

MERCHANT SHIPPING ACT 57 OF 1951

[ASSENTED TO 27 JUNE, 1951]
[DATE OF COMMENCEMENT: 1 JANUARY, 1960]
(Unless otherwise indicated)
(Afrikaans text signed by the Governor-General)

as amended by

Merchant Shipping Amendment Act 30 of 1959
Commonwealth Relations Act 69 of 1962
Merchant Shipping Amendment Act 40 of 1963
Merchant Shipping Amendment Act 13 of 1965
Unemployment Insurance Act 30 of 1966
Merchant Shipping Amendment Act 42 of 1969
Births, Marriages and Deaths Registration Amendment Act 58 of 1970
Merchant Shipping Amendment Act 24 of 1974
Merchant Shipping Amendment Act 5 of 1976
Merchant Shipping Amendment Act 70 of 1977
Merchant Shipping Amendment Act 62 of 1978
Merchant Shipping Amendment Act 3 of 1981
South African Transport Services Act 65 of 1981
Merchant Shipping Amendment Act 3 of 1982
Admiralty Jurisdiction Regulation Act 105 of 1983
Merchant Shipping Amendment Act 25 of 1985
Carriage of Goods by Sea Act 1 of 1986
Transport Advisory Council Act 58 of 1987
Merchant Shipping Amendment Act 3 of 1989
Population Registration Act Repeal Act 114 of 1991
Merchant Shipping Amendment Act 18 of 1992
Transport General Amendment Act 86 of 1992
Transport General Amendment Act 16 of 1995
General Law Amendment Act 49 of 1996
Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996
Wreck and Salvage Act 94 of 1996
Shipping General Amendment Act 23 of 1997
South African Maritime Safety Authority Act 5 of 1998
Shipping Laws Amendment Act 57 of 1998
Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002
Ship Registration Act 58 of 1998

OFFICE COPY

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GENERAL NOTE

- (a) In terms of s 2(2) of Act 5 of 1998 the word "Director-General", wherever it occurs, except in the definition of "Director-General" in s 2(1) and in ss 343 and 344, is substituted by the word "Authority".
- (b) In terms of s 2(2) of Act 5 of 1998 the word "Minister", wherever it occurs, except in the definition of "Minister" and "safety standard" in s 2(1) and in ss 3–6, 13, 18(1) and (2), 72A, 73(2), 74(1), 84(1), 102, 180(1), 218, 264(2), 266–8, 275–7, 282, 290, 291, 324, 325, 327, 336, 343, 344, 353, 356, 356*bis*, 356*ter* and 356*quat*, is substituted by the word "Authority".
- (c) In terms of item 24 (Sch2) of Act 58 of 1998 the expression "superior court", wherever it occurs, is substituted by the expression "High Court".

To provide for the control of merchant shipping and matters incidental thereto.

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- First Schedule: Laws repealed and amended by section *one*
- Second Schedule: International Convention for the Safety of Life at Sea, 1974
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PRELIMINARY

Repeal and amendment of laws

1. The laws mentioned in the First Schedule to this Act are hereby repealed or amended to the extent set out in the fourth column of that Schedule: Provided that until all the provisions of this Act have been brought into operation in terms of section *three hundred and fifty-eight*, any provision of any such law which corresponds to a provision of this Act which has not yet been so brought into operation shall, in so far as it is not inconsistent with any provision of this Act which has been so brought into operation, continue to apply in relation to the ships in respect of which the provisions of this Act which have been so brought into operation apply, and in relation to the owners, masters, seamen and apprentice-officers of such ships as if this section had not been enacted.

[S 1 amended by s 2, Act 30/1959]

Definitions and interpretation of certain references

2. (1) In this Act, unless the context indicates otherwise—

"**accident**", in relation to a vessel, includes—

- (a) the collapse or overturning of any lift, crane, davit, derrick, mobile powered access platform, access equipment, staging or bosun's chair or the failure of any load-bearing part thereof;
- (b) the explosion, collapse or bursting of any closed container, including a boiler or boiler tube, in which there is any gas (including air), liquid or any vapour at a pressure greater than atmospheric pressure;
- (c) any electrical short circuit or overload resulting in fire or explosion;
- (d) the sudden, uncontrolled release of flammable liquid or gas from any system, plant or pipeline;
- (e) the uncontrolled release or escape of any harmful substance;
- (f) either of the following occurrences in respect of any pipeline, valve or any piping system in a vessel—
 - (i) the bursting, explosion or collapse of a pipeline;
 - (ii) the accidental ignition of anything in a pipeline or of anything which, immediately before it ignited, was in a pipeline;
- (g) any contact of the human body with loose asbestos fibre;
- (h) the failure of any lashing-wire, chain or appliance;
- (i) any collapse or significant movement of cargo;
- (j) the malfunctioning of any hatch cover, hatch cover control wire or other mechanism;
- (k) any person falling overboard;
- (l) the parting of a tow-rope;

(m) the failure of bilge-pumping arrangements or life-saving or fire-fighting equipment to operate;

[Definition of "accident" inserted by s 1(a), Act 18/1992]

"air-cushion vehicle" means any craft of which the whole or a significant part of its weight can be supported, whether at rest or in motion, by a continuously generated cushion of air dependent for its effectiveness on the proximity of the surface over which the craft operates;

[Definition of "air-cushion vehicle" inserted by s 1(a), Act 16/1995]

"apprentice-officer" means an indentured apprentice to the sea service;

"Authority" means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998;

[Definition of "Authority" inserted by s 2(2), Act 5/1998]

"cadet" means an unindentured apprentice to the sea service;

"cargo ship safety construction certificate" means such a certificate, issued in conformity with the Safety Convention under subparagraph (a) of paragraph (1) or (2) of section 193, or deemed in accordance with the provisions of section 202(1)(b) to have been so issued;

[Definition of "cargo ship safety construction certificate" inserted by s 1(a), Act 13/1965 and substituted by s 1(a), Act 23/1997]

"cargo ship safety equipment certificate" means such a certificate, issued in conformity with the Safety Convention under subparagraph (b) of paragraph (1) or (2) of section 193, or deemed in accordance with the provisions of section 202(1)(b) to have been so issued;

[Definition of "cargo ship safety equipment certificate" inserted by s 1(a), Act 13/1965 and substituted by s 1(a), Act 23/1997]

"cargo ship safety radio certificate" means such a certificate, issued in conformity with the Safety Convention under subparagraph (b) of paragraph (3) or (4) of section 193, or deemed in accordance with the provisions of section 202(1)(b) to have been so issued;

[Definition of "cargo ship safety radio certificate" inserted by s 1(b), Act 23/1997]

"cargo ship safety radiotelegraphy certificate" . . .

[Definition of "cargo ship safety radiotelegraphy certificate" inserted by s 1(a), Act 13/1965 and deleted by s 1(c), Act 23/1997]

"cargo ship safety radiotelephony certificate" . . .

[Definition of "cargo ship safety radiotelephony certificate" inserted by s 1(a), Act 13/1965 and deleted by s 1(c), Act 23/1997]

"carrier" includes the owner of the charterer who enters into a contract of carriage with a shipper;

"clearance" includes any clearance or transire referred to in the Customs and Excise Act 91 of 1964;

[Definition of "clearance" amended by s 3(a), Act 30/1959 and substituted by s 1(a), Act 5/1976]

"coasting ship" means a ship employed in plying between ports in the same country, but does not include any fishing, sealing or whaling boat;

[Definition of "coasting ship" amended by s 3(b), Act 30/1959]

"collision regulations" means the regulations made under paragraph (b) of subsection (2) of section 356 to give effect to the relative provisions of the International Collision Regulations Convention and Annexures thereto, or such regulations as applied under subsection (3) of that section;

[Definition of "collision regulations" amended by s 1(a), Act 40/1963, and substituted by s 1(a), Act 3/1982]

"Commonwealth ship" . . .

[Definition of "Commonwealth ship" deleted by s 31(a), Act 69/1962]

"conditions of assignment" means such of the load line regulations as are made to give effect to the relative provisions of the Load Line Convention and Annexes thereto, or such regulations as applied under subsection (3) of section *three hundred and fifty-six*;

[Definition of "conditions of assignment" substituted by s 1(b), Act 13/1965]

"construction regulations" means the regulations made under paragraph (a) of subsection (2) of section *three hundred and fifty-six* to give effect to the relative provisions of the Safety Convention, or such regulations as applied under subsection (3) of the said section;

[Definition of "construction regulations" amended by s 3(c), Act 30/1959, and substituted by s 1(c), Act 13/1965]

"contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same;

"country to which the Load Line Convention applies" means a country in respect of which the Load Line Convention is for the time being in force, and includes any territory to which the said Convention applies in accordance with the relative Article thereof;

[Definition of "country to which the Load Line Convention applies" substituted by s 1(d), Act 13/1965, and s 1(d) , Act 23/1997]

"country to which the Safety Convention applies" means a country in respect of which the Safety Convention is for the time being in force;

[Definition of "country to which the Safety Convention applies" substituted by s 1(e), Act 13/1965, and s 1(d), Act 23/1997]

"crew" means all seamen on board a ship;

[Definition of "crew" inserted by s 1(b), Act 18/1992]

"crew accommodation" includes sleeping rooms, store rooms, galleys, mess rooms, sanitary accommodation, hospitals and recreation spaces provided for use by or for the benefit of seamen and apprentice-officers;

"dangerous goods" means goods which by reason of their nature, quantity or mode of stowage, are either singly or collectively liable to endanger the lives or health of persons on or near the ship or to imperil the ship, and includes all substances within the meaning of the expression 'explosives' as used in the Explosives Act 26 of 1956 and any other goods specified in the regulations as dangerous goods;

[Definition of "dangerous goods" amended by s 3(d), Act 30/1959 and substituted by s 1(e), Act 23/1997]

"dangerous space" means any enclosed or confined space in which it is reasonably foreseeable that the atmosphere may at some stage contain toxic or flammable gases or vapours or dangerous substances, or be deficient in oxygen, to the extent that it may endanger the life or health of any person entering that space;

[Definition of "dangerous space" inserted by s 1(c), Act 18/1992]

"deck line" means a mark on each side of a ship indicating the position of the uppermost complete deck, as defined by the load line regulations;

"Director-General" means the Director-General: Transport;

[Definition of "Director-General" inserted by s 1(a), Act 3/1981]

"Director" . . .

[Definition of "Director" deleted by s 3(e), Act 30/1959]

"dynamically supported craft" means any air-cushion vehicle, sidewall craft, hydrofoil boat, or other similar craft, used wholly or principally in navigation by water;

[Definition of "dynamically supported craft" inserted by s 1(b), Act 16/1995 and substituted by s 1(f), Act 23/1997]

"employee" means any person on board a vessel, including a member of the crew, who is employed by or working for an employer and receives or is entitled to receive any remuneration, or who works under the direction or supervision of an employer, or any other person who on board a vessel in any manner assists in the carrying on or the conducting of the business of an employer, except as provided otherwise by regulation;

[Definition of "employee" inserted by s 1(d), Act 18/1992]

"employer" means any person, including the owner or master of a vessel, who employs any person or provides work for him on a vessel and who remunerates that person or expressly or tacitly undertakes to remunerate him, except as provided otherwise by regulation;

[Definition of "employer" inserted by s 1(d), Act 18/1992]

"equipment" includes boats, tackle, pumps, apparel, furniture, life-saving appliances of every description, spars, masts, rigging and sails, fog signals, lights and signals of distress, medicines and medical and surgical stores and appliances, charts, radio apparatus, apparatus for preventing, detecting or extinguishing fires, buckets, compasses, axes, lanterns, loading and discharging gear and apparatus of all kinds, and all other stores or articles belonging to or to be used in connection with, or necessary for, the navigation and safety of a ship;

"exemption certificate" means such a certificate, issued in conformity with the Safety Convention under paragraph (c) of section 192, subparagraph (a) or (b) of paragraph (2) or subparagraph (a) of paragraph (4) of section 193, or deemed in accordance with the provisions of section 202(1)(a) or (b) to have been so issued;

[Definition of "exemption certificate" inserted by s 1(f), Act 13/1965 and substituted by s 1(g), Act 23/1997]

"fishing boat" means any ship engaged in sea fishing for financial gain or reward, but does not include any sealing boat or whaling boat;

[Definition of "fishing boat" amended by s 3(f), Act 30/1959 and substituted by s 1(g), Act 13/1965]

"foreign country" means a country which is not a treaty country;

[Definition of "foreign country" amended by s 31(b), Act 69/1962]

"foreign-going ship" means—

- (a) a ship plying between a port in one country and a port in another country; or
- (b) . . .

[Para (b) deleted by s 3(g), Act 30/1959]

- (c) . . .

[Para (c) deleted by s 3(g), Act 30/1959]

- (d) a whaling boat other than a shore-based whaling boat;

"foreign ship" means a ship other than a treaty ship;

[Definition of "foreign ship" amended by s 31(c), Act 69/1962]

"freight" includes passage money and hire;

"general safety certificate" . . .

[Definition of "general safety certificate" deleted by s 1(h), Act 13/1965]

"goods" includes all animals, matter or things, save that in Chapter VIII **"goods"** does not include animals or cargo which by a contract of carriage it is provided shall be carried on deck and is so carried;

"High Court" means any division of the High Court of the Republic;

[Definition of "High Court" inserted by item 1(a) (Sch 2), Act 58/1998]

"hazard" means a source of or exposure to danger;

[Definition of "hazard" inserted by s 1(h), Act 23/1997]

"hydrofoil boat" means any craft which is supported above the surface of water in normal operating condition by hydrodynamic forces generated on foils;

[Definition of "hydrofoil boat" inserted by s 1(c), Act 16/1995]

"International Collision Regulations Convention" means the Convention on the International Regulations for Preventing Collisions at Sea done at London on 20 October 1972, as modified by any amendment made under Article VI of that Convention that has entered into force for the Republic;

[Definition of "International Collision Regulations" substituted by s 1(b), Act 40/1963, substituted by definition of "International Collision Regulations Convention" by s 1(b), Act 3/1982 and substituted by s 1(i), Act 23/1997]

"international load line certificate" means such a certificate, issued in conformity with the Load Line Convention under paragraph (i) of section 207, or deemed in accordance with the provisions of section 215(1) to have been so issued, and includes an international load line exemption certificate;

[Definition of "international load line certificate" inserted by s 1(j), Act 13/1965 and substituted by s 1(a), Act 42/1969 and by s 1(j), Act 23/1997]

"international load line exemption certificate" means such a certificate issued in conformity with the Load Line Convention under section 204(1)(a);

[Definition of "international load line exemption certificate" inserted by s 1(b), Act 42/1969 and substituted by s 1(j), Act 23/1997]

"international load line ship" means a load line ship of 24 metres or more in length, which is engaged on an international voyage;

[Definition of "international load line ship" substituted by s 1(c), Act 42/1969 and by s 1(b), Act 5/1976]

"international voyage", when used with reference to ships registered in a country to which the Load Line Convention applies, means a voyage from a port in one country to a port in another country, either of those countries being a country to which the Load Line Convention applies, and when used with reference to ships registered in a country to which the Safety Convention applies, means a voyage from a port in one country to a port in another country either of those countries being a country to which the Safety Convention applies; and "short international voyage" means an international voyage in the course of which a ship is not more than two hundred nautical miles from a port in which the passengers and crew could be placed in safety, and which does not exceed six hundred nautical miles in length between the last port of call in the country in which the voyage begins and the final port of destination; and in the application of this definition—

- (a) no account shall be taken of any deviation by a ship from her intended voyage due solely to stress of weather or any other circumstances which neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled; and

- (b) every colony, overseas territory, protectorate, territory for whose international relations a State that has accepted the Safety Convention is responsible, territory for which the United Nations are the administering authority, and territory administered by a State in whose favour a mandate thereover was issued by the Council of the former League of Nations, shall be deemed to be a separate country;

"licence", in relation to a ship, means a licence contemplated in section 68; and "licensed" shall be construed accordingly;

[Definition of "licence" inserted by item 1(b) (Sch 2), Act 58/1998]

"life-saving equipment regulations" means the regulations made under paragraph (a) of subsection (2) of section *three hundred and fifty-six* to give effect to the relative provisions of the Safety Convention, or such regulations as applied under subsection (3) of the said section;

[Definition of "life-saving equipment regulations" amended by s 3(h), Act 30/1959 and substituted by s 1(j), Act 13/1965]

"load lines" means the marks indicating the several maximum depths to which a ship is entitled to be loaded in various circumstances prescribed by the load line regulations;

"load line certificate" means an international load line certificate or a local load line certificate;

[Definition of "load line certificate" substituted by s 1(k), Act 13/1965]

"Load Line Convention" means the International Convention on Load Lines done at London on 5 April 1966, as modified by any amendment made under Article 29 of that Convention that has entered into force for the Republic;

[Definition of "Load Line Convention" substituted by s 1(c), Act 40/1963 and by s 1(k), Act 23/1997]

"load line exemption certificate" means an international load line exemption certificate or a local load line exemption certificate;

[Definition of "load line exemption certificate" inserted by s 1(d), Act 42/1969]

"load line convention certificate" . . .

[Definition of "load line convention certificate" deleted by s 1(l), Act 13/1965]

"load line regulations" means the regulations made under paragraph (c) of subsection (2) of section *three hundred and fifty-six* to give effect to the relative provisions of the Load Line Convention and Annexes thereto, or such regulations as applied under subsection (3) of the said section;

[Definition of "load line regulations" substituted by s 1(m), Act 13/1965]

"load line ship" means any ship of 14 metres or more in length, which is not solely engaged in fishing and is not a pleasure yacht;

[Definition of "load line ship" substituted by s 1(e), Act 42/1969 and by s 1(c), Act 5/1976]

"local general safety certificate" means a certificate issued under section 194(1)(a) or (b)(ii);

[Definition of "local general safety certificate" substituted by s 1(f), Act 42/1969]

"local load line certificate" means a certificate issued under paragraph 2 of section 207 and includes a local load line exemption certificate;

[Definition of "local load line certificate" substituted by s 1(g), Act 42/1969]

"local load line exemption certificate" means a certificate issued under section 204(1)(b);

[Definition of "local load line exemption certificate" inserted by s 1(h), Act 42/1969]

"local load line ship" means a load line ship—

- (a) engaged on an international voyage and of less than 24 metres in length; or
- (b) not engaged on an international voyage;

[Definition of "local load line ship" substituted by s 1(i), Act 42/1969 and by s 1(d), Act 5/1976]

"local safety certificate" means a local general safety certificate or a local safety exemption certificate;

[Definition of "local safety certificate" substituted by s 1(n), Act 13/1965]

"local safety exemption certificate" means a certificate issued under subparagraph (i) of paragraph (b) of subsection (1) of section *one hundred and ninety-four*;

"machinery" means any appliance or combination of appliances assembled, arranged or connected and which is used or intended to be used for converting any form of energy to perform work, or which is used or intended to be used, whether incidental thereto or not, for generating, receiving, storing, containing, transforming, transmitting, transferring or controlling any form of energy;

[Definition of "machinery" inserted by s 1(e), Act 18/1992]

"marine notice" means a notice described as such and issued by the Authority;

[Definition of "marine notice" inserted by s 1(e), Act 18/1992 and amended by s 2(2), Act 5/1998]

"master" means, in relation to a ship, any person (other than a pilot) having charge or command of such ship;

"medical practitioner" means—

- (a) at a place in the Republic, a person registered as such under the Medical, Dental and Supplementary Health Service Professions Act 56 of 1974; or
- (b) at a place outside the Republic, a person who is entitled to practise as such under the law in force in that place;

[Definition of "medical practitioner" substituted by s 1(e), Act 5/1976]

"Minister" means the Minister of Transport;

[Definition of "Minister" amended by s 3(i), Act 30/1959 and substituted by s 1(b), Act 3/1981 and by s 1(f), Act 18/1992]

"nautical mile" means a distance of 1 852 metres; and **"mile"** has a corresponding meaning;

[Definition of "nautical mile" inserted by s 1(c), Act 3/1981 and substituted by s 1(i), Act 23/1997]

"near relative" in relation to a seaman means the wife or parent or a grandparent, child, grandchild, brother or sister of the seaman or the guardian or the person having the custody of a child of the seaman;

"occupational safety" means the safety of any employee working on or in a ship and whilst boarding or leaving the ship;

[Definition of "occupational safety" inserted by s 1(g), Act 18/1992 and substituted by s 1(m), Act 23/1997]

"officer of customs" means an officer as that expression is defined by section 1 of the Customs and Excise Act 91 of 1964;

[Definition of "officer of customs" amended by s 3(j), Act 30/1959 and substituted by s 1(f), Act 5/1976]

"owner" means any person to whom a ship or a share in a ship belongs, except as provided otherwise by regulation;

[Definition of "owner" substituted by item 1(c) (Sch 2), Act 58/1998]

"part of the Commonwealth" . . .

[Definition of "part of the Commonwealth" deleted by s 31(d), Act 69/1962]

"passenger" means any person carried in a ship, except—

- (a) a person employed or engaged in any capacity on board the ship on the business of the ship;
- (b) a person on board the ship either in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons or by reason of any circumstances that neither the master nor the owner nor the charterer (if any) could have prevented; and
- (c) a child under one year of age;

"passenger ship" means a ship which carries more than twelve passengers;

"passenger ship safety certificate" means such a certificate, issued in conformity with the Safety Convention under paragraph (a) or (c) of section 192, or deemed in accordance with the provisions of section 202(1)(a) to have been so issued;

[Definition of "passenger ship safety certificate" inserted by s 1(o), Act 13/1965 and substituted by s 1(n), Act 23/1997]

"passenger ship's exemption certificate" . . .

[Definition of "passenger ship's exemption certificate" deleted by s 1(p), Act 13/1965]

"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 of which Transnet Limited has become the owner in terms of section 3 of the Legal Succession to the South African Transport Services Act 9 of 1989, or a fishing harbour as defined in section 1 of the Sea Fishery Act 12 of 1988, 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;

[Definition of "port" substituted by s 1(a), Act 25/1985. Para (b) substituted by s 1(h), Act 18/1992]

"port of registry", in relation to a ship, means its home port as selected or changed in accordance with the Ship Registration Act, 1998;

[Definition of "port of registry" substituted by item 1(d) (Sch 2), Act 58/1998]

"prescribed" means prescribed by this Act;

"principal officer" means the officer in charge of the office of the Authority at a port;

[Definition of "principal officer" inserted by s 1(a), Act 24/1974 and amended by s 2(2), Act 5/1998]

"proper officer" means the officer designated by the Authority to be the proper officer at the place or in respect of the area and in respect of the matter to which reference is made in the provision of this Act in which the expression occurs; or if no such designation has been made—

- (a) at a place in the Republic, a principal officer or, where there is no principal officer, the Controller of Customs and Excise; or

[Para (a) substituted by s 31(e), Act 69/1962 and by s 1(b), Act 24/1974]

- (b) at a place outside the Republic but within a treaty country, in the following order:

- (i) a career consular representative of the Republic; or

[Subpara (i) substituted by s 1(j), Act 42/1969]

- (ii) a diplomatic representative of the Republic; or

- (iii) the person who, in terms of the law in force in the treaty country, is entrusted with the function or charged with the duty to which reference is made in the provision of this Act in which the expression occurs; or

- (iv) a consular representative of a treaty country (other than the Republic); or

- (v) a diplomatic representative of a treaty country (other than the Republic); or

[Para (b) substituted by s 31(e), Act 69/1962]

- (c) at a place outside any treaty country, the person, and in the order, indicated, in subparagraphs (i), (ii), (iv) and (v) of paragraph (b); or

[Para (c) substituted by s 31(e), Act 69/1962]

- (d) at a place outside the Republic, where there is no proper officer as defined in paragraph (b) or (c), any master of a South African ship who is specially authorized in writing to act as proper officer by the Authority, but only in relation to the functions and duties in respect of which, and subject to the conditions subject to which, he has been so authorized to act;

[Definition of "proper officer" amended by s 1(b), Act 24/1974. Para (d) added by s 31(e), Act 69/1962]

"proper return port", in relation to a master, seaman or apprentice-officer discharged or left behind, means—

- (a) the port at which the master, seaman or apprentice-officer was engaged; or

- (b) a port in a country in which the master, seaman or apprentice-officer is domiciled; or

- (c) a port agreed to as such by the master, seaman or apprentice-officer,

as decided by the proper officer;

"Protocol of 1978 relating to the Safety Convention" means the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974 done at London on 17 February 1978, the English text of which is set forth in the Second Schedule, as modified by any amendment made under Article VIII of the International Convention for the Safety of Life at Sea, 1974, as incorporated in that Protocol by Article II of that Protocol, that has entered into force for the Republic;

[Definition of "Protocol of 1978 relating to the Safety Convention" inserted by s 1(o), Act 23/1997]

"qualified local safety certificate" . . .

