any person referred to in paragraph (a), (b), (c), **[or]** (d) or (e) and acting under his instructions;”;
- (b) by the insertion after the definition of “authorized person” of the following definitions:  
 “‘Director-General’ means the Director-General: 25  
 Transport;  
 ‘fishing harbour’ means a fishing harbour as defined in section 1 of the Sea Fisheries Act, 1973 (Act No. 58 of 1973);”;
- (c) by the substitution for the definition of “foreign” of the 30 following definition:

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“‘foreign’, in relation to any ship, submarine or other underwater ~~[vessel]~~ vehicle, means a ship, submarine or other underwater ~~[vessel]~~ vehicle which is not registered or licensed in the Republic;”;

- (d) by the insertion after the definition of “foreign” of the following definitions:

“‘harbour’ means a harbour in terms of the definition of ‘harbours’ in section 1 of the South African Transport Services Act, 1981 (Act No. 65 of 1981), excluding Lüderitz;

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

- (e) by the substitution for paragraphs (a) and (b) of the definition of “internal waters” of the following paragraphs, respectively:

“(a) any harbour ~~[under the jurisdiction of the South African Railways and Harbours Administration];~~

(b) any fishing harbour ~~[as defined in section 1 of the Sea Fisheries Act, 1973 (Act No. 58 of 1973)];~~ and”;

- (f) by the insertion after the definition of “internal waters” of the following definition:

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

- (g) by the substitution for the definition of “master” of the following definition:

“‘master’, in relation to any ship, ~~[submarine or other underwater vessel]~~ means any person (other than a pilot) having charge or command of such ship ~~[submarine or other underwater vessel];~~”;

- (h) by the substitution for paragraph (a) of the definition of “offshore installation” of the following paragraph:

“(a) any installation which is situated within the territorial waters or internal waters or in the open sea and which is used for the transfer of oil to or from a ship [to a point on land or from such point to a ship], and includes [an oil derrick so situated] any exploration or production platform so situated and used in prospecting for or the mining of oil or other substances;”;

- (i) by the substitution for the definition of “passage” of the following definition:

“‘passage’ means navigation through the territorial waters in a continuous and expeditious manner on a normal and customary route 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 a harbour, whether through internal waters or not, or a call at any such roadstead or offshore installation, and includes stopping and anchoring, in so far as such stopping [and] or such anchoring [are] is incidental to ordinary navigation or [are] is rendered necessary by vis major or distress or [are] is for the purpose of rendering assistance to persons, ships or aircraft in danger or distress;”;

- (j) by the substitution for the definition of “ship” of the following definition:

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“‘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;” 5

Substitution of section 2 of Act 2 of 1981.

2. The following section is hereby substituted for section 2 of the principal Act:

“Right of innocent passage. 2. Subject to the provisions of this Act, every ship [submarine and other underwater vessel (other than any foreign ship, submarine or other underwater vessel not used for commercial purposes)] shall enjoy the right of innocent passage through the territorial waters.” 10

Substitution of section 3 of Act 2 of 1981.

3. The following section is hereby substituted for section 3 of the principal Act: 15

“Certain vessels to show flag. 3. (1) Save as otherwise authorized by the Minister, the master of any foreign submarine or other foreign underwater [vessel] vehicle shall not cause it to navigate the territorial waters or internal waters otherwise than on the surface and [without showing] 20 with its flag being shown.

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

Substitution of section 4 of Act 2 of 1981.

4. The following section is hereby substituted for section 4 of the principal Act: 25

“Entry into and departure from internal waters. 4. (1) Subject to the provisions of this Act the master of any ship [foreign submarine or other foreign underwater vessel] shall not, except as prescribed by regulation, cause it to enter or leave internal waters other than a harbour or [port under the jurisdiction or control or management of the South African Railways and Harbours Administration] a fishing harbour. 30

(2) The master of [such ship, submarine or vessel] 35 a ship who contravenes the provisions of subsection (1) shall be guilty of an offence.”

Substitution of section 5 of Act 2 of 1981.

5. The following section is hereby substituted for section 5 of the principal Act:

“Immobilizing, laying-up, stopping or anchoring outside harbours or fishing harbours. 5. (1) Except with the permission of the Minister 40 and in accordance with any condition prescribed by regulation or imposed by the Minister 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. 45

(2) The Minister 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 Director-General in an amount determined by the Director-General for the recovery of any costs incurred by the Minister in enforcing any condition applicable to the immobilizing or laying-up of the ship, or in the exercise of his powers under this Act. 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 Minister in a particular case. 55 60

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

Amendment of section 6 of Act 2 of 1981.

6. Section 6 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(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 [with the permission of the Minister and within the areas and on the conditions prescribed by regulation] at a place agreed to by the Minister; or

(b) abandon a ship which is not in distress, a wreck, [or] a hulk or an object which may interfere with navigation.”

Substitution of section 8 of Act 2 of 1981.

7. The following section is hereby substituted for section 8 of the principal Act:

“Passage deemed to be not innocent. 8. [(1)] Notwithstanding the provisions of section 16, the passage of a ship which carries or has on board in the territorial waters

[(a) narcotic drugs; or

(b) cargo or any appliance or apparatus the use of which or persons who [in the opinion of the Minister] 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.

[(2) The master of any ship referred to in subsection (1) (a) shall be guilty of an offence.]”

Insertion of section 8A in Act 2 of 1981.

8. The following section is hereby inserted in the principal Act after section 8:

“Suppression of illicit traffic in drugs on board foreign ships in territorial waters. 8A. If the Minister on reasonable grounds suspects that the provisions of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act No. 41 of 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.”

Amendment of section 9 of Act 2 of 1981.

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

(a) by the substitution in paragraph (f) of subsection (1) for the expression “8 (1)” of the expression “8”;

(b) by the addition of the following subsections:

“(6) Notwithstanding the provisions of subsections (1) and (2) the Minister 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.

(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.”

Amendment of section 11 of Act 2 of 1981.

10. Section 11 of the principal Act is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) any offence under section 4 (2) [5 (2) or 8 (2)] or 5 (4), to a fine not exceeding R10 000 or to imprisonment for

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a period not exceeding two years or to both such fine and such imprisonment;”.

Substitution of section 16 of Act 2 of 1981.

11. The following section is hereby substituted for section 16 of the principal Act:

“Craft to which Act does not apply.

16. The provisions of this Act do not apply to— 5
- (a) ships [submarines or other underwater vessels] owned [and operated] or used by the Government of the Republic for non-commercial purposes; or
  - (b) any other ship [or vessel] or class of ship [or vessel] 10 exempted by the Minister by regulation from any provision of this Act in so far as it is so exempted.”.

Short title and commencement.

12. This Act shall be called the Marine Traffic Amendment Act, 1983, and shall come into operation on a date fixed by the 15 State President by proclamation in the *Gazette*.