[Definition of "qualified local safety certificate" deleted by s 1(q), Act 13/1965]

"qualified safety certificate" . . .

[Definition of "qualified safety certificate" deleted by s 1(r), Act 13/1965]

"qualified safety equipment certificate" . . .

[Definition of "qualified safety equipment certificate" deleted by s 1(s), Act 13/1965]

"qualified safety radio exemption certificate" . . .

[Definition of "qualified safety radio exemption certificate" deleted by s 1(t), Act 13/1965]

"qualified safety radiotelegraphy certificate" . . .

[Definition of "qualified safety radiotelegraphy certificate" deleted by s 1(u), Act 13/1965]

"qualified safety radiotelephony certificate" . . .

[Definition of "qualified safety radiotelephony certificate" deleted by s 1(v), Act 13/1965]

"radio" includes radiotelegraphy and radiotelephony;

"radio regulations" means the regulations made under paragraph (a) of subsection (2) of section *three hundred and fifty-six* to give effect to the relative provisions of the Safety Convention, or such regulations as applied under subsection (3) of the said section;

[Definition of "radio regulations" substituted by s 1(w), Act 13/1965]

"recognized non-South African", used in relation to a safety convention certificate or an international load line certificate, signifies that the certificate has been issued by or under the authority of the Government of a country other than the Republic to which the Safety Convention or the Load Line Convention, as the case may be, applies, and that the certificate complies with the regulations made under paragraph (a) of subsection (2) of section *three hundred and fifty-six* to give effect to the relative provisions of the Safety Convention or with those made under paragraph (c) of that subsection to give effect to the relative provisions of the Load Line Convention, respectively;

[Definition of "recognized non-South African" amended by s 1(d), Act 40/1963 and substituted by s 1(x), Act 13/1965]

"registered", in relation to a ship (except with reference to the law of another country), means registered or deemed to be or regarded as registered under the Ship Registration Act, 1998;

[Definition of "registered" inserted by item 1(e) (Sch 2), Act 58/1998]

"register tons" and **"register tonnage"** mean, in relation to a South African ship, the tonnage of the ship, either gross or net as the case may be, recorded in the register mentioned in section 33 of the Ship Registration Act, 1998, and in the case of any other ship, the tonnage accepted or determined by the Minister, Authority or proper officer;

[Definition of "register tons" and "register tonnage" amended by s 2(2), Act 5/1998, and substituted by item 1(f) (Sch 2), Act 58/1998]

"regulation" means a regulation made under this Act;

"safe" means free from any threat which may cause bodily injury, illness or death, and free from any hazard as far as practicable;

[Definition of "safe" inserted by s 1(i), Act 18/1992 and substituted by s 1(p), Act 3/1997]

"safety appointee" means any person appointed in terms of section 355A(1)(a);

[Definition of "safety appointee" inserted by s 1(i), Act 18/1992]

"safety committee" means a committee appointed in terms of section 355A(1)(a);

[Definition of "safety committee" inserted by s 1(i), Act 18/1992]

"Safety Convention" means the International Convention for the Safety of Life at Sea done at London on 1 November 1974, the English text of which is set forth in the Second Schedule as modified by any amendment made under Article VIII of that Convention that has entered into force for the Republic and, after the date on which the Protocol of 1978 relating to the Safety Convention enters into force for the Republic, as also modified by that Protocol;

[Definition of "Safety Convention" substituted by s 1(e), Act 40/1963 and by s 1(q), Act 23/1997]

"safety convention certificate" means a passenger ship safety certificate, a cargo ship safety construction certificate, a cargo ship safety equipment certificate, a cargo ship safety radio certificate or an exemption certificate;

[Definition of "safety convention certificate" substituted by s 1(y), Act 13/1965 and by s 1(r), Act 23/1997]

"safety equipment certificate" . . .

[Definition of "safety equipment certificate" deleted by s 1(z), Act 13/1965]

"safety equipment exemption certificate" . . .

[Definition of "safety equipment exemption certificate" deleted by s 1(aa), Act 13/1965]

"safety officer" means any person appointed in terms of section 355A(1)(a);

[Definition of "safety officer" inserted by s 1(j), Act 18/1992]

"safety radio exemption certificate" . . .

[Definition of "safety radio exemption certificate" deleted by s 1(bb), Act 13/1965]

"safety radiotelegraphy certificate" . . .

[Definition of "safety radiotelegraphy certificate" deleted by s 1(cc), Act 13/1965]

"safety radiotelephony certificate" . . .

[Definition of "safety radiotelephony certificate" deleted by s 1(dd), Act 13/1965]

"safety representative" means any person elected in terms of section 355A(1)(b);

[Definition of "safety representative" inserted by s 1(j), Act 18/1992]

"safety standard" means any standard, irrespective of whether or not it has the force of law, which, if applied for the purposes of this Act, will in the opinion of the Minister promote the attainment of an object of this Act;

[Definition of "safety standard" inserted by s 1(j), Act 18/1992]

"savings bank" means the Post Office Savings Bank, or a bank registered under the Banks Act 94 of 1990, or, in respect of the allotment of premiums, a person registered or deemed to be registered as an insurer under the Insurance Act 27 of 1943, or any other body designated by the Authority;

[Definition of "savings bank" substituted by s 1(g), Act 5/1976, by s 1(k), Act 18/1992 and by s 1(s), Act 23/1997]

"sealing boat" means any ship exclusively employed in seal-catching;

[Definition of "sealing boat" amended by s 3 (k), Act 30/1959]

"seaman" means any person (except a master, pilot or apprentice-officer) employed or engaged in any capacity as a member of the crew of a ship;

"Secretary" . . .

[Definition of "Secretary" inserted by s 3(l), Act 30/1959, and deleted by s 1(d), Act 3/1981]

"serious injury" includes—

- (a) a fracture of the skull, spine or pelvis;
- (b) a fracture of any bone other than a bone in the wrist, hand, ankle or foot, or a single rib;
- (c) the amputation of a hand or foot;
- (d) the loss of sight of an eye;
- (e) frost-bite of any bodily extremity which may lead to permanent disfigurement; or
- (f) any impairment of a person's physical condition owing to—
 - (i) the use of machinery;
 - (ii) an electrical shock;
 - (iii) the exposure to hazardous working conditions or hazardous substances or articles; or
 - (iv) the exposure to natural or artificial environmental extremes,

on board a vessel which results in that person being admitted to hospital as a patient for more than 24 consecutive hours, or would have resulted in his being so admitted had he been within reach of a hospital;

[Definition of "serious injury" inserted by s 1(i), Act 18/1992]

"ship" means any kind of vessel used in navigation by water, however propelled or moved, and includes—

- (a) a barge, lighter or other floating vessel;
- (b) a structure that is able to float or be floated and is able to move or be moved as an entity from one place to another; and
- (c) a dynamically supported craft;

and **"vessel"** has a corresponding meaning;

[Definition of "ship" substituted by s 1(c), Act 25/1985 and by s 1(i), Act 23/1997]

"ship's officer" means a navigating officer or engineer officer, whether certificated or uncertificated, employed as such on board a ship, but does not include a master; and any reference to a ship's officer shall, in its application to a ship in which a mate, boatswain, marine engineman or assistant marine engineman is employed, be construed as including a reference to a mate, boatswain, marine engineman or assistant marine engineman;

"shore-based whaling boat" means a whaling boat which delivers the whole of its catch to be processed in a factory established ashore in the Republic;

"side wall craft" means any air-cushion vehicle of which the walls extending along the sides are permanently immersed hard structures;

[Definition of "side wall craft" inserted by s 1(d), Act 16/1995]

"short voyage safety certificate" . . .

[Definition of "short voyage safety certificate" deleted by s 1(ee), Act 13/1965]

"small vessel" means a vessel of less than twenty-five gross tons and of more than three metres in length;

[Definition of "small vessel" inserted by s 1(e), Act 3/1981]

"South African ship" means a ship registered in the Republic;

[Definition of "South African ship" substituted by item 1(g) (Sch 2), Act 58/1998]

"special load line certificate" means a certificate issued under subsection (1) of section *two hundred and seventeen*;

"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;

[Definition of "sport or recreation" inserted by s 1(b), Act 25/1985]

"standard" means—

- (a) any provision occurring in a specification, compulsory specification, code of practice or standard method within the meaning of the Standards Act 29 of 1993; or

[Para (a) substituted by s 1(v), Act. 23/1997]

- (b) any provision occurring in any specification, code or any other directive having standardization as its aim and issued by an institution or organization inside or outside the Republic which, whether generally or with respect to any particular article or matter and whether internationally or in any particular country or territory, seeks to promote standardization;

[Definition of "standard" inserted by s 1(m), Act 18/1992]

"STCW Convention" means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers done at London on 7 July 1978, as modified by any amendment made under Article XII of that Convention that has entered into force for the Republic;

[Definition of "STCW Convention" inserted by s 1(u), Act 23/1997 and substituted by s 1, Act 57/1998]

"superior court" . . .

[Definition of "superior court" substituted by s 1(h), Act 5/1976, and deleted by item 1(h) (Sch 2), Act 58/1998]

"surveyor" means any person recognized or appointed in terms of section 4(b);

[Definition of "surveyor" substituted by s 1(k), Act 42/1969, and substituted by item 1(i) (Sch 2), Act 58/1998]

"this Act" includes any proclamation, notice, rule or regulation issued or made thereunder;

"timber cargo regulations" means the regulations made under section 356(2)(a) to give effect to the relative provisions of the Safety Convention, or such regulations as applied under subsection (3) of section 356;

[Definition of "timber cargo regulations" substituted by s 1(ff), Act 13/1965, and by s 1(w), Act 23/1997]

"Tonnage Convention" means the International Convention on Tonnage Measurement of Ships done at London on 23 June 1969, as modified by any amendment made under Article 18 of that Convention that has entered into force for the Republic;

[Definition of "Tonnage Convention" inserted by s 1(d), Act 25/1985, and substituted by s 1(x), Act 23/1997]

"treaty country", in relation to any provision of this Act, means the Republic and any country, including any colony, protectorate or territory subject to the authority or under suzerainty of such country or any territory over which a mandate or trusteeship is exercised

by such country, which is a party to any bilateral treaty or agreement entered into by the Republic in connection with any matter dealt with in such provision;

[Definition of "treaty country" inserted by s 31(f), Act 69/1962]

"treaty ship" means a ship registered at any place in a treaty country under the relative laws in force at that place or any ship which by the law of a treaty country is recognized as a ship belonging to that treaty country;

[Definition of "treaty ship" inserted by s 31(f), Act 69/1962]

"unseaworthy", used in relation to a vessel, means that she—

- (a) is not in a fit state as to the condition of her hull, equipment or machinery, the stowage of her cargo or ballast, or the number or qualifications of her master or crew, or in any other respect, to encounter the ordinary perils of the voyage upon which she is engaged or is about to enter; or
- (b) does not comply with the conditions of assignment to the extent set forth in paragraph (c) of section *two hundred and seven*; or
- (c) is loaded beyond the limits allowed—
 - (i) by a load line certificate issued in the Republic under this Act; or
 - (ii) if she is a load line ship, registered in a country in which the Load Line Convention applies, by a recognized non-South African international load line certificate; or

[Subpara (ii) amended by s 1(f), Act 40/1963, and substituted by s 1(gg), Act 13/1965]

- (iii) by a load line certificate to which a notice issued under section *two hundred and eighteen* applies:

[Subpara (iii) amended by s 1(f), Act 40/1963]

Provided that a safety convention ship not registered in the Republic, in respect of which a recognized non-South African safety convention certificate is produced, shall not be deemed unseaworthy, as regards the condition of her hull, equipment or machinery, unless it appears, on the report of a surveyor, that she cannot proceed to sea without danger to human life owing to the fact that the actual condition of the hull, equipment or machinery does not correspond substantially with the particulars stated in the certificate;

[Definition of "unseaworthy" amended by s 1(f), Act 40/1963]

"user", in relation to machinery, means any person who uses machinery on a vessel for his own benefit;

[Definition of "user" inserted by s 1(a), Act 18/1992]

"vessel" . . .

[Definition of "vessel" substituted by s 1(f), Act 3/1981, and by s 1(e), Act 16/1995, and deleted by s 1(y), Act 23/1997]

"wages" includes any emoluments;

"whaling boat" means any ship engaged exclusively in whale-catching, or on which any processing takes place of the bodies or any portion of the bodies of the whales caught by other whaling boats;

"workplace" means any place on a vessel where an employee performs work in the course of his employment;

[Definition of "workplace" inserted by s 1(o), Act 18/1992]

"wreck" includes flotsam, jetsam, lagan and derelict found in or on the shores of the sea or of any tidal waters of the Republic, any portion of a ship or aircraft lost, abandoned, stranded or in distress, any portion of the cargo, stores or equipment of such ship or aircraft and any portion of the personal property on board such ship or aircraft when it was lost, abandoned, stranded or in distress and belonged to any person who was on board that ship or aircraft at that time;

"year" means the calendar year, but for the purpose of the inspection of vessels required by this Act it means twelve calendar months from the date of the certificate of inspection or survey.

(2) . . .

[Subs (2) deleted by s 31(g), Act 69/1962]

(3) Whenever in this Act reference is made to—

- (a) an act or omission by or a duty resting upon or a fault committed by a vessel; or
- (b) damage or loss suffered by a vessel; or
- (c) a liability resting upon a vessel,

such reference shall, unless the context indicates otherwise, be construed as a reference to—

- (i) an act or omission by or a duty resting upon or a fault committed by the person responsible for the navigation of the vessel in connection with the navigation thereof; or
- (ii) damage or loss suffered by the owner or the person having an interest in the vessel or her cargo or freight, in connection with the vessel or her cargo or freight; or
- (iii) a liability resting upon the person in charge of the vessel or upon the person who in law is answerable for the conduct of the person in charge of the vessel, in connection with such conduct,

respectively.

(4) (a) In this Act references to a ship built or constructed before or after any date shall be construed as references to a ship the keel of which has been laid or which is at a similar stage of construction before or after that date, as the case may be.

(b) In paragraph (a) **"similar stage of construction"** means the stage at which—

- (i) construction identifiable with the ship has begun; and
- (ii) assembly of the ship has commenced and comprises at least 50 tons or one per cent of the estimated mass of all structural material, whichever is less.

[Subs (4) substituted by s 1(z), Act 23/1997]

(5) Any reference in this Act to an entry of an occurrence or other fact in the official log-book of a ship shall, in the application of the provision in which the reference occurs to a ship for which no official log-book is kept, be construed as a reference to a record of such occurrence or fact made otherwise than in an official log-book.

(6) Any reference in this Act to any order or entry made or document issued under any provision of this Act shall, unless otherwise indicated, be construed as including a reference to an order or entry made or document issued under the corresponding provision of any law repealed by section *one*.

Application of Act

3. (1) . . .

[Subs (1) amended by s 32(a), Act 69/1962, with effect from 1 January 1960, substituted by s 2(a), Act 18/1992, and deleted by s 1, Act 49/1996]

(2) This Act and any amendment thereof shall apply to Marion Island and Prince Edward Island: Provided that in its application voyages between ports in the Republic and ports in those islands shall be deemed to be voyages between ports in the Republic and ports outside the Republic.

[Subs (2) amended by s 32(b), Act 69/1962]

(3) This Act shall bind the State: Provided that the Minister may by notice direct that sections 102 to 109, inclusive, 113, 120 to 124, inclusive, 133, 134, 145, 188 and 323 shall not apply in respect of the master, seamen or apprentice-officers of any ship named in the notice and belonging to the Government of the Republic or to Transnet Limited whose conditions of service are governed by laws other than this Act or statutory regulations other than regulations made under this Act.

[Subs (3) amended by s 2(a), Act 40/1963, and substituted by s 2(b), Act 18/1992]

(4) Unless otherwise indicated, those provisions of this Act which apply to vessels which are registered or licensed in the Republic or which in terms of this Act are required to be so licensed shall so apply wherever such vessels may be.

[Subs (4) substituted by item 2(a) (Sch 2), Act 58/1998]

(5) Unless otherwise indicated, those provisions of this Act which apply to vessels other than those referred to in subsection (4) shall so apply only while such vessels are within the Republic or the territorial waters thereof.

(6) The provisions of this Act shall not apply to ships belonging to the defence forces of the Republic or of any other country.

[Subs (6) substituted by s 2, Act 13/1965]

(7) Except as provided otherwise by regulation, the provisions of this Act shall apply to any vessel or ship contemplated in section 68(3)(b) as if such vessel or ship were licensed in terms of this Act.

[Subs (7) substituted by s 2, Act 25/1985, and item 2(b) (Sch 2), Act 58/1998]

(8) The Minister may by notice in the *Gazette* declare that any of the provisions of this Act which are by that notice specified, subject to the exemptions, modifications and restrictions so specified, and which do not by virtue of the other provisions of this Act apply to a particular ship or to ships of a particular class, category or tonnage, shall apply to that ship or to ships of that class, category or tonnage: Provided that provisions which in terms of this Act apply only to South African ships shall not by any such notice be applied also to ships not registered in the Republic and vice versa.

[Subs (8) amended by s 4, Act 30/1959]

(9) The Minister may by notice in the *Gazette* declare that any of the provisions of this Act which are by that notice specified, subject to the exemptions, modifications and restrictions so specified, shall apply to any dams or other inland waters so specified.

[Subs (9) amended by s 4, Act 30/1959]

(10) If it has been made to appear to the Minister that the Government of any country other than the Republic is desirous that any of the provisions of this Act, which do not apply to the ships of that country should so apply, and there are no special provisions in this Act for that application, the Minister may by notice in the *Gazette* declare that such of those provisions as are by that notice specified (subject to the limitations, if any, contained therein) shall apply to the ships of that country and to the owners, masters, seamen and apprentice-officers of those ships, when not locally within the jurisdiction of the government of that country, in the same manner in all respects as if those ships were ships registered in the Republic; and thereupon the provisions so specified shall, subject to such limitations, if any, so apply.

[Subs (10) amended by s 4, Act 30/1959]

(11) If the Minister is satisfied—

- (a) that ships registered in any country other than the Republic are required by the law in force in that country to comply with any provisions which are substantially the same as, or equally effective with, any of the provisions of this Act which apply to such ships while they are within the Republic or the territorial waters thereof; and
- (b) that that country has made or has undertaken to make provision for the exemption of South African ships while they are within that country or the territorial waters thereof from the corresponding requirements of the law of that country,

he may by notice in the *Gazette* declare that the said provisions of this Act shall not apply to any ship of that country, while she is within the Republic or its territorial waters, if it is proved that the ship complies with the corresponding provisions of the law in force in that country; and thereafter upon such proof being furnished, the said provisions of this Act shall not apply to such ship.

[Subs (11) amended by s 4, Act 30/1959, and substituted by s 2(b), Act 40/1963]

(12) Unless otherwise indicated, only the provisions of sections 9(5), 223, 259, 264, 313, 343ter, 355A, 356 and 356ter, read with section 2, shall apply to—

- (a) every owner and master of any vessel, and every user, employer and employee;

[Para (a) substituted by s 2, Act 57/1998]

- (b) all crew on board a vessel who have entered into a contract of employment with the master or with the owner or operator of such vessel, or any person who in the case of a vessel of less than 100 gross register tons can be regarded as crew on board such vessel;
- (c) every other person on board a vessel in the execution of his duties, or working on the exterior shell or appurtenances of a vessel, including the equipment used by such person, whether or not the vessel is afloat;

[Para (c) substituted by s 2, Act 23/1997]

- (d) every working gear, lifting gear, anchor or cable, any machinery, every gangway or accommodation ladder, any equipment or every appurtenance in or on a vessel which forms a part of the construction or equipment of such vessel, including any machinery

or equipment brought on board a vessel and which does not form part of the equipment of such vessel.

[Para (d) substituted by s 2, Act 23/1997]

[Subs (12) added by s 2(c), Act 18/1992]

(13) The provisions referred to in subsection (12) shall not apply to a vessel while being constructed or dismantled.

[Subs (13) added by s 2(c), Act 18/1992]

CHAPTER I ADMINISTRATION

Powers of Authority

4. The Authority may—

- (a) appoint such officers as it considers necessary for the administration of this Act;
- (b) recognize or appoint as a ship surveyor, engineer surveyor or radio or other surveyor any qualified person whom it deems fit to act as such for the purposes of this Act;
- (c) subject to such conditions as may be determined by it, and with the concurrence of the Minister, exempt any person from any of or all the provisions of the regulations made under section 356.

[S 4 amended by s 2, Act 42/1969, and s 2, Act 5/1976, and substituted by item 3 (Sch 2), Act 58/1998]

Authority responsible for administration of Act

5. (1) The Authority shall be responsible for the administration of this Act, and shall have the control of all matters incidental thereto.

(2) The Authority shall, subject to the provisions of this Act or any other law, have such powers and perform such duties as are assigned to it by the Minister.

(3) All powers conferred and all duties imposed upon the Authority may be exercised or performed by the Authority, or by a person or organization under a delegation from or under the control or direction of the Authority.

[Subs (3) substituted by s 3, Act 25/1985, and by s 3, Act 23/1997]

[S 5 substituted by s 5, Act 30/1959, and by s 2(2), Act 5/1998]

National Marine Advisory Council, National Advisory Council for the Welfare of Merchant Seamen, port welfare committees and ad hoc advisory committees

6. (1) . . .

[Subs (1) substituted by s 3(a), Act 5/1976, and deleted by s 15(a), Act 58/1987]

(2) . . .

[Subs (2) deleted by s 6(a), Act 30/1959]

(3) . . .

[Subs (3) amended by s 6(b), Act 30/1959, and deleted by s 15(a), Act 58/1987]

(4) . . .

[Subs (4) substituted by s 3(b), Act 5/1976, and deleted by s 15(a), Act 58/1987]

(5) . . .

[Subs (5) deleted by s 6(c), Act 30/1959]

(6) . . .

[Subs (6) amended by s 3, Act 40/1963, and deleted by s 1(a), Act 86/1992]

(7) The Minister may from time to time appoint a committee for the purpose of advising him in regard to any particular matter dealt with by this Act and referred to it.

(8) The members of every committee referred to in subsection (7) shall be appointed by the Minister in accordance with the regulations, and the said councils and committees shall perform their functions in accordance with the regulations.

[Subs (8) amended by s 6(d), Act 30/1959, and by s 15(b), Act 58/1987, and substituted by s 1(b), Act 86/1992]

(9) There shall be paid to members of any committee appointed under subsection (7) such allowances towards subsistence and transport as may be prescribed by the regulations made under this Act, or, if they are members of the public service, such allowances towards subsistence and transport as are prescribed by or under the laws governing the public service.

[Subs (9) amended by s 6(e), Act 30/1959, and by s 15(c), Act 58/1987, and substituted by s 1(b), Act 86/1992]

(10) . . .

[Subs (10) added by s 6(f), Act 30/1959, and deleted by s 1(c), Act 86/1992]

Survey of ship to ascertain whether she complies with the Act

7. Subject to the provisions of this Act, a surveyor may inspect any South African ship wherever she may be or any ship not registered in the Republic while she is within the Republic or the territorial waters of the Republic for the purpose of ascertaining whether she complies with the provisions of this Act.

Duty of proper officer to ensure compliance with this Act

8. If a proper officer has reason to suspect that the provisions of this Act are not being or have not been complied with in respect of any ship within the Republic or the territorial waters of the Republic, which is not registered in the Republic, or in respect of any South African ship wherever she may be, he shall take such steps as in his opinion are necessary to ensure compliance with the said provisions.

Powers of officers and courts

9. (1) Any—

- (a) proper officer or surveyor; or
- (b) court of marine enquiry, maritime court or court of survey; or
- (c) person appointed in terms of section *two hundred and sixty-four* or subsection (1) of section *two hundred and eighty-one*, or to whom an appeal is referred in terms of subsection (1) or (2) of section *two hundred and eighty-two*; or
- (d) other person authorized or required by or under this Act, or generally or specially authorized or required by the Authority, to make any survey or inspection or conduct any investigation,

may, in the execution of his or its duty or the exercise of his or its functions—

- (i) board any South African ship wherever she may be, or any ship other than a South African ship while she is within the Republic or the territorial waters of the Republic, and inspect the same or any part thereof, or any equipment thereof, or any articles on board, or any log-books, certificates or other documents relating to the ship or the crew thereof, and muster the crew of the ship and interrogate them, and require the master and crew to demonstrate the related competency at their place or places of duty;

[Para (i) substituted by s 3, Act 57/1998]

- (ii) enter any premises, including any land, structure, vehicle or vessel, and inspect the same or any articles therein;
- (iii) by written notice or otherwise summon any person who in his or its opinion may be able to give information which is likely to assist him or it in the carrying out of such duty, or who he or it suspects or believes has in his possession or custody or under his control any book, document or thing the inspection of which is likely to assist him or it in the carrying out of such duty, to appear before him or it at a time and place specified, to be interrogated or to produce that book, document or thing;
- (iv) administer an oath to any person appearing in obedience to any summons or otherwise, and interrogate him and inspect and detain any book, document or thing produced;
- (v) require any person interrogated to subscribe to a declaration of the truth of the statement made by him;
- (vi) copy any document inspected by or produced to him or it.
- (vii) . . .

[Para (vii) added by s 3(b), Act 18/1992, and deleted by s 4, Act 23/1997]

[Subs (1) amended by s 7(a), Act 30/1959]

(2) Every person—

- (a) shall upon demand assist to the best of his ability any officer or other person or court in the exercise of any of the powers conferred by subsection (1);

- (b) summoned under paragraph (iii) of subsection (1) whose reasonable expenses have been paid or offered to him shall attend at the time and place specified, and remain in attendance until excused by the officer or other person or court from further attendance;

[Para (b) amended by s 7(b), Act 30/1959]

- (c) shall take the oath administered to him by any officer or other person or court under paragraph (iv) of subsection (1);
- (d) shall answer fully and satisfactorily, to the best of his ability, all questions lawfully put to him by any officer or other person or court under paragraph (i) or (iv) of subsection (1), and, upon being required to do so, produce any book, document or thing in his possession or under his control: Provided that in connection with the interrogation of any such person by, or the production of any such book, document or thing to any such officer or other person or court, the law relating to privilege, as applicable to a witness summoned to give evidence or produce any book, document or thing before a court of law shall apply; and
- (e) upon being required to do so, shall subscribe to a declaration of the truth of any statement made by him.

(3) Any person who, after being sworn by an officer or other person or court in the exercise of the said powers, gives a false answer to any question put to him, or makes a false statement on any matter, knowing that answer or statement to be false, shall be deemed to be guilty of perjury.

(4) Any person or court referred to in paragraph (a), (b) or (c) of subsection (1) may in the execution of his or its duty or the exercise of his or its functions, if he or it deems it necessary to do so, direct that any South African ship wherever she may be, or any ship other than a South African ship while she is within the Republic or the territorial waters of the Republic, be taken into dock at the owner's expense, in order that every part of the hull thereof may be inspected.

(5) (a) (i) When an employer performs an act or requires or permits an act to be performed which in the opinion of a proper officer or surveyor threatens or is likely to threaten the safety of any person at a workplace or in the course of his employment, the proper officer or surveyor may by notice in writing prohibit that employer from continuing or commencing with the performance of that act or from requiring or permitting that act to be continued or commenced with, as the case may be.

(ii) When a user uses any machinery or proposes to use it in a manner or in circumstances which in the opinion of a proper officer or surveyor threatens or is likely to threaten the safety of any person who works with such machinery or who is or may come in the vicinity thereof, such proper officer or surveyor may by notice in writing prohibit that user from continuing or commencing with the use of such machinery or the use thereof in that manner or those circumstances, as the case may be.

(iii) A prohibition imposed under subparagraph (i) or (ii) may at any time be revoked in writing by the proper officer or surveyor if arrangements to the satisfaction of such proper officer or surveyor have been made to dispose of the threat which gave rise to the imposition of the prohibition.

(b) When a proper officer or surveyor is of the opinion that the safety of any person at a workplace or in the course of his employment or in connection with the use of machinery is threatened on account of the refusal or failure of an employer or a user, as the

case may be, to take reasonable steps in the interest of such person's safety, such proper officer or surveyor may by notice in writing direct that employer or user to take such steps as are specified in the notice, within a specified period.

(c) When on board a vessel in the vicinity of a workplace there is any nuisance which in the opinion of a proper officer or surveyor threatens or is likely to threaten the safety of an employee performing work at that workplace, such proper officer or surveyor may by notice in writing direct the person responsible for such nuisance or the owner or master of such vessel to remove the nuisance within a specified period.

(d) When a proper officer or surveyor is of the opinion that an employer or a user has failed to comply with a provision of a regulation applying to him, such proper officer or surveyor may by notice in writing direct that employer or user to take, within a period specified in the notice, such steps as in the opinion of the proper officer or surveyor are necessary to comply with the said provision and as are specified in the notice.

(e) The period contemplated in paragraph (b), (c) or (d) may at any time be extended by the proper officer or surveyor by notice in writing to the person concerned.

(f) (i) A proper officer or surveyor may by notice in writing prohibit an employer from requiring or permitting employees or any employee belonging to a category of employees specified in the notice, to be exposed in the course of their or his employment for a longer period than a period specified in the notice to any article or condition which in the opinion of such proper officer or surveyor threatens or is likely to threaten the safety of such employees or the employee belonging to such category of employees, as the case may be.

(ii) An employer shall forthwith bring the contents of a notice under subparagraph (i) to the attention of the employees or employee concerned.

[Subs (5) inserted by s 3(c), Act 18/1992]

CHAPTER II

RECORDING, REGISTERING AND LICENSING OF SHIPS

Notification of building of vessels

10. (1) Every person who at the coming into operation of this section is building, or after such coming into operation intends to build, a vessel which when completed will be registered or licensed in the Republic, shall within sixty days of such coming into operation or before beginning to build the vessel, as the case may be, furnish to the proper officer at the port where the vessel will be registered or licensed or to the Authority such written particulars of the vessel as may be prescribed.

[Subs (1) substituted by s 3, Act 42/1969, and item 4 (Sch 2), Act 58/1998]

(2) The person on whose account any vessel is built shall for the purposes of subsection (1) be deemed to build that vessel.

11 to 16 inclusive . . .

[Ss 11 to 16 inclusive repealed by s 60(a), Act 58/1998]

Tonnage once ascertained to be the tonnage of ship

17. Whenever the tonnage of a ship has been ascertained and recorded in accordance with this Act, that tonnage shall be the tonnage of the ship unless any alteration is made in the form or capacity of the ship, or unless it is discovered that the tonnage of the ship has been erroneously computed, in either of which cases the ship shall be resurveyed, and her tonnage redetermined in accordance with this Act.

[S 17 substituted by item 5 (Sch 2), Act 58/1998]

Tonnage of ships of other countries

18. (1) Whenever the Minister is satisfied that provisions substantially the same as those of this Act relating to the measurement of the tonnage of ships are in force in any other country, he may by notice in the *Gazette* direct that ships registered in that country shall without being resurveyed in the Republic be presumed to be of the tonnage denoted in their certificates of registry or other national papers, in the same manner, to the same extent, and for the same purposes as the tonnage denoted in the certificate of registry of a South African ship is presumed to be the tonnage of that ship, and that the space shown by the certificate of registry or other national papers of any ship registered in such other country, as deducted from tonnage on account of being occupied by seamen or apprentice-officers and appropriated to their use, shall for the purpose of determining her tonnage be presumed to have been certified by a surveyor under subsection (2) of section *two hundred and sixty-two* to comply with those of the provisions of this Act which apply to such a space in the case of a South African ship.

(2) Whenever the Minister has given any such direction as is mentioned in subsection (1), the presumptions referred to shall apply in respect of any ship registered in the country to which the direction relates.

(3) If any question arises as to whether the tonnage of any ship registered in any country to which any such direction relates, as denoted in her certificate of registry or other national papers, materially differs from that which would be her tonnage if measured under this Act, or as to whether the construction and the equipment of any ship so registered as regards the said space do for the purpose of determining the tonnage of the ship conform to the standards required under this Act, the Authority may direct that a surveyor inspect the ship.

(4) If from the report of a surveyor so directed to inspect a ship it appears to the Authority that the tonnage of that ship, as so denoted, materially differs from that which would be her tonnage if measured under this Act or that her construction and equipment as regards the said space do not, for the purpose of determining her tonnage conform to the said standards, or if for any reason it appears to the Authority that the tonnage of any ship so registered has been erroneously computed, it may order that, notwithstanding any direction for the time being in force under this section, that ship or any ship registered in the country to which the direction relates shall, for all or any of the purposes of this Act or the Ship Registration Act, 1998, be surveyed in accordance with this Act.

[Subs (4) substituted by s 2(2), Act 5/1998, and item 6 (Sch 2), Act 58/1998]

19 to 67 inclusive . . .

[Ss 19 to 67 inclusive repealed by s 60(a), Act 58/1998]

Certain vessels to be licensed

68. (1) The owner or the master of a vessel which is not registered in the Republic or elsewhere and which operates at or from a port in or from anywhere else on the coast of the Republic, shall be in possession of a licence issued to him in terms of this Act by a proper officer.

(2) An application for a licence in terms of subsection (1) shall be made in the prescribed form and the owner or master shall produce to the proper officer a local general safety certificate and, where applicable, a local safety exemption certificate.

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

- (a) unless the vessel is entitled to be registered in the Republic in terms of section 16(a) or (b) of the Ship Registration Act, 1998; or
- (b) of less than 100 gross tons used solely for sport or recreation.

[S 68 amended by s 10, Act 40/1963; s 3, Act 13/1965; s 2, Act 3/1981; s 5(a), Act 25/1985; and substituted by item 7 (Sch 2), Act 58/1998]

Renewal of licences

69. (1) The owner or master of any vessel which in terms of section *sixty-eight* is required to be licensed, and in respect of which a licence has been issued, shall before or at the expiration of the period for which the licence was issued or renewed apply to the proper officer by whose office the licence was issued for a renewal thereof.

(2) The provisions of subsection (2) of section *sixty-eight* shall apply, *mutatis mutandis*, to any application for the renewal of a licence (date of commencement 1 November, 1961).

Issue and duration of licences

70. A licence issued upon an application made under section *sixty-eight* or *sixty-nine* shall be in the prescribed form and shall be issued for one year under such conditions as may be prescribed (date of commencement 1 November, 1961).

Cancellation of licences

71. (1) If the proper officer is satisfied that a licence issued under this Act was obtained fraudulently or on wrong information he may cancel the licence.

(2) If by reason of the contents of a report by a surveyor, or for any other reason, a proper officer is satisfied that—

- (a) material alterations which affect the seaworthiness of a vessel which has been licensed under this Act have taken place since the licence was issued; or
- (b) the life-saving appliances have not been maintained on such vessel in an effective condition; or
- (c) the master of such a vessel is not a fit and proper person to operate the vessel,

he may cause the vessel to be detained and direct that the deficiency or other cause for the detention of the vessel be remedied; and if after due notice the directions of the proper officer are not complied with, the licence shall be cancelled (date of commencement 1 November, 1961).

Unlicensed vessels not to be used

72. No person shall use a vessel which in terms of section 68 is required to be licensed, for any purpose whatsoever, unless the owner or master of the vessel holds a valid and current licence issued in respect thereof.

[S 72 substituted by s 6, Act 42/1969]

Prohibition of use of vessels of less than three metres in length

72A. (1) No vessel of less than three metres in length shall go to sea from any port in or from anywhere else on the coast of the Republic.

(2) Notwithstanding the provisions of subsection (1) the Minister may by regulation—

- (a) prescribe the purpose for and the area in which a vessel of less than three metres in length may be used; and
- (b) prescribe the conditions subject to which any such vessel may be so used.

[Para (b) substituted by item 8 (Sch 2), Act 58/1998]

[S 72A inserted by s 3, Act 3/1981, and amended by item 8 (Sch 2), Act 58/1998]

CHAPTER III

CERTIFICATES OF COMPETENCY, SERVICE AND QUALIFICATION

[Heading substituted by s 4, Act 57/1998]

What certificated officers and other persons to be employed on certain ships

73. (1) Subject to the provisions of this section, the owner and the master of every South African ship operating at a port in the Republic or going to sea from any port whatsoever shall ensure that there is employed on board that ship, in their appropriate

capacities, the number of officers and other persons, duly certificated as prescribed by regulation, or deemed to be so certificated.

[Subs (1) amended by s 15(a), Act 30/1959, and by s 11(a), (b) and (c), Act 40/1963,
and substituted by s 4, Act 5/1976, s 1, Act 3/1989 and s 5(a), Act 57/1998]]

(2) The Minister may by notice in the *Gazette* require that more or more highly certificated officers or other persons than are prescribed by subsection (1) shall be employed on board any class of ships of any tonnage or power specified in that notice; and after the publication of any such notice the owner of any ship to which it applies shall ensure that there are employed on board that ship the number of officers or other persons prescribed by that notice, duly certificated or deemed to be certificated under this Act.

[Subs (2) substituted by s 4, Act 5/1976]

(3) Whenever the Authority is satisfied from a report by a surveyor that it would be unreasonable to require the owner of a ship built before the coming into operation of this section to provide the accommodation on board that ship necessary to accommodate the numbers of officers or other persons required to be employed in terms of subsection (1), or in terms of a notice issued under subsection (2), it may vary the requirements of subsection (1) or of that notice in respect of that ship as it deems fit.

[Subs (3) substituted by s 2(2), Act 5/1998]

(4) (a) Subject to paragraph (b), the owner and the master of every ship other than a South African ship operating at a port in the Republic or going to sea from any such port shall ensure that there is employed on board that ship, in their appropriate capacities, a master and so many ship's officers and other persons holding certificates of such descriptions as prescribed by the law of the flag of the ship.

(b) Notwithstanding paragraph (a), subsection (1) shall apply in relation to a ship referred to in that paragraph as if it were a South African ship, if—

- (i) the matters contemplated in that paragraph are not prescribed by the law of the flag of the ship; or
- (ii) having regard to—
 - (aa) the complement normally carried by similar ships on similar voyages;
 - (bb) the complement which the ship in question has recently carried on previous voyages; and
 - (cc) the nature and place of the service for which the ship is intended,the proper officer has reason to believe that the ship is not sufficiently and efficiently manned.

[Subs (4) amended by s 37, Act 69/1962, and by s 11(d), Act 40/1963 and substituted by s 5(b), Act 57/1998]

(5) No person who has been engaged for the purpose of subsection (1) or (2) as master, ship's officer or rating shall act as such unless he is duly certificated, or deemed to be so certificated, in terms of this Act.

[Subs (5) substituted by s 5(b), Act 57/1998]

(6) No person shall for the purpose of subsection (1) or (2) employ a master, ship's officer or rating as such without first ascertaining that he is duly certificated, or deemed to be so certificated, in terms of this Act.

[Subs (6) substituted by s 5(b), Act 57/1998]

(7) . . .

[Subs (7) deleted by s 15(b), Act 30/1959]

(8) . . .

[Subs (8) deleted by s 5(c), Act 57/1998]

When ship's officers and other persons deemed to be duly certificated

74. (1) Subject to the provisions of sections 83 and 84, a master, ship's officer or rating shall not be deemed to be duly certificated as such for the purposes of this Act, unless he is the holder for the time being in the case of a—

- (a) master or ship's officer, of a valid certificate of competency or certificate of service, issued in terms of this Act, of a grade appropriate to the ship in which he is employed and to his station in the ship, or of a higher grade; or
- (b) rating, of a valid certificate of qualification, issued or recognised in terms of this Act.

[Subs (1) amended by s 38, Act 69/1962 and substituted by s 6, Act 57/1998]

(2) Whenever the question arises whether any certificate is of a higher grade than any other certificate, that question shall be determined by the Authority, in accordance with the regulations relative thereto, if any.

75. . . .

[S 75 amended by s 12, Act 40/1963 and repealed by s 7, Act 57/1998]

76. . . .

[S 76 repealed by s 2, Act 3/1989]

Examinations for certificates of competency and qualification

77. (1) Examinations of applicants for certificates of competency and qualification under this Act shall be held at such places in the Republic and at such times as the Authority may determine and under such conditions as may be prescribed by regulation.

(2) No person shall be admitted to examination for a certificate of competency or qualification unless he possesses the qualifications, and satisfies such other conditions, if any, prescribed by regulation.

[Subs (2) amended by s 39, Act 69/1962, substituted by s 4(a), Act 13/1965 and amended by s 2(2), Act 5/1998]

(3) . . .

[Subs (3) deleted by s 4(b), Act 13/1965]

(4) The Authority may appoint examiners for the conduct of such examinations, and remove any examiner so appointed.

[S 77 substituted by s 8, Act 57/1998]

Granting of certificates of competency and qualification after examination

78. (1) Subject to the provisions of subsection (2), the Authority may grant a certificate of competency or certificate of qualification, as the case may be, to every applicant who passes the examination prescribed for the certificate satisfactorily, and produces satisfactory evidence that he possesses the qualifications and satisfies such other conditions, if any, prescribed for the holder of the certificate and of his sobriety, experience, ability, physical fitness and general good conduct.

(2) The Authority may, at any time before the delivery of a certificate, require a re-examination of the applicant by the examiners who made the examination or by any other examiners, and order a further enquiry into his testimonials or character or both, and if not satisfied with the result may order that a certificate be not granted to him.

[S 78 substituted by s 9, Act 57/1998]

79. . . .

[S 79 amended by s 40, Act 69/1962, s 13, Act 40/1963, s 5, Act 13/1965, s 2(2), Act 5/1998 and repealed by s 10, Act 57/1998]

80. . . .

[S 80 amended by s 16, Act 30/1959, by s 14, Act 40/1963, by s 7, Act 42/1969, and by s 5, Act 5/1976, and repealed by s 3(1), Act 3/1989]

Form and record of certificates of competency, service and qualification

81. (1) All certificates of competency, service and qualification shall be made in the prescribed form.

[Subs (1) amended by s 15, Act 40/1963]

(2) A record of certificates of competency, service and qualification granted and of any matter affecting them shall be kept in such manner as the Authority may direct.

(3) Any such certificate and any record kept in terms of subsection (2) shall be admissible in evidence.

[S 81 substituted by s 11, Act 57/1998]

Loss of certificates of competency, service and qualification

82. If any person proves to the satisfaction of the Authority that he has lost or been deprived of a valid certificate of competency, service or qualification granted him under this Act or the Merchant Shipping (Certificates of Competency) Act 45 of 1925, the Authority may, upon payment of such fee as may be prescribed, issue to that person a certified copy of the said certificate, and such copy shall be regarded as having the same force and effect as the original.

[S 82 substituted by s 12, Act 57/1998]

Certificates granted by competent foreign authorities

83. (1) A master or a ship's officer who holds a valid certificate of competency or service granted to him by a competent authority in another country shall not be engaged as such on a South African ship, except as authorised under subsection (2) or by regulations; and while any such authorization remains in force, and if the conditions under which it was granted are complied with, the person so engaged shall be deemed to be duly certificated under this Act in respect of such ship, provided his certificate is of a grade appropriate to his station in such ship, or of a higher grade.

(2) If the Authority is satisfied that a certificate referred to in subsection (1) is of corresponding value to any certificate of competency or service granted under this Act, it may, with or without conditions, permit the engagement on a South African ship of a person who is the holder of such a certificate, and who possesses a knowledge of an official language of the Republic sufficient to enable him to communicate effectively in the performance of his duties.

[Subs (2) substituted by s 2(2), Act 5/1998]

[S 83 amended by s 41, Act 69/1962, and by s 16, Act 40/1963, and substituted by s 8, Act 42/1969 and s 13, Act 57/1998]

Certificates granted in Republic prior to commencement of Act

84. (1) All uncanceled certificates of competency or service issued under the Merchant Shipping (Certificates of Competency) Act 45 of 1925 shall continue in force as if issued under this Act, but shall be valid only for the purpose for which, and the extent to which, they would have been valid in accordance with the provisions of the aforementioned Act.

[Subs (1) amended by s 42, Act 69/1962 and s 14(a), Act 57/1998]

- (2) Any such certificate may be dealt with as if issued under this Act.
- (3) . . .

[Subs (3) deleted by s 14(b), Act 57/1998]

Authority may vary requirements as to certificates

85. Notwithstanding the provisions of section 73 the Authority may, in its discretion and for such periods and under such conditions as it may specify if it is satisfied that no suitable holder of a certificate of the required grade and granted under this Act or referred to in section 83 or 84 is available, permit a South African ship to go to sea from any port whatsoever or a ship other than a South African ship to go to sea from a port in the Republic without the prescribed number of certificated officers or other persons, and while any such permission remains in force any person who acts in terms thereof shall not, if the conditions under which it was granted are complied with, be deemed to have contravened the provisions of section 73.

[S 85 amended by s 17, Act 40/1963, and substituted by s 2(2), Act 5/1998 and s 15, Act 57/1998]

Production to proper officer of certificates

86. (1) . . .

[Subs (1) deleted by s 2, Act 3/1982]

(2) The master—

- (a) of a South African ship to which the provisions of subsection (1) of section *seventy-three* or of a notice issued under subsection (2) of the said section apply, upon going to sea from any port whatsoever; or
- (b) of a ship other than a South African ship to which the provisions of subsection (4) of the said section apply, upon going to sea from a port in the Republic,

[Para (b) amended by s 18, Act 40/1963 and substituted by s 16, Act 57/1998]

shall produce to the functionary from whom he requests a clearance for the ship the certificates of competency which, by the said provisions, subject to any variation approved by the Authority under subsection (3) of the said section, the master, officers and other persons on board the ship are required to hold.

(3) If the master of a ship fails to comply with the provisions of this section the ship may be detained by the proper officer until the certificates are produced.

Holder of certificate incapacitated by ill-health

87. (1) If at any time it appears to the proper officer that owing to ill-health or mental or physical defect the holder of a certificate of competency, service or qualification is unfit to perform the duties required of him, the proper officer may require him to submit himself to examination by a medical practitioner approved by the Authority.

[Subs (1) substituted by s 17, Act 57/1998]

(2) If after consideration of the report on the medical examination the Authority is satisfied that the person concerned is owing to continued ill-health or mental or physical defect incapable of performing satisfactorily the duties appertaining to his certificate of competency, service or qualification it may direct that until it is satisfied that the holder of the certificate has again become capable of performing satisfactorily the duties appertaining to the said certificate, the holder shall not be engaged or go to sea in the capacity referred to in the certificate or in any other capacity specified by the Authority.

[Subs (2) substituted by s 2(2), Act 5/1998 and s 17, Act 57/1998]

(3) Any direction by the Authority under subsection (2) shall—

- (a) if the certificate was issued in the Republic, be effective everywhere and in respect of all ships; and
- (b) if the certificate was issued elsewhere than in the Republic, be effective—
 - (i) within the Republic and the territorial waters of the Republic in respect of all ships; and
 - (ii) outside the Republic and the territorial waters of the Republic in respect of South African ships only.

Cancellation and suspension of certificates

88. Notwithstanding anything contained in this Act, the Authority may cancel or suspend a certificate of competency, service or qualification—

- (a) if the holder has been convicted of any offence and sentenced to imprisonment without the option of a fine, or has been convicted of any offence under this Act; or
- (b) if the holder obtained the certificate on erroneous information.

[S 88 amended by s 18, Act 57/1998]

Appeals against cancellation or suspension of certificate

89. (1) Any person in respect of whom any direction has been given under section 87 or whose certificate of competency, service or qualification has been cancelled or suspended under section 88 may appeal against the direction, cancellation or suspension to the High Court within the area of jurisdiction of which that person resides, and that court may confirm, set aside or vary the direction, cancellation or suspension.

[Subs (1) substituted by s 19, Act 57/1998]

(2) An appeal under this section shall be made in the manner and subject to the conditions and in accordance with the provisions laid down in the regulations.

CHAPTER IV

ENGAGEMENT, DISCHARGE, REPATRIATION, PAYMENT, DISCIPLINE AND GENERAL

TREATMENT OF SEAMEN, CADETS AND APPRENTICE-OFFICERS

Cadets

90. (1) No person shall be employed as a cadet on board any South African ship unless he is a South African citizen or a citizen of a treaty country (other than the Republic) or a citizen of any other country whom the Authority has in its discretion and subject to any conditions which it may have imposed, permitted to be so employed, and has attained the age of sixteen years and the master of the ship undertakes to train him or cause him to be trained in navigation and seamanship or in engineering and in the duties of a ship's officer.

[Subs (1) amended by s 43, Act 69/1962, substituted by s 6, Act 13/1965, and by s 2(2), Act 5/1998]

(2) The 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.

[Subs. (2) substituted by s 3, Act 3/1982]

Excessive number of cadets or apprentice-officers not to be employed

91. No person shall engage or permit cadets or apprentice-officers to serve on board a South African ship in excess of the number of cadets or such officers permitted by the regulations.

Medical examination of cadets and apprentice-officers

92. No person shall be employed as a cadet on board any South African ship or indentured as an apprentice-officer to the owner of a South African ship until he has passed the colour and form vision tests prescribed and has been certified by a medical practitioner approved by the proper officer as physically fit for the sea service.

Indentures of apprenticeship

93. All indentures of apprenticeship to the sea service entered into in the Republic shall be in accordance with the regulations and shall be executed in the prescribed form by the intended apprentice-officer and the person to whom he is to be bound in the presence of, and shall be attested by, a proper officer, who shall before the execution of the indentures satisfy himself—

- (a) that the intended apprentice-officer—
 - (i) understands the contents and provisions of the indentures;
 - (ii) freely consents to be bound;
 - (iii) is a South African citizen or citizen of a treaty country (other than the Republic) or a citizen of any other country whom the Authority has in its discretion and subject to any conditions which it may have imposed, permitted to be indentured, and has attained the age of sixteen years;
[Subpara (iii) amended by s 44, Act 69/1962, substituted by s 7, Act 13/1965, and by s 2(2), Act 5/1998]
 - (iv) is in possession of a certificate by a medical practitioner to the effect that the said apprentice-officer is physically fit for the sea service; and
 - (v) has passed the colour and form vision tests prescribed;
- (b) that the intended apprentice-officer is to be bound to a person who is the owner of a South African ship and is a fit and proper person for the purpose and who undertakes to ensure that the intended apprentice-officer shall be trained in navigation and seamanship or in engineering and in the duties of a ship's officer;
- (c) if the intended apprentice-officer is under the age of twenty-one years, that his guardian's consent has been obtained to his being indentured.

Indentures voidable in certain cases

94. All indentures of apprenticeship entered into in the Republic whereby a person under the age of twenty-one years is bound without the consent of his guardian shall be voidable by the guardian.

Recording of indentures

95. (1) The indentures of an apprentice-officer shall be executed in triplicate.

(2) The proper officer shall forward the indentures executed, in triplicate, to the Authority, who shall keep and record the one set of indentures, and after endorsing on the others the fact that they have been recorded, transmit one to the master of the apprentice-officer and the other to the apprentice-officer, or, if he is a minor, to his guardian.

Notice of cancellation of indentures or death or desertion of apprentice-officer

96. The master shall notify the cancellation of the indentures, or the death or desertion of the apprentice-officer to the Authority or to a proper officer, within three days of the occurrence if it occurs within the Republic, or as soon as circumstances permit if it occurs elsewhere.

Entry of indentures on agreement with the crew

97. The master of a South African ship shall, before going to sea from a port in the Republic with an apprentice-officer on board—

(a) cause the name of the apprentice-officer to be entered on the agreement with the crew referred to in section *one hundred and two*, together with the date of his indentures and every assignment thereof, and the name of every port at which the indentures have been registered;

(b) . . .

[Paras (b) deleted by s 4, Act 3/1982]

(c) . . .

[Paras (c) deleted by s 4, Act 3/1982]

[S 97 amended by s 19, Act 40/1963, and by s 4, Act 3/1982]

Death, insolvency, etc. of owner

98. If the owner of a South African ship carrying an apprentice-officer dies, or if his estate is sequestrated as insolvent, or if he ceases to have any interest in the ship, the indentures shall cease and a proportionate part of any premium paid shall be repaid, and until repaid shall be a charge on the ship: Provided that the name of the person by whom the ship has been acquired may with his consent and that of the apprentice-officer and, if he is under the age of twenty-one years, that of his guardian, and with the approval of the proper officer, be inserted in the indentures as master of the apprentice-officer in lieu of the previous owner, in which case the indentures shall continue: Provided, further, that if the voyage is continued and the apprentice-officer consents in terms of subsection (1) of section *one hundred and sixteen* to complete the voyage, the name of the person by whom the ship has been acquired may with his consent be inserted in the indentures as master of the

apprentice-officer in lieu of the previous owner, and the indentures shall continue until the voyage has been completed.

Assignment of indentures

99. (1) Every assignment of the indentures of an apprentice-officer shall be executed in the prescribed form by the apprentice-officer and the person to whom the indentures are to be assigned in the presence of, and shall be attested by, a proper officer, who shall before the execution of the assignment satisfy himself—

- (a) that the apprentice-officer freely consents to the assignment;
- (b) that the person to whom the indentures are to be assigned is the owner of a ship, and is a fit and proper person for the purpose, and undertakes to ensure that the apprentice-officer shall be taught navigation and seamanship and the duties of an officer; and
- (c) if the apprentice-officer is under the age of twenty-one years, that his guardian's consent has been obtained to the assignment.

(2) An assignment of the indentures of an apprentice-officer shall be executed in triplicate.

(3) The proper officer shall forward the assignment, executed in triplicate, to the Authority, who shall keep and record one assignment and after endorsing on the others the fact that they have been recorded, transmit one to the master of the apprentice-officer, and the other to the apprentice-officer, or, if he is under the age of twenty-one years, to his guardian.

Certificate of expiration of indentures

100. Upon the expiration of the period for which any apprentice-officer was indentured, including any period for which the indentures were lawfully extended, the master to whom he has been bound shall issue to him a certificate in the prescribed form, signed by the master and setting forth such matters as may be prescribed, and shall forward to the Authority a duplicate of the certificate, signed by the master.

Medical examination of crew prior to engagement

101. (1) Subject to the provisions of this section, the master of a South African ship shall not engage a seaman to serve in that ship unless there has been delivered to the master a certificate, valid in terms of subsection (3), signed by a medical practitioner approved by the Authority from which it appears that the seaman has been examined in accordance with the regulations and found to comply with the prescribed medical standards.

[Subs (1) substituted by s 20(a), Act 57/1998]

(2) . . .

[Subs (2) deleted by s 20(b), Act 57/1998]

(3) The certificate shall remain in force for the prescribed period.

[Subs (3) amended by s 17, Act 30/1959 and substituted by s 20(c), Act 57/1998]

(4) If required to do so by the proper officer, the master shall produce the certificate referred to in subsection (1), and if the master fails to do so, the proper officer may refuse to permit the engagement of the seaman concerned.

(5) The proper officer may on the ground of urgency authorize the engagement of a seaman for a single voyage notwithstanding the fact that a certificate has not been delivered to the master as required by subsection (1).

(6) Any medical examination for the purpose of this section shall be at the expense of the owner of the ship concerned.

(7) The provisions of this section shall apply, *mutatis mutandis*, to the engagement of a master and an apprentice-officer.

(8) . . .

[Subs (8) amended by s 4, Act 18/1992 and deleted by s 20(d), Act 57/1998]

Agreements with crew

102. (1) The master of every South African ship of more than one hundred gross register tons shall, and the master of every other South African ship may, enter into an agreement (in this Act called the agreement with the crew) with every seaman whom he engages to serve in that ship: Provided that the proper officer may refuse to allow the engagement of a seaman—

- (a) who has not completed any period of pre-sea training that may be prescribed; or
- (b) who does not possess a knowledge of one of the official languages of the Republic sufficient to enable him to understand fully any necessary orders given him in that language in the performance of his duties.

(2) The agreement with the crew shall be in the prescribed form, dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs it.

(3) The agreement with the crew shall contain, inter alia, as terms thereof the following particulars:

- (a) the nature and, as far as practicable, either the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement and any places or parts of the world to which the voyage or engagement is not to extend;
- (b) the particulars as to the position of the deck line and load lines specified in any load line certificate issued in respect of the ship and still in force;
- (c) the number and description of the crew;
- (d) the time at which each seaman is to be on board or to begin work;
- (e) the capacity in which each seaman is to serve;
- (f) the wages which each seaman is to receive;

[Para (f) substituted by s 9, Act 42/1969]

- (g) a scale of the provisions which are to be furnished to each seaman;
- (h) any regulations approved by the Minister as to conduct on board and as to fines or other lawful punishment for misconduct which the parties agree to adopt.

(4) If the master of a South African ship engages single seamen and there is already in existence in respect of that ship an agreement with the crew made in due form, those seamen may sign that agreement, and the master need not enter into a separate agreement with them.

Special provisions as to agreements with crew of foreign-going ships

103. The following provisions shall apply to agreements with the crew of a foreign-going South African ship:

- (a) subject to the provisions of this Act as to substitutes, the agreement shall be signed by each seaman in the presence of a witness;

[Para (a) substituted by s 5(a), Act 3/1982]

- (b) the 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 in the presence of a witness, who shall attest each signature;

[Para (b) substituted by s 5(a), Act 3/1982]

- (c) when the crew is first engaged the agreement shall be signed in duplicate, and one agreement shall be delivered to the proper officer and the other shall be 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;

[Para (c) substituted by s 5(a), Act 3/1982]

- (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 be effected before 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;

[Para (d) substituted by s 5(a), Act 3/1982]

- (e) the 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;

[Para (e) substituted by s 5(a), Act 3/1982]

- (f) separate agreements may be made for each single voyage, or an agreement (in this Act referred to as a running agreement) may be made to extend over two or more voyages;

- (g) a running agreement shall not be for a longer period than one year, but if the period for which the agreement was entered into expires while the ship is not in a port in the Republic, the agreement shall continue in force until the ship is again in a port in the Republic: Provided that the agreement shall not continue for more than three months

after the expiration of the period for which it was entered into unless the seamen concerned agree thereto in writing;

[Para (g) amended by s 20, Act 40/1963]

- (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 engagement 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.

[Para (h) substituted by s 5(b), Act 3/1982]

Changes in crew to be reported

104. (1) Where an agreement has been entered into with the crew of a South African ship, the master or the owner thereof shall—

- (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 Authority of every change that has taken place in the crew since the agreement was entered into; and

[Para (a) substituted by s 6, Act 3/1982]

- (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 Authority of every change that has taken place in the crew since he last rendered a statement in terms of this section.

[Para (b) substituted by s 6, Act 3/1982]

[Subs (1) substituted by s 10, Act 42/1969]

(2) Every statement rendered in accordance with the provisions of this section shall be admissible in evidence.

[S 104 substituted by s 18, Act 30/1959]

Certificates as to agreements with crew of foreign-going ships

105. (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 master shall issue a certificate to that effect.

[Subs. (1) substituted by s 7, Act 3/1982]

(2) The master of every foreign-going South African ship shall before proceeding to sea from a port in the Republic produce to the officer of customs, if that officer should so require, the certificate mentioned in subsection (1), and any such ship may be detained until the certificate is so produced.

(3) The master of every foreign-going South African ship shall, within forty-eight hours after the ship's arrival at her final port of destination for the voyage, or, in the case of

a running agreement, within forty-eight hours of her arrival at her final port of destination for the last voyage over which the agreement extends, or upon the discharge of the crew, whichever event first occurs, deliver the agreement with the crew to the proper officer, who shall give the master a certificate of that delivery.

Special provisions as to agreements with crew of coasting ships, and fishing, sealing or shore-based whaling boats

106. The following provisions shall have effect in respect of agreements with the crew of a coasting ship or a fishing, sealing or shore-based whaling boat registered in the Republic:

- (a) agreements may be made either for service in a particular ship or for service in two or more ships belonging to the same owner;
- (b) crews or single seamen shall be engaged 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.

[Para (b) substituted by s 8, Act 3/1982]

- (c) an agreement for service in two or more ships belonging to the same owner may be made by the owner of the ship instead of by the master, and the relative provisions of this Act shall apply *mutatis mutandis* to such an agreement;
- (d) an agreement shall not be for a longer period than two years, but if the period for which the agreement was entered into expires while the ship is not in a port in the Republic, the agreement shall continue in force until the ship is again in a port in the Republic: Provided that the agreement shall not continue for more than three months after the expiration of the period for which it was entered into unless the seamen concerned agree thereto in writing.

[Para (d) amended by s 21, Act 40/1963]

Certificate as to agreements with crew of coasting ships, and fishing, sealing or shore-based whaling boats

107. When the agreement with the crew of a coasting ship or a fishing, sealing or shore-based whaling boat registered in the Republic has expired, the master or owner of the ship shall deliver such agreement to the proper officer with twenty-one days after such expiry, and the proper officer on receiving such agreement shall give the master or owner a certificate to that effect.

Alterations in agreements with crew

108. No erasure, interlineation or alteration in any agreement with the crew of a South African ship (except additions made for the purpose of shipping substitutes or persons engaged after the first departure of the ship) shall be of force or effect unless proved by the written attestation of a proper officer to have been made with the consent of the members of the crew interested in such erasure, interlineation or alteration.

Copy of agreement to be displayed

109. The master of a South African ship shall at the beginning of every voyage or engagement cause a legible copy of the agreement with the crew (omitting the signatures) to be framed and displayed in some conspicuous place on board the ship which is accessible to the crew, and shall cause it to be kept so framed and displayed during its currency.

Employment of children on ships prohibited

110. The owner or master of a ship which is registered in the Republic, or of a ship which is not registered in the Republic and is wholly engaged in plying between ports in the Republic, shall not knowingly take into employment or keep in employment or permit the employment of any person under the age of fifteen years in any capacity on board the ship.

[S 110 amended by s 22, Act 40/1963]

Employment of young persons as trimmers or firemen

111. (1) Subject to the provisions of this section the owner or master of a South African ship shall not knowingly take into employment, or keep in employment, or permit the employment of, a young person as a trimmer or fireman in that ship: Provided that—

- (a) this subsection shall not apply—
 - (i) to the employment of a young person on such work as aforesaid in a school-ship or training-ship, if the work is of a kind approved by the Authority and is carried on subject to supervision by officers approved or appointed by it; or
 - (ii) to the employment of a young person on such work as aforesaid in a ship which is mainly propelled otherwise than by means of steam; and
- (b) if in any port a trimmer or fireman is required for any ship and no person over the age of eighteen years is available to fill the place, a young person over the age of sixteen years may be employed as a trimmer or fireman, but in any such case two young persons over the age of sixteen years shall be employed to do the work which would otherwise have been performed by one person over the age of eighteen years.

[Subpara (i) substituted by s 2(2), Act 5/1998]

(2) There shall be included in every agreement with the crew of a South African ship a list of the young persons who are members of the crew, together with particulars of the dates of their birth, and, in the case of a ship in which there is no such agreement, the master of the ship shall, if young persons are employed therein, keep a register of those persons with particulars of the dates of their birth and of the dates on which they become or cease to be members of the crew.

(3) There shall be included in every agreement with the crew of a South African ship a short summary of the provisions of this section.

(4) Subject to the provisions of this section, the owner or master of a South African ship shall not knowingly employ a young person in any capacity in that ship unless there has been delivered to the master of the ship a certificate, valid in terms of subsection (5), signed

by a medical practitioner approved by the proper officer, to the effect that the young person is fit to be employed in that capacity: Provided that—

- (a) this subsection shall not apply to the employment of a young person in a ship in which only members of the same family are employed; and
- (b) a proper officer may on the ground of urgency authorize a young person to be employed in a ship notwithstanding that no such certificate as aforesaid has been delivered to the master of the ship, but a young person in respect of whom any such authorization is given shall not be employed beyond the first port at which the ship calls after he has embarked thereon, except subject to and in accordance with the foregoing provisions of this section.

(5) A certificate such as is referred to in subsection (4) shall be effective for a period of six months from the date on which it is signed: Provided that if the said period of six months expires at some time during the course of the voyage of the ship in which the young person is employed, the certificate shall remain effective until the end of the voyage.

(6) The guardian of a young person shall not knowingly cause or permit him to be employed in contravention of the terms of this section.

(7) The master of a South African ship shall on demand by a proper officer produce to that officer for the purpose of inspection the register mentioned in subsection (2) and every certificate delivered to the said master in terms of this section.

(8) In this section—

"young person" means a person who is under the age of eighteen years;

"ship" means any sea-going ship or boat of any description, and includes a fishing boat, but does not include any tug, dredger, sludge vessel, barge, or other craft whose navigation does not extend beyond the seaward limits of the jurisdiction of the harbour authority of the port at which such vessel is regularly employed.

112. . . .

[S 112 repealed by s 21, Act 57/1998]

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.

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

(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.

(4) When a seaman is discharged and the master declines to express an opinion on the conduct, character and ability of the seaman, the discharge shall be made before a proper officer, to whom he shall furnish 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 reason so entered. The proper officer shall, whenever practicable, give the seaman a reasonable opportunity to make a statement upon such report.

(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 proper officer at the port where the agreement with the crew was entered into.

[S 113 amended by s 11, Act 42/1969, and substituted by s 10, Act 3/1982]

Repatriation of seamen whose service terminates elsewhere than at proper return port

114. (1) When the service of a seaman or apprentice-officer belonging to a South African ship terminates without the consent of the said seaman or apprentice-officer at a place other than a proper return port, and before the expiration of the period for which the seaman was engaged or the apprentice-officer was indentured, the master or owner of the ship shall, in addition to any other relative obligation imposed on either of them by this Act, make adequate provision for the maintenance of the seaman or apprentice-officer according to his rank or rating, and for the return of that seaman or apprentice-officer to a proper return port.

(2) If the master or owner fails without reasonable cause to comply with the provisions of subsection (1), the expenses of maintenance and of the journey to the proper return port shall, if defrayed by the seaman or apprentice-officer, be recoverable as wages due to him, and if defrayed by the proper office, be regarded as expenses falling within the provisions of subsections (4) and (5) of section *one hundred and fifty-four*. Inability to provide the said expenses shall not, for the purposes of this subsection, be regarded as reasonable cause.

(3) The provisions of this section shall not apply in the case of a seaman who is not a South African citizen or a citizen of a treaty country (other than the Republic) and who was engaged at a port out of the Republic and discharged at a port outside the Republic.

[Subs (3) amended by s 45, Act 69/1962]

Entries and certificates of desertion outside the Republic

115. (1) In every case of desertion from a South African ship at a port outside the Republic, the master shall as soon as possible after the event produce the entry of the desertion in the official logbook to a proper officer, and shall request that officer to make and certify a copy of such entry, and the proper officer shall, in the absence of reasonable cause to the contrary, comply with that request.

(2) The certified copy made in terms of subsection (1) shall be transmitted by the master to the proper officer at the port where the agreement was entered into and shall be admissible in evidence.

[Subs (2) substituted by s 11, Act 3/1982]

Discharge of seamen on change of ownership

116. (1) If a South African ship is transferred or disposed of while she is at or on a voyage to any port outside the Republic every seaman or apprentice-officer belonging to that ship shall be discharged at that port, unless he consents in writing in the presence of a proper officer to complete the voyage in the ship if continued.

(2) If a seaman or apprentice-officer is discharged from a South African ship in terms of subsection (1), the provisions of section *one hundred and fourteen* shall apply as if the service of the seaman or apprentice-officer had terminated without his consent and before the expiration of the period for which the seaman was engaged or the apprentice-officer was indentured, and, in the case of a seaman, the provisions of the said section shall, notwithstanding subsection (3) thereof, be applicable whatever may be his nationality and wherever may be situated the port where he was engaged.

(3) Every seaman or apprentice-officer discharged in terms of subsection (1) shall, if the voyage for which he was engaged is not continued, be entitled to the wages to which he would have been entitled if his service had been wrongfully terminated by the owner before the expiration of the period for which the seaman was engaged or the apprentice-officer was indentured.

Discharge and leaving of seamen behind

117. (1) The master of a South African ship shall not—

- (a) discharge a seaman before the expiration of the period for which he was engaged, unless the seaman consents to his discharge; nor
- (b) except in circumstances beyond his control, leave a seaman or apprentice-officer behind,

without the authority of the proper officer, who shall certify on the agreement with the crew that he has granted such authority, and also the reason for the seaman's being discharged or the seaman or apprentice-officer's being left behind.

(2) The proper officer to whom application is made for authority in terms of subsection (1) shall investigate the grounds on which the seaman is to be discharged or the seaman or apprentice-officer left behind and may in his discretion grant or refuse to grant such authority: Provided that he shall not refuse to grant his authority if he is satisfied that the seaman has without reasonable cause—

- (a) failed or refused to join his ship or to proceed to sea therein; or
- (b) been absent from his ship without leave, either at the commencement or during the progress of a voyage for a period of more than forty-eight hours.

(3) The proper officer shall keep a record in the prescribed form of all seamen or apprentice-officers discharged or left behind in the Republic with his authority; and whenever any charge is made against a seaman or apprentice-officer under section *one hundred and seventy-five* or *one hundred and seventy-six* the fact that no such authority is so recorded shall be prima facie evidence that it was not granted.

Leaving seamen behind

118. No person shall cause a seaman or apprentice-officer to be wrongfully left behind—

- (a) at any place in the Republic, in the case of a ship other than a South African ship;
- (b) at any place whatsoever, in the case of a South African ship.

Wages and other property of seaman or apprentice-officer left behind

119. (1) If a seaman or apprentice-officer belonging to a South African ship is left behind, the master of the ship shall enter in the official log-book a statement of the amount due to the seaman or apprentice-officer in respect of wages at the time when he was left behind and of all property left on board by him, and shall take such property into his charge.

(2) Within forty-eight hours after the arrival of the ship at the port at which the voyage terminates, the master shall deliver to the proper officer—

- (a) a statement of the amount due to the seaman or apprentice-officer in respect of wages, and of all property left on board by him; and
- (b) a statement, with full particulars, of any expenses that may have been caused to the master or owner of the ship by the absence of the seaman or apprentice-officer, where the absence is due to a contravention by the seaman or apprentice-officer of section *one hundred and seventy-five* or *one hundred and seventy-six*,

and if required by the proper officer to do so, shall furnish such vouchers as are reasonably required to verify the statements.

(3) The master shall at the time when he delivers the statements referred to in subsection (2) to the proper officer also deliver to him the amount due to the seaman or apprentice-officer in respect of wages and the property that was left on board by him, and the proper officer shall give to the master a receipt therefor in the prescribed form.

(4) The master shall be entitled to be reimbursed out of the wages or property referred to in paragraph (a) of subsection (2) such expenses shown in the statement referred to in paragraph (b) of that subsection as appear to the proper officer to be properly chargeable.

(5) If the master or owner of the ship is not satisfied with any decision of the proper officer under subsection (4), he or she may appeal therefrom to the Authority.

[Subs (5) substituted by s 5(a), Act 88/1996]

(6) The seaman or apprentice-officer concerned may within 30 days of his or her first becoming aware of any such decision of the proper officer under subsection (4) appeal therefrom to the Authority. The Authority may on such appeal direct that any money paid to the master in accordance with the decision of the proper officer shall be paid over by the master or the owner of the ship to the seaman or apprentice-officer, who may recover the amount as wages.

[Subs (6) substituted by s 5(b), Act 88/1996]

Payment of wages on discharge of a seaman of a South African ship

120. When a seaman of a South African ship is discharged, he may or if he has a dispute regarded his wages, he shall be paid his wages, or the balance thereof, in the manner directed by the proper officer, and the owner or master of the ship, as the case may be, shall, in the case of a dispute, not pay the wages of the seaman, or the balance thereof, in any other manner.

[S 120 amended by s 19, Act 30/1959, and substituted by s 12, Act 42/1969]

Master to deliver account of wages

121. (1) When a seaman of a South African ship is discharged, the master or the owner of such ship shall cause to be delivered to such seaman a full and true account of his wages in a form approved by the Authority.

[Subs (1) substituted by s 13(a), Act 42/1969]

(2) . . .

[Subs (2) deleted by s 13(b), Act 42/1969]

(3) A deduction from the wages of a seaman shall not be allowed unless it is included in the account delivered in terms of subsection (1), except in respect of a matter happening after the said delivery.

[Subs (3) substituted by s 13(c), Act 42/1969]

(4) The master shall during the voyage enter the various matters in respect of which the deductions are made, with the amount of the respective deductions, as they occur, in a book to be kept for that purpose, and shall, if required, produce the book at the time of the payment of wages, and also upon the hearing before any competent authority of any complaint or question relating to that payment.

[S121 amended by s 19, Act 30/1959]

Time of payment of wages for foreign-going ships

122. In the case of a foreign-going South African ship (other than a ship employed on voyages for which seamen by the terms of their agreement are wholly compensated by a share in the profits of the venture)—

(a) 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 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: Provided that if the seaman consents, the settlement of his wages may be left to the proper officer and in that case any relative receipt given by that officer to the owner or master shall operate as if it were a release given by the seaman in accordance with the provisions of this Act;

[Para (a) amended by s 12, Act 3/1982]

(b) if the wages of a seaman or any part thereof are not paid or settled in terms of this section, the said wages shall continue to run and be payable until the time of final payment or settlement thereof, unless the delay in payment or settlement is due to the

act or default of the seaman, or to any reasonable dispute as to liability, or to any other cause not being the wrongful act or default of the owner or master.

[S 122 amended by s 19, Act 30/1959]

Time of payment for coasting ships, and fishing, sealing and shore-based whaling boats

123. (1) When a seaman is discharged from a coasting ship or a fishing, sealing or shore-based whaling boat, registered in the Republic, the owner or master shall pay to that seaman, within two days of his discharge, the balance of wages due to him, and if an owner or master fails without reasonable cause to make such payment he shall pay to the seaman or apprentice-officer a sum equal to two days' pay for each of the days during which payment is delayed beyond the said period of two days, but the additional sum so payable shall not exceed ten days' double pay.

[Subs (1) amended by s 19, Act 30/1959]

(2) A sum payable under this section may be recovered as wages.

Settlement of wages

124. (1) 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. The release shall also be signed by the proper officer and shall operate as a mutual discharge and settlement of all relative demands between the parties concerned, but shall not debar a claim under any law relating to workmen's compensation.

[Subs (1) amended by s 13, Act 3/1982]

(2) The release shall be retained by the proper officer, and shall be admissible in evidence.

(3) Where the settlement of wages is by this Act required to be completed through or in the presence of a proper officer, no payment, receipt or settlement made otherwise shall operate as or be admitted as evidence of the release or satisfaction of any claim in respect of such wages.

(4) Upon any payment being made by a master before a proper officer, the said officer shall on request sign and give to the master a statement of the whole amount so paid, and that statement shall as between the master and his employer be admissible as evidence that the master has made the payments therein mentioned.

(5) A seaman may except from the release signed by him under this section any specified claim or demand against the owner or master of the ship, and a note of any claim or demand so excepted shall be entered upon the release. The release shall not operate as a discharge or settlement of any claim or demand so noted, nor shall subsection (3) of this section apply to any payment, receipt, or settlement made with respect to any such claim or demand.

[S 124 amended by s 19, Act 30/1959]

Decision by proper officer on question as to wages

125. Whenever a question as to wages is raised 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 a proper officer, he may hear and decide the question so submitted, and his decision shall be final.

[S 125 substituted by s 14, Act 3/1982]

Payment of seamen in currency other than that mentioned in agreement

126. If a seaman has agreed with the master of a South African ship for payment of his wages in South African or any other currency, payment of or on account of such wages, if made in any other currency than that stated in the agreement, shall be made at the rate of exchange in force at the time when and at the place where the payment is made.

[S 126 amended by s 20, Act 30/1959, and by s 24, Act 40/1963]

Disrating of seaman

127. (1) Whenever the master of a South African ship disrates a seaman he shall forthwith enter or cause to be entered in the official log-book a statement of the disrating and furnish the seaman with a copy of the entry, and any reduction of wages consequent on the disrating shall not take effect until the entry has been so made and the copy so furnished.

(2) Any reduction of wages consequent on the disrating of a seaman shall be deemed to be a deduction from wages within the meaning of section *one hundred and twenty-one*.

Master to give facilities to seamen for remitting wages

128. If the balance of wages earned by but not yet payable to a seaman of a South African ship is more than 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 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.

[S 128 substituted by s 15, Act 3/1982]

Advance of more than one month's wages prohibited

129. (1) The owner or master of a South African ship shall not pay or agree to pay in advance to or on account of any seaman in respect of wages an amount in excess of one month's wages.

(2) Any agreement for the payment in advance of wages to or on account of any seaman in contravention of subsection (1) shall be void, and any money paid in pursuance of any such agreement shall not be deducted from the seaman's wages, and no person shall

have any right of action or set-off against the seaman or his assignee in respect of any money so paid.

Allotment notes

130. (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 for the 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 National Welfare Act 100 of 1978 of any portion of the wages which he may earn during the voyage.

[Subs (1) substituted by s 16(a), Act 3/1982, and by s 5, Act 18/1992]

(2) Except by agreement with the master an allotment note shall not provide for payment of a greater sum than three-fourths of the seaman's wages.

(3) The stipulations shall be inserted in the agreement with the crew, and shall state the amounts and times of the payments to be made and the names of the persons to whom they are to be made.

(4) All allotment notes shall be in the prescribed form, and shall be signed by the master or owner of the ship or his authorized agent and the seaman.

(5) The 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 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 parties thereto.

[Subs (5) substituted by s 16(b), Act 3/1982]

Right of suing on allotment notes

131. (1) The person in whose favour an allotment note under this Act has been made may, unless the seaman has forfeited or ceased to be entitled to the wages out of which the allotment is to be paid, recover the sums allotted when and as the same are made payable, with costs, from the owner of the ship in respect of which the seaman was engaged or from any agent of the owner who has authorized the allotment, and the provisions of section *one hundred and thirty-six* shall, *mutatis mutandis*, apply to any proceedings for such recovery: Provided that the wife of a seaman, if she deserts her children or so misconducts herself as to be undeserving of support from her husband shall forfeit all rights to further payments under any allotment made in her favour.

(2) In any proceedings mentioned in subsection (1) it shall be sufficient for the claimant to prove that he is the person mentioned in the allotment note and that the note was given by the owner or by the master or the authorized agent of the owner or master, and the seaman shall be presumed to be duly earning his wages unless the contrary is shown to the satisfaction of the court—

(a) in the case of a seaman serving on a foreign-going ship, by the official statement of the change in the crew caused by the seamen's absence, made and signed by the master in terms of section *one hundred and four*; or

- (b) by a certified copy of some entry in the official log-book, or by a letter from the master, to the effect that the seaman has left the ship; or
- (c) by such other evidence as the court in its discretion considers sufficient to show that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid.

Time of payment of an allotment note

132. (1) Subject to the provisions of subsection (2), payment under an allotment note under this Act shall—

- (a) begin at the expiration of one month from the date on which the seaman was engaged;
- (b) be made at the expiration of every subsequent month after the first month; and
- (c) be made only in respect of wages earned before the date of payment.

(2) By agreement with the master or owner or the authorized agent of the master or owner of a South African ship an allotment note may be granted to a seaman providing for payment at a time earlier than one month from the date of his engagement and at intervals more frequent than one month.

Rights to wages and provisions and when such are to commence

133. The rights of a seaman or apprentice-officer of a South African ship to wages and provisions shall be deemed to begin either at the time at which he commences work or at the time specified in the agreement or articles of indenture, as the case may be, for his commencement of work or presence on board, whichever first happens.

Agreement to forfeit lien for wages is void

134. (1) A seaman of a South African ship shall not by agreement forfeit his or her lien on the ship for his or her wages, or be deprived of any remedy for the recovery of wages to which in the absence of the agreement he or she would be entitled, or abandon his or her right to wages in the case of the loss of the ship and every stipulation in any agreement with the crew inconsistent with the provisions of this section shall be void.

[Subs (1) substituted by s 26(a), Act 94/1996]

(2) . . .

[Subs (2) deleted by s 26(b), Act 94/1996]

Restrictions on assignment of wages and salvage

135. (1) The following provisions shall apply to wages due or to become due to a seaman or apprentice-officer of a South African ship:

- (a) They shall not be liable to attachment or subjected to any form of execution under a judgment or order of any court;

- (b) an assignment or hypothecation thereof shall not bind the person making the same;
- (c) a power of attorney or authority for the receipt thereof shall not be irrevocable; and
- (d) a payment of wages to a seaman or apprentice-officer shall be valid in law, notwithstanding any previous assignment or hypothecation of those wages, or any attachment of or execution upon those wages.

[Subs (1) substituted by s 27, Act 94/1996]

(2) Nothing in this section shall affect the provisions of this Act regarding allotment notes or those of section 326 of this Act or those of sections 99 and 100 of the Income Tax Act 58 of 1962.

[Subs (2) substituted by s 6, Act 18/1992]

Proceedings for wages

136. (1) A seaman or apprentice-officer, or a person duly authorized by him, may as soon as wages due to him by reason of his engagement in a South African ship become payable sue for the same before any magistrate's court within whose area of jurisdiction the place at which his service has been terminated is situated, or which by reason of any other fact has jurisdiction in the matter; and no appeal shall lie from any judgment given or order made by the court in the matter.

(2) Nothing in subsection (1) contained shall increase the jurisdiction of any magistrate's court as regards the amount which may be claimed in any proceeding tried by the court.

Wages not recoverable abroad except in certain cases

137. If a seaman is engaged in a South African ship for a voyage or period of service which is to terminate in the Republic he shall not be entitled to sue in any court outside the Republic for wages, unless he has been discharged, or proves such ill-usage on the part of or by the authority of the master as to warrant reasonable apprehension of danger to his life or health if he were to remain on board.

Wages not to depend on freight

138. The right to wages shall not depend on the earning of freight, and every seaman and apprentice-officer of a South African ship who would be entitled to demand and recover wages if the ship in which he has served had earned freight shall, subject to all other laws and conditions applicable to the case, be entitled to recover the same notwithstanding that freight has not been earned.

Wages not claimable by seaman or apprentice-officer who fails to exert himself to save ship

139. (1) If it is proved that a seaman or apprentice-officer of a South African ship whose ship has been wrecked or actually or constructively lost has not made every

reasonable effort to save the ship, cargo and stores, he shall not be entitled to claim any wages that would otherwise be due to him.

(2) For the purposes of this section, a ship shall be deemed to be constructively lost if—

- (a) the ship is reasonably abandoned because its actual total loss appears to be unavoidable;
- (b) the ship cannot be preserved from actual total loss without an expenditure that would exceed its value when the expenditure has been incurred; or
- (c) the ship has been damaged to the extent that the cost of repairing the damage would exceed its value when repaired.

[Subs (2) substituted by item 9 (Sch 2), Act 58/1998]

Wages on termination of services by illness or injury of seamen or wreck or loss of ship

140. (1) If the service of a seaman of a South African ship is terminated, before the date contemplated in the agreement, by reason of—

- (a) the wreck, loss, abandonment, flooding, stranding, fire on board or collision of the ship;

[Para (a) substituted by s 5(a), Act 3/1981]

- (b) his being left behind at a place other than a proper return port owing to his incapacity to perform his duty because of illness, hurt or injury, unless it be proved that his illness, hurt or injury was caused by his own wilful act or default or his own misbehaviour, or unless he has unreasonably refused to undergo medical or surgical treatment for such illness, hurt or injury involving no appreciable risk to his life,

[Para (b) amended by s 21(a), Act 30/1959]

he shall be entitled to receive wages at the rate provided in the agreement for the period from the date his services are so terminated until he is returned to and arrives at a proper return port: Provided that the period for which he shall be entitled to receive wages shall not exceed ninety days, nor be less than sixty days or the period from the date his services so terminated until the date contemplated in the agreement, whichever is the shorter period.

[Subs (1) amended by s 21(b), Act 30/1959]

(2) Notwithstanding the proviso to subsection (1), a seaman shall not be entitled to receive wages under that subsection in respect of any particular day if it be proved that he was able to obtain employment on that day in work which he was able to do and which was suitable, having regard to his rank or rating.

(3) If by reason of the wreck, loss, abandonment, flooding, stranding, fire on board or collision of a ship on which a seaman is employed he sustains the loss of any or all of his property, he shall be entitled, in accordance with the regulations, to compensation from the owner of the ship for such loss.

[Subs (3) substituted by s 5(b), Act 3/1981]

(4) A seaman shall not be entitled to receive compensation under subsection (3) if it be proved that the loss of his property was not due to the wreck, loss, abandonment, flooding, stranding, fire on board or collision of the ship.

[Subs (4) substituted by s 5(c), Act 3/1981]

(5) Nothing in this section shall deprive any seaman of any compensation to which he may be entitled in terms of the Workmen's Compensation Act 30 of 1941—

(a) for temporary partial disablement or temporary total disablement in respect of any period for which he has not been paid wages in terms of this section; or

[Para (a) amended by s 21(c), Act 30/1959]

(b) for permanent disablement.

[Subs (5) amended by s 21(c), Act 30/1959]

(6) A seaman shall not be entitled to receive any compensation under the Workmen's Compensation Act 30 of 1941, for temporary partial disablement or temporary total disablement in respect of any period for which he has been paid wages in terms of this section; but his employer who has paid such wages to him for that period shall, if he has paid all assessments for the payment of which he is liable under that Act, be entitled to recover from the accident fund established under that Act an amount equal to the compensation that would, but for the provisions of this section, have been payable to the seaman under that Act in respect of that period.

[Subs (6) amended by s 21(d), Act 30/1959]

(7) In this section the expression "**seaman**" includes every person employed or engaged in any capacity on board any ship, but in the case of a ship which is a fishing boat, does not include any person who is entitled to be remunerated only by a share in the profits or the gross earnings of the working of the boat.

Wages not to accrue during refusal to work or imprisonment or illness caused by own default or drunkenness

141. (1) A seaman or apprentice-officer of a South African ship shall not be entitled to wages—

(a) for any period during which he is absent without leave from his ship or from his duty; or

(b) for any period during which he unlawfully refuses or neglects to work when required; or

(c) unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned; or

(d) for any period during which he is by reason of his being under the influence of liquor or a drug, incapable of performing his duty.

(2) A seaman or apprentice-officer shall not be disentitled to claim wages for any period during which he has not performed his duty if he proves that he was incapable of doing so by reason of illness, hurt or injury, unless it be proved that—

(a) his illness, hurt or injury was caused by his own wilful act or default or his own misbehaviour; or

- (b) his illness was contracted or his hurt or injury was sustained at a proper return port and was not attributable to his employment; or
- (c) he has unreasonably refused to undergo medical or surgical treatment for his illness, hurt or injury involving no appreciable risk to his life.

(3) This section shall be construed as though subsections (5) and (6) of section *one hundred and forty* were included in this section; and in such construction any reference in the said subsections to the payment of wages in terms of section *one hundred and forty* shall be deemed to be a reference to the payment of wages in terms of this section.

[Subs (3) amended by s 22, Act 30/1959]

Compensation to a seaman improperly discharged

142. If a seaman of a South African ship is discharged otherwise than in accordance with the terms of his engagement—

- (a) before the commencement of the voyage; or
- (b) before one month's wages are earned,

without fault on his part justifying that discharge and without his consent, he shall be entitled to receive from the owner or master, in addition to any wages which he may have earned, compensation not exceeding one month's wages for any damage caused to him by the discharge, and may recover that compensation as if it were wages duly earned.

Remedies of master for recovery of wages, disbursements, etc

143. (1) The master of a South African ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of his wages as a seaman has under this Act or by any law or custom.

(2) The master of a South African ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of disbursements or liabilities properly made or incurred by him on account of the ship as a master has for the recovery of his wages.

(3) If in any proceedings in any court touching the claim of a master in respect of wages or of disbursements or liabilities properly made or incurred on account of the ship any right of set-off or counter-claim is set up, the court may enter into and adjudicate upon all questions and settle all accounts then arising or outstanding and may direct payment of any balance found to be due.

Unreasonable delay in paying master's wages

144. If a payment of the sum due to the master of a South African ship on account of wages has been delayed, the court trying any proceedings for the recovery of such wages may order the person liable to make the payment of wages to pay to the master, in addition to any sum due on account of wages, such sum as it thinks just as damages in respect of the delay, unless the court finds that the delay is due to the act or default of the master, or to any

reasonable dispute as to liability, or to any other cause not being the wrongful act or default of the person liable to make the payment.

Power of court to rescind contract between owner or master and seaman or apprentice-officer

145. When any proceedings are instituted in any court of competent jurisdiction in relation to any dispute between an owner or master of a South African ship and a seaman or apprentice-officer, arising out of or incidental to their relation as such, the court may in its discretion rescind any contract between the owner or master and the seaman or apprentice-officer, or any contract of apprenticeship, upon such terms as the court may think just, and this power shall be in addition to any other jurisdiction which the court may have.

Master to take care and make record of property of seaman who dies

146. (1) If a seaman or apprentice-officer of a South African ship dies, the master of the ship shall take charge of all money and other property on board the ship belonging to the said seaman or apprentice-officer.

(2) The master shall enter in the official log-book the following particulars:

- (a) a statement of the amount of the money and a detailed description of the other property; and
- (b) a statement of the sum due to the deceased for wages and of the amount of any deductions to be made from the wages.

(3) The said money, balance of wages and other property are in this Chapter referred to as the property of the seaman or apprentice-officer.

Delivery to proper officer of property of seaman who dies

147. (1) If a seaman or apprentice-officer of a South African ship dies during a voyage, the master of the ship shall within forty-eight hours after arrival at the ship's next port of call where there is a proper officer report all the circumstances of the death to that officer, and shall within the same period deliver the property of the deceased seaman or apprentice-officer to the proper officer, unless that officer directs that such delivery be made to the proper officer at some other port, in which case the master shall act accordingly.

(2) If a seaman or apprentice-officer of a South African ship dies in the Republic, the master or owner of the ship shall deliver the property of the deceased seaman or apprentice-officer to the proper officer at the port where the seaman or apprentice-officer was discharged or was to have been discharged.

(3) The master of the ship shall, as soon as is practicable, report the death to the next-of-kin of the seaman or apprentice-officer.

Account to be rendered of property of seaman who dies

148. (1) In all cases where a seaman or apprentice-officer of a South African ship dies during a voyage or engagement, the master shall give to the proper officer to whom the property of the deceased is delivered an account of such property, in such form as that officer may require.

(2) No deductions claimed by the master shall be allowed unless verified by such vouchers as may reasonable be required by the proper officer and, if an official log-book is required to be kept, by an entry in that book made and attested as required by this Act.

(3) When a master has complied with the provisions of this section the proper officer shall grant him a certificate to that effect.

Property of deceased seaman left abroad but not on board ship

149. If a seaman or apprentice-officer of a South African ship, the voyage of which is to terminate in the Republic, dies at any place out of the Republic, leaving any money or other property not on board the ship to which he belonged at the time of his death, the proper officer at or near that place shall claim and take charge of such money and other property, and such money and other property shall be deemed to be the property of a deceased seaman or apprentice-officer within the meaning of this Chapter.

Sale of property of deceased seaman

150. (1) Subject to the provisions of subsection (2), the proper officer may, if he thinks fit, sell any of the property of a deceased seaman or apprentice-officer delivered to him, or of which he takes charge under this Chapter, and the proceeds of any such sale shall be deemed to form part of the said property.

(2) Before selling any valuables comprised in such property the proper officer shall endeavour to ascertain the reasonable wishes of the next-of-kin of the deceased seaman or apprentice-officer as to the disposal of such valuables. He shall, if practicable and lawful, comply with such wishes.

(3) Every such officer shall remit the property or proceeds so acquired to the Authority, and shall render such accounts in respect thereof as may be prescribed or may be required by the Authority.

Property of deceased seaman may be recovered as wages

151. The provisions of section *one hundred and thirty-six* shall apply, *mutatis mutandis*, in respect of the property of a deceased seaman or apprentice-officer.

Disposal of property of deceased seaman

152. If the property of a deceased seaman is handed over to a proper officer, such property shall be handed over to his next of kin after the necessary authority thereto has been obtained from the Master of the Supreme Court or any other authorized person.

[S 152 amended by s 25, Act 40/1963, repealed by s 1(2), Act 114/1991, and inserted by s 7, Act 18/1992]

Recovery of wages of seaman lost with his ship

153. (1) If a seaman or apprentice-officer of a South African ship is lost with the ship to which he belongs the proper officer may recover the wages due to him from the owner of the ship.

(2) The provisions of sections *one hundred and thirty-six* and *one hundred and fifty-two* shall apply, *mutatis mutandis*, in respect of wages referred to in subsection (1).

(3) If in any proceedings under subsection (1) for the recovery of wages it is shown by the official records or by other evidence that the ship departed from a port twelve months or more before the institution of the proceedings and has not since been heard of, that ship shall be deemed to have been lost with all hands on board, either immediately after the latest time at which she is known to have been still in existence or at such later time as the court hearing the case may think probable.

(4) Any duplicate agreement with the crew 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 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 Authority, 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.

[Subs (4) substituted by s 17, Act 3/1982, and by s 2(2), Act 5/1998]

Relief and maintenance of distressed seamen

154. (1) In this section and in section *one hundred and fifty-five*—

- (a) **"distressed seaman"** includes any master, seaman or apprentice-officer—
- (i) who is a South African citizen and who by reason of having been discharged or left behind from or shipwrecked in any ship other than a South African ship at a place outside the Republic, is in distress at that place; or
 - (ii) whether he is a South African citizen or not, who, by reason of having been discharged or left behind from or shipwrecked in any South African ship at a place outside the Republic, is in distress at that place;
- (b) **"repatriation expenses"** means expenses incurred in returning a distressed seaman to a proper return port and in providing him with necessary clothing and maintenance until his arrival at such port and includes, in the case of a shipwrecked seaman, the

repayment of expenses incurred in conveying him to port after shipwreck and maintaining him while being so conveyed; and

- (c) "**excepted expenses**" means repatriation expenses incurred in cases where the cause of the seaman's being left behind is desertion or absence without leave or imprisonment for misconduct or discharge from his ship by a maritime court on the ground of misconduct.

(2) The proper officer shall on application being made to him by a distressed seaman, provide in terms of the regulations for the return of that seaman to a proper return port, and also for the said seaman's necessary clothing and maintenance until his arrival at such port.

(3) A distressed seaman shall not have any right to be maintained or sent to a proper return port except to the extent and on the conditions provided for in the regulations.

(4) All repatriation expenses, other than excepted expenses, incurred by or on behalf of the State in accordance with the provisions of this Act shall constitute a debt due to the State for which the owner of the ship to which the seaman in respect of whom they were incurred belonged at the time of his discharge or other event which resulted in his becoming a distressed seaman shall be liable. The owner shall not be entitled to recover from the seaman any amount paid by him to the State in settlement or part settlement of such debt.

(5) All excepted expenses incurred by or on behalf of the State in accordance with the provisions of this Act shall constitute a debt due to the State for which the seaman in respect of whom they were incurred and the owner of the ship to which that seaman belonged at the time of his discharge or other event which resulted in his becoming a distressed seaman shall be jointly and severally liable. The owner shall be entitled to recover from the seaman any amount paid by him to the State in settlement or part settlement of such debt, and may apply to the satisfaction of his claim so much as may be necessary of any wages due to the seaman.

(6) All excepted expenses incurred in accordance with the provisions of this Act in respect of any distressed seaman by the owner of the ship to which he belonged at the time of his discharge or other event which resulted in his becoming a distressed seaman shall constitute a debt due to the owner for which the seaman shall be liable. The owner may apply to the satisfaction of his claim so much as may be necessary of any wages due to the seaman. The owner shall not be entitled to recover from the seaman any repatriation expenses other than excepted expenses.

(7) In any proceedings for the recovery of any expenses which in terms of subsection (4) or (5) are a debt due to the State the production of an account of the expenses and proof of payment thereof by or on behalf of or under the direction of the Authority shall be prima facie evidence that the expenses were incurred or repaid in accordance with the provisions of this Act by or on behalf of the State.

Receiving distressed seamen on ships

155. (1) The master of a South African ship shall receive on board his ship and afford passage and maintenance to all distressed seamen whom he is required by a proper officer to take on board his ship, and shall during the passage provide every such distressed seaman with accommodation equal to that normally provided for the crew of the ship and subsistence, proper to the rank or rating of the said distressed seaman.

(2) Every distressed seaman who is taken on board a ship in accordance with the provisions of subsection (1) shall so long as he remains in the ship be deemed to belong to the ship and be subject to the same laws and regulations for preserving discipline as if he were a member of the crew and had signed the agreement with the crew.

(3) The master of a ship shall not be required to receive on board his ship a distressed seaman in terms of this section, if the proper officer is satisfied that accommodation is not and cannot be made available for such seaman.

Provisions of seamen

156. (1) The master of a South African ship of more than one hundred gross register tons shall furnish provisions to every seaman and apprentice-officer (who does not furnish his own provisions) in accordance with the prescribed scale.

(2) . . .

[Subs (2) amended by s 26, Act 40/1963, and deleted by s 1(2), Act 114/1991]

Measuring instruments on board

157. The master of a South African ship shall keep on board proper measuring instruments for determining the quantities of the several provisions and articles served out, and in the event of any dispute as to the quantities served out, shall cause the quantities to be measured in the presence of a witness by using such measuring instruments.

[S 157 substituted by s 6, Act 5/1976]

Refrigerating chamber

158. (1) Subject to the provisions of subsections (2) and (3), the owner of every foreign-going South African ship shall cause her to be provided with a mechanically cooled refrigerating chamber of such capacity and design as to be capable of preserving in good condition fresh meat and other similar perishable foods prescribed for the consumption of the seamen and apprentice-officers between the principal ports of supply on the projected voyage of the ship.

(2) If the Authority is satisfied—

- (a) from a report of a surveyor that in the case of a ship built before the coming into operation of this section the provision of a refrigerating chamber is impracticable; or
- (b) in the case of a ship built before or after the coming into operation of this section, the purpose of this section will, by reason of the small tonnage of the ship or the nature or conditions of the projected voyage of the ship, be secured by the provision of a refrigerator instead of a refrigerating chamber,

it may direct that a refrigerator of a capacity and design approved by it be provided instead of a refrigerating chamber.

[Subs (2) amended by s 2(2), Act 5/1998]

(3) If the Authority is satisfied that because of the nature and conditions of the projected voyage of the ship the provision of a refrigerating chamber or a refrigerator would be unreasonable or unnecessary, it may exempt the ship from the provisions of this section.

[Subs (3) substituted by s 2(2), Act 5/1998]

(4) If a proper officer or surveyor finds on inspecting any foreign-going South African ship which has not been exempted under subsection (3), that the provisions of subsection (1) or any direction given in respect of that ship under subsection (2), as the case may be, is not being complied with, he may cause the ship to be detained until the subsection or the direction, as the case may be, is complied with.

159. . . .

[S 159 repealed by s 22, Act 57/1998]

Bedding and other articles for seamen

160. The master of a South African ship of more than one hundred gross register tons shall supply every seaman and apprentice-officer with such bedding, towels, mess utensils and other articles for personal use as may be prescribed.

Crew accommodation

161. (1) The owner of a South African ship shall provide crew accommodation to the satisfaction of the proper officer, and in accordance with the regulations.

(2) . . .

[Subs (2) amended by s 27, Act 40/1963, and deleted by s 1(2), Act 114/1991]

(3) The master of a South African ship shall ensure that the crew accommodation shall be kept free from goods and stores of any kind (except stores and furniture and other equipment necessary for the proper use of such accommodation) not being the personal property of a seaman or apprentice-officer in use during the voyage, and if any part of such accommodation is not so kept free, each seaman or apprentice-officer lodged in that part may recover, by way of compensation for the discomfort suffered by him by reason of the fact that such accommodation was not so kept free after complaint had been made to the master by any two or more of the said seamen or apprentice-officers, an amount which the court or the proper officer, as the case may be, considers reasonable, having regard to all the circumstances.

(4) Any amount recoverable in terms of subsection (3) may be recovered as wages.

Complaints as to provisions or water or accommodation

162. (1) If three or more seamen or apprentice-officers of a South African ship consider—

(a) that the provisions or water for the use of the seamen or apprentice-officers are at any time of bad quality or deficient in quantity; or

- (b) that the crew accommodation is unsanitary or is not in accordance with the regulations;
or
- (c) that in any other respect the conditions under which the seamen or apprentice-officers are living on board ship are not of a reasonably good standard,

they may complain thereof to the proper officer, who shall investigate the complaint or cause it to be investigated.

(2) If the proper officer or person making the investigation finds—

- (a) that the provisions or water are of bad quality, or deficient in quantity; or
- (b) that the new accommodation is unsanitary or is not in accordance with the regulations;
or
- (c) that the living conditions are not of a reasonably good standard,

as the case may be, he shall communicate that finding in writing to the master.

(3) Upon the finding being communicated to him, the master shall forthwith—

- (a) if the finding is in terms of paragraph (a) of subsection (2), provide other provisions or water of good quality or sufficient in quantity, as the case may be, and shall not permit any provisions or water so found to be of bad quality to be used on board the ship; or
- (b) if the finding is in terms of paragraph (b) of subsection (2), take steps to the satisfaction of the proper officer to provide crew accommodation that is sanitary and in accordance with the regulations; or
- (c) if the finding is in terms of paragraph (c) of subsection (2), take steps to the satisfaction of the proper officer to ensure that the living conditions of the seamen and apprentice-officers are of a reasonably good standard;

and the ship shall be detained until this has been done.

(4) The officer making or causing the investigation shall enter a statement of the result of the examination in the official log-book, and send a report thereof to the Authority, and that report shall be admissible in evidence.

(5) If the said officer certifies in that statement that there was no reasonable ground for the complaint, each of the complainants shall, if so directed by the officer in the certificate, forfeit to the owner out of his wages a sum to be determined by the proper officer, but not exceeding one week's wages.

Powers of inspection of provisions, water and accommodation

163. (1) A port health officer, district surgeon or other medical officer of the Department of Health in the Republic, or any medical practitioner outside the Republic, or a surveyor may at the request of the proper officer board any South African ship and inspect the provisions and water provided for the use of the seamen, apprentice-officers or passengers and the crew accommodation and the accommodation for passengers, for the purpose of ascertaining whether the same are in accordance with the requirements of this Act or any other law.

(2) The provisions of subsections (2), (3) and (4) of section *one hundred and sixty-two* shall apply, *mutatis mutandis*, in respect of any investigation under this section.

(3) The provisions of this section shall not in any way derogate from or modify the powers and duties of a port health officer under the provisions of the Health Act 63 of 1977.

[Subs (3) substituted by s 8, Act 18/1992]

Inspection of provisions, water and accommodation at sea

164. The master of a South African ship which is at sea shall, at least once in every ten days, cause an inspection to be made of the provisions and water provided for the use of the seamen, apprentice-officers and passengers and the crew accommodation and the accommodation for passengers, for the purpose of ascertaining whether the same are being maintained in accordance with the requirements of this Act and all other laws. The person making the inspection shall enter a statement of the result of the inspection in the official log-book.

[S 164 amended by s 23, Act 30/1959]

Compensation if short or bad provisions furnished

165. (1) If the allowance of any of the provisions which the master of a South African ship is by section *one hundred and fifty-six* required to furnish is reduced, or any of those provisions are bad in quality, the seaman or apprentice-officer may recover by way of compensation for that reduction or bad quality an amount which the court or the proper officer, as the case may be, considers reasonable, having regard to all the circumstances.

(2) Any amount recoverable in terms of subsection (1) may be recovered as wages.

Provision of board and lodging elsewhere than on board ship

166. Whenever the master or a seaman or apprentice-officer of a South African ship who is entitled to be provided with accommodation or provisions, by reason of the fact that the ship is being fumigated, or for any other reason not due to his own wilful act or default or to his own misbehaviour, be provided with accommodation or provisions on board the ship, he shall be provided elsewhere at the expense of the owner of the ship with accommodation or food, as the case may be, proper to his rank or rating.

Medicines to be provided and kept on board certain ships

167. The owner and master of a South African ship of any prescribed class shall ensure that there is on board that ship an adequate supply, according to the prescribed scales, of antiscorbutics and medicines and appliances for the treatment and prevention of diseases and accidents likely to occur at sea and of the prescribed first-aid equipment.

[S 167 substituted by s 2, Act 24/1974]

Inspection of medicines and medical appliances

168. (1) A port health officer, district surgeon or other medical officer of the Department of Health in the Republic, or any medical practitioner outside the Republic, may at the request of the proper officer board any South African ship and inspect the medicines, medical appliances and first-aid equipment carried, for the purpose of ascertaining whether the same are in accordance with the requirements of this Act or any other law.

(2) The provisions of subsections (2), (3) and (4) of section *one hundred and sixty-two* shall apply, *mutatis mutandis*, in respect of any investigation under this section.

(3) The provisions of this section shall not in any way derogate from or modify the powers and duties of a port health officer under the provisions of the Health Act 63 of 1977.

[Subs (3) substituted by s 9, Act 18/1992]

Expenses of medical attendance in cases of injury or illness

169. (1) If the master or a seaman or apprentice-officer of a South African ship receives any hurt or injury or suffers from any illness (not being a hurt, injury or illness due to his own wilful act or default or to his own misbehaviour), resulting in his being discharged or left behind at a place other than his proper return port, the expense of providing the necessary medical advice, attendance and treatment and medicine, and also the expenses of the maintenance of the said master, seaman or apprentice-officer in a manner appropriate to his rank or rating, until he is cured or dies or is returned to and arrives at a proper return port, and of his conveyance to that port, and in case of death the expense of his burial, shall be defrayed by the owner of the ship, without any relative deduction from the wages of the master, seaman or apprentice-officer concerned.

(2) If the master or seaman or apprentice-officer is on account of any illness or injury temporarily removed from his ship, at a port other than his proper return port, for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expenses of removal, medical attendance and treatment, and of maintenance while the master, seaman or apprentice-officer is away from the ship, shall be defrayed in like manner.

(3) The expenses of all medical attendance and treatment given to a master, seaman or apprentice-officer whilst on board his ship shall be defrayed in like manner.

(4) In all other cases any reasonable expenses duly incurred by the owner for any master, seaman, or apprentice-officer in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any master, seaman or apprentice-officer who dies whilst on service, shall, if proved to the satisfaction of the proper officer, be deducted from the salary or wages of the master, seaman or apprentice-officer.

(5) Nothing contained in this section shall deprive any person of any benefit to which he may be entitled under Chapter VIII of the Workmen's Compensation Act 30 of 1941 and to which this section does not entitle him.

(6) A seaman shall not be entitled to receive the same benefit under this section and also under the Workmen's Compensation Act 30 of 1941; but his employer who has incurred any expense under this section which the Workmen's Compensation Commissioner would, but for the provisions of this section, have been liable to defray, shall, if he has paid all

assessments for the payment of which he is liable under that Act, be entitled to recover that expense from the Workmen's Compensation Commissioner.

(7) In this section the expression "**seaman**" includes every person employed or engaged in any capacity on board any ship, but in the case of a ship which is a fishing boat, does not include any person who is entitled to be remunerated only by a share in the profits or the gross earnings of the working of the boat.

Recovery of expenses from owner

170. If any expenses payable by the master or owner of a South African ship in respect of illness, hurt or injury of the master or of a seaman or apprentice-officer of that ship are paid by any other person, those expenses shall be repaid to that person by the said master or owner, and if not so repaid shall constitute a debt recoverable in any competent court from the master or owner by whom they are payable.

Facilities for making complaints

171. (1) If a seaman or apprentice-officer whilst on board a South African ship states to the master of the ship his desire to make a complaint to a proper officer against the master or any of the crew or concerning the unseaworthiness of the ship, the master shall—

- (a) if the ship is then at a place where there is a proper officer, as soon after such statement as the service of the ship will permit; or
- (b) if the ship is not then at such a place, as soon after her first arrival at such place as the service of the ship will permit,

allow the complainant to go ashore or, if he is in custody, send him ashore in proper custody, so that he may make his complaint.

(2) This section shall not apply in respect of a seaman or apprentice-officer on board a vessel belonging to Transnet Limited and used by that authority in connection with the working of its harbours.

[Subs (2) substituted by s 10, Act 18/1992]

Seamen's property not to be detained

172. Any person who receives or takes into his possession or under his control any money or other property of a seaman or apprentice-officer who belongs or has recently belonged to any ship wherever registered shall return the same or pay the value thereof when required by the seaman or apprentice-officer subject to such deductions as may be justly due to him from the seaman or apprentice-officer in respect of board or lodging.

Soliciting seamen

173. No person shall within twenty-four hours after the arrival of any ship (wherever registered) at a port in the Republic, or within twenty-four hours before the projected departure therefrom—

- (a) solicit a seaman or apprentice-officer belonging to the ship to become a lodger at any house; or
- (b) take out of the ship any property of a seaman or apprentice-officer except under the direction of the seaman or apprentice-officer and with the permission of the master.

Misconduct by seamen endangering ship or life, and general offences against discipline

174. (1) No master of or seaman or apprentice-officer engaged on or belonging to any ship wherever registered shall knowingly—

- (a) do anything tending to the immediate loss, destruction or serious damage of the ship, or tending to endanger the life of or to cause injury to any person belonging to or on board the ship; or
- (b) refuse or omit to do any lawful act proper and requisite to be done by him for preserving the ship from immediate loss, destruction or serious damage, or for preserving any person belonging to or on board the ship from danger to life or from injury.

(2) Subject to the provisions of subsection (4) of section *three hundred and fifty-five*, no seaman or apprentice-officer engaged on or belonging to a South African ship shall—

- (a) report for duty on the ship in a drunken condition or be drunk on board the ship; or
- (b) wilfully disobey any lawful command or neglect his duty; or
- (c) be guilty of continued wilful disobedience to lawful commands or continued wilful neglect of duty; or
- (d) combine with any of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or retard the progress of the voyage; or
- (e) assault the master or any ship's officer of the ship; or
- (f) prevent or hinder or retard the loading or unloading or departure of the ship; or
- (g) wilfully damage the ship, or misappropriate, or make any improper use of, or wilfully damage, any of the ship's stores, equipment or cargo.

(3) No seaman on or before being engaged to serve on a South African ship shall knowingly make a false statement of the name of his last ship or alleged last ship, or knowingly make a false statement of his own name.

Desertion

175. (1) Subject to the provisions of subsection (4) of section *three hundred and fifty-five*, no seaman or apprentice-officer engaged on or belonging to a treaty ship shall without reasonable cause—

- (a) at a port in the Republic, in the case of a treaty ship other than a South African ship;
or

[Para (a) amended by s 46, Act 69/1962, and by s 28, Act 40/1963]

- (b) at any place whatsoever, in the case of a South African ship,
absent himself from his ship with the intention of not returning thereto.

[Subs (1) amended by s 46, Act 69/1962]

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of desertion.

(3) No person shall knowingly harbour or secrete a seaman or apprentice-officer who has contravened or is contravening the provisions of subsection (1).

Absence without leave

176. (1) Subject to the provisions of subsection (4) of *section three hundred and fifty-five*, no seaman or apprentice-officer engaged on or belonging to a treaty ship shall without reasonable cause—

- (a) at a port in the Republic, in the case of a treaty ship other than a South African ship;
or

[Para (a) amended by s 46, Act 69/1962, and by s 28, Act 40/1963]

- (b) at any place whatsoever, in the case of a South African ship,
fail or refuse to join his ship or to proceed to sea therein, or be absent without leave from his ship or from his duty, either at the commencement or during the progress of a voyage.

[Subs (1) amended by s 46, Act 69/1962]

(2) Any person who contravenes the provisions of subsection (1) shall, if his conduct does not amount to desertion, as defined in section *one hundred and seventy-five* be guilty of absence without leave.

(3) No person shall knowingly harbour or secrete a seaman or apprentice-officer who has contravened or is contravening the provisions of subsection (1).

Notice to proper officer of absence of seaman at time of sailing

177. If a seaman or apprentice-officer engaged on or belonging to a treaty ship is not on board that ship at the time of sailing—

- (a) from a port in the Republic, in the case of a treaty ship other than a South African ship;
or

[Para (a) amended by s 47, Act 69/1962, and by s 29, Act 40/1963]

(b) from any port whatsoever, in the case of a South African ship,

the master of the ship shall, as soon as possible, give written notice of the fact in the prescribed form and manner to the proper officer of that port.

[S 177 amended by s 47, Act 69/1962]

Unseaworthiness of ship a good defence to charge of desertion, etc

178. (1) For the purpose of the proviso to subsection (2) of section *one hundred and seventeen* and sections *one hundred and seventy-five* and *one hundred and seventy-six* the fact that the ship on which a seaman or apprentice-officer is engaged or to which he belongs is unseaworthy shall be deemed to be reasonable cause: Provided the seaman or apprentice-officer has, before absenting himself or being absent from, or failing or refusing to join, or to proceed to sea in, his ship, as the case may be, complained to the master or proper officer that the ship is unseaworthy.

(2) The provisions of section *two hundred and forty-three* shall apply in respect of any complaint to the proper officer referred to in subsection (1).

(3) Whenever in any proceedings against any seaman or apprentice-officer on a charge of desertion or absence without leave the defence referred to in subsection (1) is raised, the court may, if it think fit, order the ship to be inspected by a surveyor.

(4) If it is not proved that the ship was an unseaworthy ship, the expenses incurred in connection with any such inspection shall be paid to the Authority by the seaman or apprentice-officer by whom the said defence has been raised, and upon demand by the Authority the unpaid amount of such expenses shall be deducted by the master or owner of the ship out of the wages due or to become due to the said seaman or apprentice-officer and paid over to the Authority.

(5) If it is proved that the ship was an unseaworthy ship, the expenses incurred in connection with the inspection shall be paid to the Authority by the master or owner of the ship, who shall also pay to the seaman or apprentice-officer charged such compensation for the damage suffered by him by reason of the charge having been made against him as the court may award.

Deserter's certificates of discharge may be withheld

179. If it is shown to the satisfaction of a proper officer that a seaman engaged or belonging to a South African ship has been guilty of desertion or absence without leave, as defined by sections *one hundred and seventy-five* and *one hundred and seventy-six* respectively, the Authority may direct that the seaman's certificates of discharge shall be withheld for such period as the Authority may direct, and while such a direction is in force the proper officer or any other person may, notwithstanding anything to the contrary contained in this Act, refuse to furnish copies of any of the seaman's certificates of discharge or certified extracts of any particulars of his service or character.

Deserters from foreign ships

180. (1) If the Minister is satisfied that due facilities are or will be given by the Government of any foreign country for apprehending seamen and apprentice-officers who desert or are absent without leave from South African ships in that country, he may by notice in the *Gazette* declare that the provisions of subsection (2) shall apply to seamen and apprentice-officers belonging to ships of that country.

[Subs (1) amended by s 24(a), Act 30/1959]

(2) (a) If the provisions of this subsection have in terms of subsection (1) been applied to seamen and apprentice-officers belonging to ships of any foreign country, any magistrate may, on application by the master of a ship of that country, if he is satisfied from information taken on oath that reasonable grounds exist for suspecting that any seaman or apprentice-officer has deserted or is absent without leave from that ship, issue a warrant for the apprehension of that seaman or apprentice-officer and for bringing him before a judicial officer, and such warrant shall be executed in the same manner as a warrant issued under section 43 of the Criminal Procedure Act 51 of 1977.

(b) A judicial officer before whom the seaman or apprentice-officer is brought in terms of paragraph (a) may, on proof that he has deserted or is absent without leave from that ship, order that he be conveyed on board that ship or delivered to the master or a ship's officer or the owner of that ship, to be so conveyed, and any such order shall be duly executed.

[Subs (2) amended by s 24(b), Act 30/1959, and substituted by s 11, Act 18/1992]

(3) No person shall knowingly harbour or secrete any person liable to be apprehended under the provisions of this section.

Entry of offences in official log

181. If in or in respect of any South African ship any offence within the meaning of this Act of desertion or absence without leave or against discipline is committed, or if any act of misconduct is committed for which the offender's agreement imposes a fine and for which it is intended to enforce the fine—

- (a) an entry of the offence or act shall be made by the master in the official log-book, and signed by him and also by a ship's officer or one of the crew;
- (b) the offender, if still in the ship, shall, before the next subsequent arrival of the ship at any port, or, if the ship is at the time in port, before her departure therefrom, either be furnished by the master with a copy of the entry or have the same read over distinctly and audibly to him in one of the official languages selected by the offender, and he may thereupon make such reply thereto as he thinks fit;
- (c) a statement that a copy of the entry has been so furnished or, as the case may be, that the entry has been so read over, and of the offender's reply (if any) shall be entered and signed in manner aforesaid;
- (d) in any subsequent legal proceedings the entries required by this section shall, if practicable, be produced or proved, and in default of that production or proof the court hearing the case may in its discretion refuse to receive evidence of the offence or act of misconduct.

Official log-books to be kept

182. (1) The master of every South African ship of more than one hundred gross register tons, and the master of every South African ship of one hundred gross register tons or less who has entered into an agreement with the crew of the ship, shall keep an official log-book in the prescribed form and in one of the official languages of the Republic.

(2) The official log-book may, at the discretion of the master, be kept distinct from or united with the ordinary ship's log-book. In all cases the spaces in the official log-book shall be duly filled up.

(3) An entry required by this Act in an official log-book shall be made as soon as possible after the occurrence to which it relates, and if not made on the same day as that occurrence shall be so made and dated as to show the dates of the occurrence and of the entry respecting it.

(4) Every entry in the official log-book shall be signed by the master, and by a ship's officer or some other member of the crew, and also—

- (a) if it is an entry in respect of illness, hurt, injury or death, by the surgeon or medical practitioner, if any, on board; and
- (b) if it is an entry in respect of wages due to, or of the property of, a seaman or apprentice-officer who dies, by some other member of the crew.

(5) Every entry made in an official log-book in the manner provided by this Act shall be admissible in evidence.

Entries in official log-books

183. The master of a ship on board of which an official log-book is required to be kept in terms of this Act shall enter or cause to be entered in that book the following matters:

- (a) every conviction by a legal tribunal of a member of his crew, and the punishment inflicted;
- (b) every offence for which punishment is inflicted on board, and the nature of the punishment inflicted;
- (c) a statement of the conduct, character and qualifications of each member of the crew, or a statement that he declines to express an opinion thereon, with a statement of his reasons for so declining;
- (d) every case of illness, hurt or injury happening to a member of the crew, with the nature thereof, and the medical treatment adopted, if any;
- (e) every case of death happening on board, and the cause thereof, together with such particulars as may be prescribed;
- (f) every birth happening on board, with the sex of the infant and names of the parents, together with such particulars as may be prescribed;
- (g) every marriage taking place on board, with the names and the ages of the parties;
- (h) the name of every seaman or apprentice-officer who ceases to be a member of the crew, otherwise than by death, with the place, time, manner and cause thereof;

- (i) the wages due to any seaman or apprentice-officer who dies during the voyage, and the gross amount of all deductions to be made therefrom;
- (j) every collision with any other ship, and the circumstances under which the same occurred;
- (k) every casualty or accident of which a report is required to be made under this Act;
- (l) every meeting with any other ship at sea, when persons or goods are transhipped; and
- (m) any other matter directed by this Act to be entered.

Unlawful entries or alterations in official log-books

184. (1) No person shall twenty-four hours after the arrival of a South African ship at its final port of destination of a voyage make any entry in the official log-book of that ship respecting an occurrence prior to the arrival of the ship at that port.

(2) No person shall wilfully destroy or mutilate or render illegible an entry in an official log book, or wilfully make a false entry in such book, or wilfully fail to make any entry which it is his duty to make in such book.

Delivery of official log-books to proper officer

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 at the port where the crew is discharged.

[S 185 substituted by s 18, Act 3/1982]

Transmission of official log-books to proper officer

186. (1) If for any reason the official log-book ceases to be required in respect of a South African ship, the master or owner of the ship, shall, if the ship is then in the Republic, within one month, and if it is elsewhere, within six months, after the cessation, deliver or transmit to the proper officer at the port to which the ship belonged the official log-book duly completed up to the time of the cessation.

(2) If a ship is lost or abandoned the master or owner thereof shall, if practicable, and as soon as possible, deliver or transmit to the proper officer at the port to which the ship belonged the official log-book duly completed up to the time of the loss or abandonment.

Documents to be handed to successor on change of master

187. If, at any time before or during the progress of a voyage, the master of a South African ship is removed or superseded, or, for any other reason, quits the ship and is succeeded in the command by some other person, he shall deliver to his successor the various documents in his custody relating to the navigation of the ship and to the crew, and

his successor shall immediately on assuming the command of the ship enter in the official log-book a list of the documents so delivered to him.

List of the crew

188. (1) The master of a foreign-going South African ship who has entered into an agreement with the crew of the ship, and the master or the owner of a coasting ship or a fishing, sealing or shore-based whaling boat registered in the Republic who has entered into an agreement with the crew of the ship, shall, upon the discharge of the crew, whether within or outside the Republic, make out and sign a list (in this Act referred to as the list of the crew) which may be combined in one document with the agreement with the crew, in the prescribed form, containing the following particulars:

- (i) the number and date of the ship's register, and her register tonnage;
- (ii) the length and general nature of the voyage or employment;
- (iii) the names, ages, and places of birth of all the crew, including the master and apprentice-officers; their ratings on board, their last ships or other employments and the dates and places of their joining the ship; and
- (iv) the names of any of the crew who have ceased to belong to the ship, with the times, places, causes and circumstances thereof.

[Subs (1) substituted by s 25, Act 30/1959]

- (2) The list of the crew shall be delivered to the proper officer—
 - (a) in the case of a foreign-going ship, by the master, within forty-eight hours after the ship's arrival at her final port of destination for the voyage, or, if the agreement entered into with the crew was a running agreement, within forty-eight hours after her arrival at her final port of destination for the last voyage over which the agreement extends, or upon the discharge of the crew, whichever event first occurs; and
 - (b) in the case of a coasting ship or a fishing, sealing or shore-based whaling boat, by the master or the owner, as the case may be, who entered into the agreement with crew, within twenty-one days after the expiry of the agreement,

and the proper officer shall give to the master or owner from whom he has received the list a certificate of such delivery and any such ship may be detained until the certificate is produced.

[Subs (2) substituted by s 25, Act 30/1959]

(3) If a South African ship is lost or abandoned, the master or owner thereof shall, if practicable, and as soon as possible, deliver or transmit to the proper officer at the port to which the ship belonged the list of the crew, duly made out to the time of the loss or abandonment.

Returns of births and deaths

189. (1) Within forty-eight hours after the arrival of any ship at any port in the Republic, the master shall deliver or transmit to the proper officer in the prescribed form a return of such particulars as may be prescribed—

- (a) in the case of a South African ship, of every birth of a child and every death of a person on board the ship which has occurred after the last preceding occasion on which the ship left a port in the Republic; or
 - (b) in the case of a ship other than a South African ship, of every birth of a child on board the ship whose parents reside or intend to reside in the Republic, and of every death of a person on board the ship who at the time of his death was residing in the Republic, which has occurred during the voyage.
- (2) The proper officer shall transmit every such return received by him to the registrar or assistant registrar of births and deaths within whose area the port is situated.

[Subs (2) substituted by s 49, Act 58/1970]

CHAPTER V SAFETY OF SHIPS AND LIFE AT SEA

Part I—Construction of ships, provision of life-saving appliances and installation of radio

Initial and subsequent surveys of vessels in respect of safety provisions

190. (1) If the owner of any vessel which is or is to be registered or licensed in the Republic desires that a safety convention certificate or a local safety certificate be issued in respect of the vessel, he shall, before he applies for the issue of the certificate, cause her to be inspected by a surveyor.

[Subs (1) substituted by item 10 (Sch 2), Act 58/1998]

(2) The owner of every vessel in respect of which a safety convention certificate or a local safety certificate has been issued shall cause her to be inspected by a surveyor at intervals, calculated from the date of the initial survey referred to in subsection (1), as follows:

- (a) in the case of a passenger ship, at intervals not exceeding twelve months in accordance with the construction regulations, the life-saving equipment regulations, the collision regulations, the radio regulations and any other applicable regulations which may have been made;

[Para (a) substituted by s 8, Act 13/1965]

- (b) in the case of a vessel (other than a passenger ship) plying on international voyages, at intervals not exceeding twenty-four months in accordance with the construction regulations, the life-saving equipment regulations, the collision regulations and any other applicable regulations which may have been made: Provided that inspections in accordance with such of the said regulations which are solely applicable to the issue of a cargo ship safety construction certificate shall be at intervals not exceeding five years;

[Para (b) substituted by s 8, Act 13/1965]

- (c) in the case of a vessel (other than a passenger ship) which does not ply on international voyages, at intervals not exceeding twelve months in accordance with the construction

regulations, the life-saving equipment regulations the collision regulations and any other applicable regulations which may have been made;

[Para (c) substituted by s 8, Act 13/1965]

- (d) in the case of a vessel (other than a passenger ship), which by the radio regulations is required to be fitted with a radio installation, at intervals not exceeding twelve months in accordance with the radio regulations applicable to her.

(3) On the inspection of a vessel in terms of subsection (1) or (2) there shall be paid by the owner of the vessel such fee as may be prescribed.

Surveyor's report on inspection under safety regulations

191. (1) Every surveyor who inspects a vessel in pursuance of section *one hundred and ninety* or any provision of the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations, or any other applicable regulations which may have been made, shall draw up a report of his inspection in the prescribed form.

[Subs (1) substituted by s 9, Act 13/1965]

(2) The report shall contain full and clear statements as to the extent to which, in the case of an inspection of a ship referred to in paragraph (a), (b), (c) or (d) of subsection (2) of the said section, the vessel is constructed and equipped in accordance with the regulations referred to in those paragraphs, respectively, and as to all matters on which the form indicates that a report is required.

(3) The surveyor shall forward the report to the proper officer.

Issue of safety convention certificates in respect of passenger ships

192. If, after consideration of the report of a surveyor, the Authority is satisfied—

- (a) that a passenger ship which is or is to be registered in the Republic is constructed and equipped in accordance with all the requirements of the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations and any other regulations which may have been made, which are applicable to the ship when plying on international voyages or on short international voyages, it shall cause to be issued in respect of the ship a passenger ship safety certificate for an international voyage or a short international voyage, as the case may be;

[Para (a) substituted by item 11(a) (Sch 2), Act 58/1998]

(b) . . .

- (c) that a passenger ship which is or is to be registered in the Republic is exempt, by virtue of the exercise by it of a power conferred on it by the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations or any other regulations which may have been made, from any of the requirements of the said regulations applicable to the ship when plying on international voyages, or on short international voyages, or when engaged in any special passenger trade on such voyages, and that she is constructed and equipped in accordance with the remaining

requirements, it shall cause to be issued in respect of the ship an exemption certificate and a passenger ship safety certificate.

[Para (c) substituted by item 11(b) (Sch 2), Act 58/1998]

[S 192 amended by s 10, Act 13/1963; substituted by s 2(2), Act 5/1998; and amended by item 11 (Sch 2), Act 58/1998]

Issue of safety convention certificates in respect of ships other than passenger ships

193. If, after consideration of the report of a surveyor, the Authority is satisfied—

- (1) that a ship (other than a passenger ship) to which the Safety Convention applies and which is or is to be registered in the Republic is constructed and equipped in accordance with all the requirements of the construction regulations, the life-saving equipment regulations, the collision regulations and any other regulations which may have been made, which are applicable to the ship when plying on international voyages, it shall cause to be issued in respect of that ship—
 - (a) a cargo ship safety construction certificate relating to the matters applicable to the issue of such a certificate; and
 - (b) a cargo ship safety equipment certificate relating to the matters applicable to the issue of such a certificate;

[Para (1) amended by item 12(a) (Sch 2), Act 58/1998]

- (2) that a ship (other than a passenger ship) to which the Safety Convention applies and which is or is to be registered in the Republic is exempt, by virtue of the exercise by it of a power conferred on it by the construction regulations, the life-saving equipment regulations, the collision regulations or any other regulations which may have been made, from any of the requirements of the said regulations applicable to the ship when plying on international voyages, and that she is constructed and equipped in accordance with the remaining requirements, it shall cause to be issued in respect of the ship—
 - (a) an exemption certificate and a cargo ship safety construction certificate if the matters from which the ship is exempt relate to such latter certificate; and
 - (b) an exemption certificate and a cargo ship safety equipment certificate, if the matters from which the ship is exempt relate to such latter certificate;

[Para (2) amended by item 12(b) (Sch 2), Act 58/1998]

- (3) that a ship (other than a passenger ship) to which the Safety Convention applies and which is or is to be registered in the Republic is equipped in accordance with all the requirements of the radio regulations applicable to the ship when plying on international voyages, it shall cause to be issued in respect of the ship a cargo ship safety radio certificate;

[Para (3) substituted by item 12(c) (Sch 2), Act 58/1998]

- (4) that a ship (other than a passenger ship) to which the Safety Convention applies and which is or is to be registered in the Republic is exempt, by virtue of the exercise by it of a power conferred on it by the radio regulations, from any or all of the requirements of the said regulations applicable to the ship when plying on international voyages, and that she is equipped in accordance with the remaining requirements (if any), it shall cause to be issued in respect of the ship—

- (a) an exemption certificate; and
- (b) in the case of a ship which is not exempt from all the said requirements, a cargo ship safety radio certificate.

[Para (4) amended by item 12(d) (Sch 2), Act 58/1998]

(5) . . .

[S 193 amended by s 11, Act 13/1965, and s 5, Act 23/1997; substituted by s 2(2), Act 5/1998; and amended by item 12 (Sch 2), Act 58/1998]

Issue of local safety certificates

194. (1) If, after consideration of the report of a surveyor, the Authority is satisfied that a vessel referred to in subsection (2)—

- (a) is constructed and equipped in accordance with all the requirements of the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations and any other regulations which may have been made, which are applicable to the vessel when engaged in the voyages or the operations in which it is intended that she shall be engaged, it shall cause to be issued in respect of the vessel a local general safety certificate stating that she is so constructed and equipped, and specifying the voyages or the operations in which the vessel is by the certificate authorized to be engaged;

[Para (a) substituted by s 12(a), Act 13/1965, and by s 2(2), Act 5/1998]

- (b) is exempt, by virtue of the exercise by it of a power conferred on it by the regulations referred to in paragraph (a), from any of the requirements of the said regulations and is constructed and equipped in accordance with the remaining requirements, it shall cause to be issued in respect of the vessel—
 - (i) a local safety exemption certificate stating which of the said requirements the vessel is exempt from, and that the exemption is conditional on her being engaged only in the voyages or operations and complying with the other conditions (if any) specified in the certificates; and
 - (ii) a local general safety certificate stating that the vessel is constructed and equipped in accordance with the remaining requirements.

[Subpara (ii) substituted by s 12(b), Act 13/1965]

[Para (b) amended by s 2(2), Act 5/1998]

(2) The provisions of subsection (1) shall apply in respect of all—

- (a) passenger ships of whatever size which are not intended to be engaged in international voyages; or
- (b) ships (other than passenger ships)—
 - (i) to which the Safety Convention does not apply and which are intended to be engaged in international voyages; or

[Subpara (i) substituted by s 12(c), Act 13/1965]

- (ii) of whatever size which are not intended to be engaged in international voyages,

and which are or are to be registered or licensed in the Republic.

[Subs (2) amended by item 13 (Sch 2), Act 58/1998]

Form of safety certificate

195. (1) Every safety convention certificate and every local safety certificate shall be in the form prescribed.

(2) Every passenger ship safety certificate, cargo ship safety equipment certificate or local general safety certificate shall state the maximum number of persons which the vessel is fit to carry, distinguishing, if necessary, between the respective numbers to be carried on the deck and in the cabins and in different parts of the deck and cabins, and any conditions and variations to which those numbers shall be subject, according to the time of the year, the nature of the voyage, the cargo carried, or other circumstances, as the case requires.

[Subs (2) substituted by s 13, Act 13/1965]

(3) Every local general safety certificate shall state the limits, if any, beyond which the vessel is not fit to proceed, and such other particulars as may be prescribed.

[Subs (3) substituted by s 13, Act 13/1965]

Modification of safety convention certificates as respects life-saving appliances

196. (1) If, on any international voyage, a passenger ship registered in the Republic, in respect of which a safety convention certificate is in force, has on board a total number of persons less than the number stated in that certificate to be the number for which the life-saving appliances on the ship provides, the Authority may, at the request of the master of the ship, issue a memorandum stating the total number of persons carried on the ship on that voyage, and the consequent modification which may be made for the purpose of that voyage in the particulars with respect to life-saving appliances stated in the certificate, and that memorandum shall be annexed to the certificate.

[Subs (1) substituted by s 2(2), Act 5/1998]

(2) The master of the ship in respect of which any such memorandum has been issued shall return it to the Authority at the end of the voyage to which it relates.

(3) If a recognized non-South African safety convention certificate is produced in respect of a passenger ship not registered in the Republic, and there is attached to the certificate a memorandum which—

- (a) has been issued by or under the authority of the Government of the country in which the ship is registered; and
- (b) modifies for the purpose of any particular voyage, in view of the number of persons actually carried on that voyage, the particulars stated in the certificate with respect to life-saving appliances,

the certificate shall have effect for the purpose of that voyage as if were modified in accordance with the memorandum.

[Subs (3) amended by s 30, Act 40/1963]

Duration of safety certificates

197. (1) Subject to the provisions of this section, a safety convention certificate or a local safety certificate shall expire at the end of such period, not exceeding two years, in the case of a cargo ship safety equipment certificate or five years, in the case of a cargo ship safety construction certificate, or one year, in the case of any other certificate, from the date of its issue, as may be specified therein, or upon the giving of notice by the Authority to the owner or master of the vessel that it has been cancelled.

[Subs (1) substituted by s 14, Act 13/1965]

(2) An exemption certificate shall not remain in force for a period longer than the period of the passenger ship safety certificate, the cargo ship safety construction certificate, the cargo ship safety equipment certificate or the cargo ship safety radio certificate, and a local safety exemption certificate shall not remain in force for a period longer than the period of the local general safety certificate, issued in respect of the same vessel.

[Subs (2) substituted by s 14, Act 13/1965, and by s 6, Act 23/1997]

(3) (a) The Authority may grant an extension of—

- (i) any safety convention certificate, except a cargo ship safety construction certificate; or
- (ii) any local safety certificate, issued in respect of any vessel registered or licensed in the Republic for a period not exceeding one month from the date when the certificate would, but for the extension, have expired, or, if the vessel is absent from the Republic on that date, for a period not exceeding five months from that date.

[Para (a) substituted by s 2(2), Act 5/1998, and item 14 (Sch 2), Act 58/1998]

(b) If any safety convention certificate, except a cargo ship safety construction certificate, issued in respect of a ship not registered in the Republic, expires while such ship is in any port in the Republic, the Authority may, for sound reasons, extend such certificate for any period not exceeding five months, which extension shall be granted only for the purpose of allowing such ship to complete its voyage to the country in which it is registered or is to be inspected.

[Subs (3)(b) substituted by s 2(2), Act 5/1998]

(c) Notwithstanding the provisions of this section the validity of a certificate shall expire upon transfer of any ship to the flag of another country.

[Subs (3) substituted by s 6, Act 3/1981]

Cancellation of safety convention certificates and local safety certificates

198. (1) The Authority may direct that a safety convention certificate or a local safety certificate be cancelled, if, by reason of the contents of a report by a surveyor, or for any other reason, it is satisfied that—

- (a) it was obtained fraudulently or on wrong information; or
- (b) since it was issued, the hull, equipment or machinery of the vessel has, by reason of any alteration made thereto, or by reason or any injury sustained by the vessel, or for any other reason, become insufficient: or
- (c) since it was issued, the vessel has for any reason become unseaworthy; or

- (d) the vessel no longer complies with all the requirements of the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations and any other applicable regulations which may have been made, to the same extent to which she complied with those regulations when the certificate was issued.

[Para (d) substituted by s 15, Act 13/1965]

[Subs (1) amended by s 2(2), Act 5/1998]

(2) For the purposes of this section the word "**alteration**", in relation to the hull, equipment or machinery of a vessel, includes the renewal of any part thereof.

(3) Whenever a direction is issued under subsection (1) for the cancellation of a certificate, the Authority shall notify the owner or master of the vessel in respect of which the certificate was issued of the cancellation.

Surrender of expired or cancelled safety convention certificate or local safety certificate

199. (1) A safety convention certificate or a local safety certificate which has expired or has been cancelled shall on demand be surrendered by the owner or master of the ship to the Authority.

(2) If any certificate required to be surrendered under subsection (1) is not surrendered, the Authority may cause the ship to be detained until the certificate is surrendered.

[S 199 substituted by s 2(2), Act 5/1998]

South African ships not to be taken to sea without safety certificates

200. (1) Neither the owner nor the master of a South African ship shall cause or permit her to proceed to sea from any port within or outside the Republic, or cause or permit her to operate at or from a port in or from anywhere else on the coast of the Republic, unless there is on board and in force in respect of that ship—

- (a) if she is a passenger ship engaged in an international voyage, a passenger ship safety certificate appropriate to the voyage in which she is engaged and if an exemption certificate has been issued, such exemption certificate; or

[Para (a) substituted by s 16(a), Act 13/1965]

- (b) if she is a passenger ship not engaged in an international voyage, a local general safety certificate appropriate to the voyage in which she is engaged, and if a local safety exemption certificate has been issued, such local safety exemption certificate; or

[Para (b) substituted by s 16(a), Act 13/1965]

- (c) if she is a ship (other than a passenger ship) to which the Safety Convention applies and engaged in an international voyage—

- (i) a cargo ship safety construction certificate and if an exemption certificate has been issued, such exemption certificate; and
- (ii) a cargo ship safety equipment certificate and if an exemption certificate has been issued, such exemption certificate; and

- (iii) a cargo ship safety radio certificate and if an exemption certificate has been issued, such exemption certificate; or

[Subpara (iii) substituted by s 7(a), Act 23/1997]

- (iv) . . .

[Subpara (iv) deleted by s 7(b), Act 23/1997]

- (v) an exemption certificate, if the ship is exempt from all the requirements of the radio regulations; or

[Para (c) substituted by s 16(a), Act 13/1965]

- (d) if she is a ship (other than a passenger ship) not engaged in an international voyage or a ship (other than a passenger ship) to which the Safety Convention does not apply and engaged in an international voyage, a local general safety certificate appropriate to the voyage in which she is engaged, and if a local safety exemption certificate has been issued, such local safety exemption certificate.

[Para (d) substituted by s 16(a), Act 13/1965]

[Subs (1) amended by s 16, Act 13/1965; s 7, Act 23/1997; and item 15 (Sch 2), Act 58/1998]

- (2) Subsection (1) shall not prohibit the owner or master of a ship from causing or permitting her to proceed to sea—

- (a) on a voyage other than an international voyage, if there are on board and in force in respect of the ship such certificates as would be required if she were engaged in an international voyage; or
- (b) if she is not a passenger ship, and if there are on board and in force in respect of the ship such certificates as would be required if she were a passenger ship.

(3) The Authority may authorize the owner or master of a passenger ship registered in the Republic to cause the ship to proceed to sea from a port in the Republic on an international voyage not exceeding twelve hundred nautical miles in length between the last port of call in the Republic and the final port of destination, provided there is on board and in force in respect of that ship a passenger ship safety certificate for a short international voyage and if an exemption certificate has been issued, such exemption certificate; and upon such authority being granted, the certificate or certificates referred to shall for the purposes of this section be deemed to be appropriate to such voyage, notwithstanding the fact that the distance between the said ports exceeds six hundred nautical miles.

[Subs (3) amended by s 31, Act 40/1963, and substituted by s 16(b), Act 13/1965]

Carrying persons in excess

201. No master or owner of any vessel registered or licensed in the Republic shall anywhere, and no master of any vessel not registered or licensed in the Republic shall in the Republic or the territorial waters thereof, permit persons to be on board or on or in any part of the vessel in excess of the number permitted by the vessel's safety convention certificate, local safety certificate, memorandum referred to in section *one hundred and ninety-six* or certificate referred to in subsection (4) or (5) of section *two hundred and three*: Provided that the Authority may, for the purpose of enabling persons to be moved from any place in consequence of a threat to their lives, authorize more persons to be carried on board a ship than are permitted by the said certificate or memorandum; and the carriage of persons in

accordance with such authority shall not constitute a contravention of the provisions of this section.

Issue of safety convention certificate by one Government at request of another

202. (1) The Authority may request the Government of a country to which the Safety Convention applies to issue an appropriate safety convention certificate in respect of a ship registered in the Republic; and a certificate issued in pursuance of such a request shall contain a statement that it has been so issued, and shall be deemed to have been issued—

- (a) in the case of a passenger ship, under section *one hundred and ninety-two*; or
- (b) in the case of a ship other than a passenger ship, under section *one hundred and ninety-three*.

(2) The Authority may, at the request of the Government of a country to which the Safety Convention applies, cause an appropriate safety convention certificate to be issued in respect of a ship registered in that country, if it is satisfied in like manner as in the case of a ship registered in the Republic, that the certificate can properly be issued: Provided that it may cause the certificate to be issued if it is satisfied that the ship is constructed and equipped in accordance with all the requirements of the construction regulations, the life-saving equipment regulations, the radio regulations and any other regulations which may have been made and which are applicable to the ship and to the voyages on which she is to be engaged, in so far as those requirements are requirements of the Safety Convention applicable as aforesaid, notwithstanding the fact (if it be so) that she is not constructed or equipped in accordance with any requirements of the said regulations that are not applicable requirements of the Safety Convention, and that she is equipped in accordance with the requirements of the collision regulations. A certificate issued in pursuance of such a request shall contain a statement that it has been so issued and shall have effect as if it had been issued by the Government of the country in which the ship is registered.

[Subs (2) substituted by s 17, Act 13/1965, and amended by s 2(2), Act 5/1998]

Application of this Part to ships not registered or licensed in the Republic while in the Republic

203. (1) Subject to the provisions of this section, the provisions of this Part shall, *mutatis mutandis*, apply in respect of all ships not registered or licensed in the Republic while they are within the Republic or the territorial waters thereof.

(2) A recognized non-South African safety convention certificate issued in respect of any such ship by the Government of the country in which the ship is registered shall, subject to the provisions of subsection (3), have the same effect as a corresponding certificate issued by the Authority under section *one hundred and ninety-two* or *one hundred and ninety-three*.

[Subs (2) amended by s 32(a), Act 40/1963]

(3) If a recognized non-South African safety convention certificate is produced which has been issued in respect of any such ship by or under the authority of the Government of the country in which the ship is registered, and which corresponds with the safety convention certificate which, in accordance with the provisions of this Part, the ship would

be required to carry if she were registered in the Republic, the ship shall not be required to be inspected by a surveyor except—

- (a) for the purpose of determining the maximum number of persons that the ship is fit to carry; or
- (b) if the proper officer so directs, for the purpose of verifying that the ship is in the condition of seaworthiness indicated in the non-South African safety convention certificate produced.

[Para (b) amended by s 32(a), Act 40/1963]

[Subs (3) amended by s 32(a), Act 40/1963]

(4) On receipt of the report of a surveyor of an inspection made under paragraph (a) of subsection (3), the Authority shall cause to be issued in respect of the ship a certificate stating the maximum number of persons which the ship is fit to carry.

(5) Notwithstanding the provisions of subsection (3)(a), if the non-South African safety convention certificate produced in respect of any such ship states the maximum number of persons that the ship is fit to carry, or if in addition to the non-South African safety convention certificate there is produced a certificate issued by or under the authority of the Government of the country in which the ship is registered stating the maximum number of persons that the ship is fit to carry, and the Authority is satisfied that that number has been determined substantially in the same manner as it would have been determined in the case of a ship registered in the Republic, it may, if it thinks fit, dispense with any inspection of the ship for the purpose of determining the maximum number of persons that she is fit to carry.

[Subs (5) amended by s 32(a), Act 40/1963, and substituted by s 2(2), Act 5/1998]

(6) If after consideration of the report of a surveyor of an inspection made under subsection (3)(b), the Authority is satisfied that a ship in respect of which a non-South African safety convention certificate has been produced is unseaworthy, it may direct that the said certificate be not recognized in the Republic, and thereafter the said certificate shall have no effect in the Republic.

[Subs (6) amended by s 32(a), Act 40/1963, and substituted by s 2(2), Act 5/1998]

(7) A safety certificate issued in respect of a ship to which the Safety Convention does not apply by or under the authority of the Government of the country to which the ship belongs, being a country other than the Republic, shall have the same effect as a certificate issued under section *one hundred and ninety-four*: Provided that, if, after consideration of the report of a surveyor on an inspection of such ship, the Authority is satisfied that she is not in the condition of seaworthiness indicated in such certificate, it may direct that the certificate be not recognized in the Republic, and thereafter the said certificate shall have no effect in the Republic.

[Subs (7) added by s 18, Act 13/1965, and amended by s 2(2), Act 5/1998]

(8) Notwithstanding the provisions of this section, every ship not registered or licensed in the Republic, plying regularly between ports in the Republic or operating from a port in the Republic, and which is not in possession of any safety convention certificate issued by or under the authority of the government of the country of origin of the ship, shall be in possession of a local general safety certificate.

[Subs (8) added by s 12, Act 18/1992]

(9) No person, including the owner or master of a ship referred to in subsection (8), shall cause or permit that ship to proceed to sea from any port in the Republic, unless there is on board and in respect of that ship a local general safety certificate.

[Subs (9) added by s 12, Act 18/1992]

Part II—Load lines

Exemption from this Part and issue of load line exemption certificates

204. (1) If, after consideration of the report of a surveyor of his inspection of a load line ship registered in the Republic, the Authority is satisfied that the ship is exempt by virtue of the exercise by it of a power conferred on it by the load line regulations, from any or all of the requirements of the said regulations and that the ship complies with the remaining requirements (if any), the Authority shall cause to be issued in respect of that ship—

- (a) if she is an international load line ship, an international load line exemption certificate; or
- (b) if she is a local load line ship, a local load line exemption certificate.

[Subs (1) amended by s 33(a), Act 40/1963, substituted by s 14(a), Act 42/1969, and amended by s 2(2), Act 5/1998]

- (2) Every load line exemption certificate shall be in the prescribed form.

[Subs (2) amended by s 33(b), Act 40/1963, and substituted by s 14(a), Act 42/1969]

(3) The owner and the master of a ship in respect of which a load line exemption certificate has been issued shall observe the terms and conditions specified therein.

- (4) . . .

[Subs (4) amended by s 33(c), Act 40/1963, and substituted by s 14(b), Act 42/1969]

Initial and subsequent surveys of ships in respect of load line provisions

205. (1) If the owner of any load line ship which is or is to be registered in the Republic desires that a load line certificate be issued in respect of the ship, he shall, before he applies for the issue of the certificate, cause her to be inspected by a surveyor.

[Subs (1) substituted by item 16 (Sch 2), Act 58/1998]

(2) The owner of every ship in respect of which a load line certificate has been issued, shall cause her to be inspected by a surveyor in accordance with the load line regulations, at the intervals specified in the said regulations, calculated from the date of the initial survey referred to in subsection (1).

[Subs (2) substituted by s 15, Act 42/1969]

(3) On the inspection of any ship in terms of subsection (1) or (2) there shall be paid by the owner of the ship such fee as may be prescribed.

Surveyor's inspection report on load line ship

206. (1) Every surveyor who inspects a ship in pursuance of section *two hundred and five* or of any provision of the load line regulations shall draw up a report of his inspection in the prescribed form.

(2) The report of the inspection of a load line ship in respect of which no load line certificate is in force, or in respect of which a load line certificate is in force which is due to expire within a period of twelve months after the date on which the inspection takes place, shall deal fully with the matters mentioned in section *two hundred and seven* and with such other matters as may be prescribed.

(3) The report of the inspection of a load line ship in respect of which a load line certificate is in force which is due to expire at a date later than twelve months after the date on which the inspection takes place, shall deal in detail with the question whether the certificate ought to remain in force during the period of twelve months following the inspection, with the matters mentioned in section *two hundred and seven* and with such other matters as may be prescribed.

(4) The surveyor shall forward his report to the proper officer.

Issue of load line certificates other than load line exemption certificates

207. If, after consideration of the report of a surveyor of his inspection of a load line ship registered in the Republic, the Authority is satisfied that—

- (a) the ship is marked with deck lines and load lines of the description and number required by the load line regulations; and
- (b) the ship's load lines are in the position required by the load line regulations; and
- (c) the ship complies with the conditions of assignment,

the Authority shall cause to be issued in respect of that ship—

- (i) if she is an international load line ship, an international load line certificate other than an international load line exemption certificate; or
- (ii) if she is a local load line ship, a local load line certificate other than a local load line exemption certificate,

which shall be in the form prescribed.

[S 207 amended by s 26, Act 30/1959, and by s 19, Act 13/1965, substituted by s 16, Act 42/1969, and amended by s 2(2), Act 5/1998]

Entry of load line particulars in official log-book

208. (1) When a load line certificate has been issued in terms of this Act in respect of a load line ship registered in the Republic, the master, before making any other entry in the official log-book shall enter therein the particulars as to the position of the deck line and load lines specified in the certificate.

(2) Before any load line ship registered in the Republic leaves any port within or outside the Republic, or before any passenger ship not registered in the Union and plying

between ports in the Republic or between a port in the Republic and any other port leaves any port in the Republic, for the purpose of proceeding to sea the master shall—

- (a) enter in the official log-book the prescribed particulars relating to the depth to which the ship is for the time being loaded; and
- (b) cause a notice in the prescribed form, and containing such of the said particulars as may be prescribed, to be displayed in some conspicuous place on board the ship and to be kept so displayed and legible until the ship arrives at some other port.

[Subs (2) amended by s 34, Act 40/1963]

Duration of load line certificates

209. (1) A load line certificate issued under the provisions of this Act shall expire at the end of such period, not exceeding five years from the date of its issue, as may be specified therein, or upon the giving of notice by the Authority to the owner or master of the ship that it has been cancelled.

(2) The Authority may grant an extension of any international load line certificate or of any local load line certificate, issued in respect of any ship registered in the Republic, for a period not exceeding one month from the date when the certificate would, but for the extension, have expired, or, if the ship is absent from the Republic on that date, for a period not exceeding five months from that date.

[Subs (2) substituted by s 20, Act 13/1965; s 2(2), Act 5/1998; and item 17 (Sch 2), Act 58/1998]

Cancellation of load line certificates

210. (1) The Authority may direct that an international load line certificate or a local load line certificate be cancelled, if it is satisfied that—

- (a) it was obtained fraudulently or on wrong information; or
- (b) since it was issued, structural alterations, which affect the position of the load lines, have taken place in the hull or superstructures of the ship; or
- (c) the fittings and appliances for the protection of openings, the guard rails, the freeing ports or the means of access to the crew accommodation have not been maintained on the ship in as effective a condition as that in which they were when the certificate was issued; or
- (d) the owner of the ship has failed to cause her to be inspected in accordance with the provisions of section *two hundred and five*; or
- (e) the marking of the deck lines and load lines on the ship have not been properly maintained.

[Subs (1) amended by s 21, Act 13/1965, and by s 2(2), Act 5/1998]

(2) For the purposes of this section the word "**alteration**" in relation to the hull or superstructures of a ship, includes the renewal of any part thereof.

(3) Whenever a direction is issued under subsection (1) for the cancellation of a load line certificate, the Authority shall notify the owner or master of the ship in respect of which the certificate was issued of the cancellation.

Surrender of expired or cancelled load line certificate

211. (1) A load line certificate which has expired or has cancelled, shall on demand be surrendered by the owner or master of the ship to the Authority.

(2) If any certificate required to be surrendered under subsection (1) is not surrendered, the Authority may cause the ship to be detained until the certificate is surrendered.

[S 211 amended by s 17, Act 42/1969, and substituted by s 2(2), Act 5/1998]

South African ships not to be taken to sea without load line certificates

212. Neither the owner nor the master of a load line ship registered in the Republic shall cause or permit her to proceed to sea from a port within or outside the Republic unless there is on board and in force in respect of that ship—

- (a) if the voyage which she is undertaking is an international voyage—
 - (i) in the case of an international load line ship, an international load line certificate other than an international load line exemption certificate, and if an international load line exemption certificate has been issued, such international load line exemption certificate, or an international load line exemption certificate if the ship is exempt from all the requirements of the load line regulations; or
 - (ii) in the case of a local load line ship, a local load line certificate other than a local load line exemption certificate, and if a local load line exemption certificate has been issued, such local load line exemption certificate, or a local load line exemption certificate if the ship is exempt from all the requirements of the load line regulations; or

[Para (a) substituted by s 27, Act 30/1959, by s 22, Act 13/1965, and by s 18, Act 42/1969]

- (b) if the voyage which she is undertaking is not an international voyage—
 - (i) an international load line certificate other than an international load line exemption certificate, and if an international load line exemption certificate has been issued, such international load line exemption certificate, or an international load line exemption certificate if the ship is exempt from all the requirements of the load line regulations; or
 - (ii) a local load line certificate other than a local load line exemption certificate, and if a local load line exemption certificate has been issued, such local load line exemption certificate, or a local load line exemption certificate if the ship is exempt from all the requirements of the load line regulations.

[Para (b) substituted by s 27, Act 30/1959, amended by s 35, Act 40/1963, and substituted by s 22, Act 13/1965, and by s 18, Act 42/1969]

Maintenance of load lines and deck lines

213. (1) The owner and the master of a load line ship registered in the Republic shall maintain the marking of her deck lines and load lines in the position specified in the load line certificate in force in respect of that ship or in the position approved by a person entitled

under the load line regulations to approve the alteration of the position of the said deck lines or load lines.

(2) No person shall conceal, remove, alter, deface or obliterate, or suffer any person under his control to conceal, remove, alter, deface or obliterate any mark placed on any ship in accordance with the provisions of this Act, except with the authority of a person entitled under the load line regulations to authorize the alteration of the mark, or except for the purpose of escaping capture by an enemy or by a foreign ship in the exercise of some belligerent right.

Submersion of load line on South African ships

214. (1) The master of a load line ship registered in the Republic shall not—

- (a) so load the ship; or
- (b) suffer the ship to be so loaded; or
- (c) bring the ship into any port in the Republic so loaded,

as to submerge in salt water, when the ship has no list, the load line on each side of the ship appropriate to the circumstances then existing.

[Subs (1) substituted by s 28, Act 30/1959]

(2) Any surveyor who finds upon inspection that the ship is loaded in contravention of subsection (1) shall give notice in writing to that effect to the master, pointing out the extent of the overloading, and requiring that the matter be rectified.

(3) A copy of every notice so given shall be transmitted by the surveyor to the proper officer at any port at which a clearance for that ship may be requested, and a clearance shall not be granted, and the ship shall be detained, until a certificate under the hand of a surveyor is produced stating that the deficiency has been made good.

Issue of international load line certificate by one Government at request of another

215. (1) The Authority may request the Government of a country to which the Load Line Convention applies to issue an international load line certificate in respect of a load line ship registered in the Republic; and a certificate issued in pursuance of such a request shall contain a statement that it has been so issued, and shall be deemed to have been issued under paragraph (i) of section *two hundred and seven*.

[Subs (1) amended by s 8, Act 23/1997]

(2) The Authority may, at the request of the Government of a country to which the Load Line Convention applies, cause an international load line convention certificate to be issued in respect of a load line ship registered in that country, if it is satisfied, in like manner as in the case of a ship registered in the Republic, that the certificate can properly be issued: Provided that it may cause the certificate to be issued if it is satisfied that the ship is marked with deck lines and load lines in accordance with the requirements of the load line regulations in so far as those requirements are requirements of the Load Line Convention, notwithstanding the fact (if it be so) that she is not marked with deck lines and load lines in accordance with any requirements of the said regulations that are not requirements of the Load Line Convention. A certificate issued in pursuance of such a request shall contain a

statement that it has been so issued, and shall have effect as if it had been issued by the Government of the country in which the ship is registered.

[Subs (2) amended by s 2(2), Act 5/1998]

[S 215 substituted by s 23, Act 13/1965]

Inspection and control of load line convention ships not registered in the Republic

216. (1) If a recognized non-South African international load line certificate is produced in respect of a load line ship which is registered in a country (other than the Republic) to which the Load Line Convention applies and is at a place within the Republic or the territorial waters thereof, a surveyor's powers of inspecting the ship with respect to load line shall be limited to ascertaining—

- (a) whether the ship is loaded beyond the limits allowed by the certificate;
- (b) whether the position of the load lines on the ship corresponds with the position specified in the certificate;
- (c) whether since the certificate was issued any structural alterations have taken place in the hull or superstructures of the ship which affect the position of the load lines; and
- (d) whether the fittings and appliances for the protection of openings, the guard rails, the freeing ports and the means of access to the crew accommodation have been maintained on the ship in as effective a condition as they were in when the certificate was issued.

[Subs (1) amended by s 36, Act 40/1963, and by s 24(a), Act 13/1965]

(2) If a surveyor finds on inspection that the ship is loaded beyond the limits allowed by the certificate, he shall give notice in writing to that effect to the master, pointing out the extent of the overloading and requiring that the matter be rectified.

(3) If a surveyor finds on inspection that the load lines of the ship are not in the position specified in the certificate, he shall give notice in writing to that effect to the owner or master, pointing out the defects and requiring the same to be made good.

(4) A copy of every notice given under subsection (2) or (3) shall be transmitted by the surveyor to the proper officer at any port at which a clearance for that ship may be requested, and a clearance shall not be granted, and the ship shall be detained, until a certificate under the hand of a surveyor is produced stating that the matter has been rectified or the deficiency made good, as the case may be.

(5) If a recognized non-South African international load line certificate is not produced to the surveyor on such demand as aforesaid, the surveyor shall have the same power of inspecting the ship, for the purpose of seeing that the provisions of this Part have been complied with, as if the ship were a ship registered in the Republic.

[Subs (5) amended by s 36, Act 40/1963, and substituted by s 24(b), Act 13/1965]

(6) For the purposes of this section a ship shall be deemed to be loaded beyond the limits allowed by the certificate if she is so loaded as to submerge in salt water, when the ship has no list, the appropriate load line on each side of the ship, that is to say, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled under the Load Line Convention to be loaded.

Issue of load line certificates in respect of ships not registered in the Republic

217. (1) The Authority may cause a special load line certificate to be issued in respect of any load line ship not registered in the Republic.

(2) The provisions of this Chapter relating to the issue, effect, duration, renewal and cancellation of local load line certificates shall apply, *mutatis mutandis*, in relation to special load line certificates: Provided that—

- (a) if a special load line certificate is issued in respect of a load line ship registered in a country to which the Load Line Convention does not apply, it shall be available in respect of international voyages as well as other voyages, but if issued in respect of a load line ship registered in a country to which the Load Line Convention applies, shall only be valid so long as the ship is not plying on international voyages, and shall be endorsed with a statement to that effect, and may be cancelled by the Authority if it is satisfied that the ship is so plying; and

[Para (a) substituted by s 2(2), Act 5/1998]

- (b) a survey for the purpose of ascertaining whether the certificate should remain in force shall take place whenever the Authority so requires.

Recognition of certificates as to load lines issued in other countries

218. If the Minister is satisfied—

- (a) either—
 - (i) that, by the law in force in any treaty country (other than the Republic) provision has been made for the fixing, marking and certifying of load lines on ships (or any class or description of ships) registered in that treaty country; or
 - (ii) that such provision has been made by the law in force in any foreign country with respect to ships (or any class or description of ships) registered in that country, and has also been so made (or it has been agreed that provision shall be so made) for recognizing load line certificates issued in the Republic as having the same effect in ports of that country as certificates issued under the said provision; and
- (b) that the provision for the fixing, marking and certifying of load lines is based on the same principles as the corresponding provisions of this Chapter and of the load line regulations and is equally effective,

he may, by notice in the *Gazette*, direct that certificates issued in pursuance of that provision in respect of ships (or that class or description of ships) registered in that treaty country or in respect of ships (or that class or description of ships) registered in that foreign country, as the case may be, shall have the same effect, for the purposes of this Chapter as special load line certificates.

[S 218 amended by s 29, Act 30/1959, and by s 48, Act 69/1962]

Load line ships not registered in the Republic not to be taken to sea without load line certificates

219. The master of a load line ship not registered in the Republic shall not cause or permit her to proceed to sea from a port in the Republic unless there is on board and in force in respect of that ship—

- (a) if she is registered in a country to which the Load Line Convention applies, and—
 - (i) is engaged in an international voyage, a recognized non-South African international load line certificate or a certificate issued under subsection (2) of section *two hundred and fifteen*; or

[Subpara (i) amended by s 38(a), Act 40/1963, and substituted by s 25, Act 13/1965]

- (ii) is not engaged in an international voyage, a certificate referred to in paragraph (i) or a special load line certificate or a certificate which in terms of a notice issued under section *two hundred and eighteen* has the same effect as a special load line certificate; or

[Subpara (ii) amended by s 38(b), Act 40/1963]

- (b) if she is not registered in a country to which the Load Line Convention applies, a special load line certificate or a certificate which in terms of a notice issued under section *two hundred and eighteen* has the same effect as a special load line certificate.

[Para (b) amended by s 38(b), Act 40/1963]

Submersion of load line on ships not registered in the Republic

220. The provisions of section *two hundred and fourteen* shall apply to load line ships not registered in the Republic, while they are at any port in the Republic, as they apply to load ships registered in the Republic: Provided that in the application of the said provisions the expression "**the load line**" shall mean—

- (a) in the case of a ship in respect of which there is produced a recognized Non-South African international load line certificate, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled under the Load Line Convention to be loaded; or

[Para (c) amended by s 39(a), Act 40/1963, and substituted by s 26, Act 13/1965]

- (b) in the case of a ship in respect of which there is produced a certificate which, in terms of a notice issued under section *two hundred and eighteen*, has the same effect for the purposes of this Chapter as a special load line certificate, the load line appearing by the certificate to indicate the maximum depth to which the ship is for the time being entitled, under the law in force in the country in which the ship is registered, to be loaded; or

[Para (b) amended by s 39(b), Act 40/1963]

- (c) in any other case, the load line which corresponds with the load line indicating the maximum depth to which the ship is for the time being entitled under the load line regulations to be loaded, or if no load line on the ship corresponds as aforesaid, the lowest load line thereon.

Part III—Safety of navigation

Ship's complement

221. (1) The owner and the master of every South African ship operating at a port in the Republic or going to sea from any port whatsoever shall ensure that, in addition to the ship's officers and other persons which in terms of section 73 must be employed on board that ship, there are employed as crew the number and description of persons prescribed.

[Subs (1) substituted by s 23(a), Act 57/1998]

(2) (a) Subject to paragraph (b), the owner and the master of every ship other than a South African ship operating at a port in the Republic or going to sea from any such port shall ensure that, in addition to the ship's officers and other persons which in terms of section 73(4) must be employed on board that ship, there are employed as crew the number and descriptions of persons prescribed by the law of the flag of the ship.

(b) Notwithstanding paragraph (a), subsection (1) shall apply in relation to a ship referred to in that paragraph, as if it were a South African ship, if—

- (i) the matters contemplated in that paragraph are not prescribed by the law of the flag of the ship; or
- (ii) having regard to—
 - (aa) the complement normally carried by similar ships on similar voyages;
 - (bb) the complement which the ship in question has recently carried on previous voyages; and
 - (cc) the nature and place of the service for which the ship is intended,the proper officer has reason to believe that the ship is not sufficiently and efficiently manned.

[Subs (2) amended by s 49, Act 69/1962, s 40, Act 40/1963 and substituted by s 23(a), Act 57/1998]

(3) . . .

[Subs (3) substituted by s 13, Act 18/1992 and deleted by s 23(b), Act 57/1998]

Employment of radio officers and operators

222. (1) No person shall be employed as a radio officer or operator of a radio installation on any South African ship unless he holds an appropriate certificate of proficiency issued or approved in accordance with the regulations.

[Subs (1) amended by s 50, Act 69/1962 and substituted by s 24, Act 57/1998]

(2) A person employed as a radio officer or operator on board a South African ship shall subscribe to a declaration of secrecy, which shall be in the approved form; and no person, having made the declaration, shall, either directly or indirectly, divulge to any other person unless lawfully authorized to do so, any information which he has acquired by virtue of his employment.

Surveyor may direct that defects be made good

223. (1) If upon the inspection of a vessel a surveyor finds that the provisions of section 73 or 221 or of the maritime occupational safety regulations are not being complied with, or that the vessel is not equipped as required by the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations or any other applicable regulations which may have been made or not marked as required by the load line regulations, or that the equipment is not in good condition, or that the deck lines or load lines are not being properly maintained, or that the master and crew cannot demonstrate the related competency at their place or places of duty, he shall give notice in writing to that effect to the owner or master, pointing out the deficiencies or defects and requiring that they be made good.

[Subs (1) substituted by s 27, Act 13/1965, s 14, Act 18/1992 and by s 25, Act 57/1998]

(2) A copy or every notice so given shall be transmitted by the surveyor to the proper officer at any port at which a clearance for that vessel may be requested, and a clearance shall not be granted, and the vessel shall be detained, until a certificate under the hand of a surveyor is produced stating that the deficiencies or defects have been supplied or made good.

Display of safety convention certificate, local safety certificate or load line certificate

224. Immediately after receipt of a safety convention certificate, a local safety certificate or a load line certificate, the owner or master shall cause it to be framed and displayed in some conspicuous place on board the vessel for the information of all on board, and shall cause it to be kept so framed and displayed so long as it remains in force and the vessel is in use: Provided that this section shall not apply in respect of any vessel of less than one hundred gross tons, if the Authority has exempted her from its provisions.

[S 224 substituted by s 19, Act 42/1969]

Printed notices and diagrams as to location of lifeboats, etc

225. (1) The master of every passenger ship, wherever registered, plying between ports in the Republic or between a port in the Republic and any other port shall cause ample provision to be made, to the satisfaction of a surveyor, by printed notices, and by diagrams where necessary, to enable the passengers to ascertain the position of lifeboats, life-jackets and other life-saving appliances, fire-buckets, axes and fire-extinguishers. He shall also cause to be kept exhibited in each cabin, and throughout the ship to the satisfaction of a surveyor, notices showing the method of adjusting life-jackets to the body.

[Subs (1) amended by s 41, Act 40/1963]

(2) The master of every passenger ship registered in the Republic shall cause to be kept in some conspicuous place accessible to all the passengers a printed copy of this Part.

Information about stability of ship

226. (1) The owner of every South African ship of the class or tonnage prescribed by regulation built after the coming into operation of this section shall cause to be kept on

board the ship such information in writing about the stability of the ship as is necessary for the guidance of the master in loading and ballasting the ship.

[Subs (1) substituted by s 20, Act 42/1969]

(2) The information required in terms of subsection (1) shall be as determined by regulation, and shall be based upon the determination of the stability of the ship by means of an inclining test of the ship: Provided that the Authority may allow the information to be based on a similar determination of the stability of a sister ship.

[Subs (2) substituted by s 20, Act 42/1969]

(3) When any such information is provided concerning any ship, the owner of the ship shall send a copy thereof to the Authority: Provided that the owner shall not be required to send a copy of any information to the Authority if a copy of the same information has been previously sent to him.

(4) For the purposes of section *one hundred and eighty-seven* every document containing such information as is referred to in this section shall be deemed to be a document relating to the navigation of the ship.

Production of certificates to officers of customs

227. (1) The master of any ship which is at any port in the Republic shall produce to the officer of customs from whom a clearance for that ship is requested—

- (a) if she is a ship to which section *two hundred or two hundred and three* applies, the certificate or certificates which in terms of those sections must be on board that ship; or
- (b) if she is a load line ship registered in the Republic, the certificate which in terms of section *two hundred and twelve* must be on board that ship; or
- (c) if she is a load line ship not registered in the Republic, the certificate which in terms of section *two hundred and nineteen* must be on board that ship; or
- (d) if she is a load line ship carrying a deck cargo of timber, a certificate issued under subsection (1) of section *two hundred and thirty-seven*.

(2) If the certificate or certificates required to be produced by or under subsection (1) are not produced, the ship shall be detained until such certificate or certificates are produced.

Compasses to be adjusted

228. (1) The master of every ship plying between ports in the Republic or between a port in the Republic and any other port, wherever she may be registered, shall ensure that the compasses on board that ship are properly adjusted from time to time, in accordance with the regulations.

[Subs (1) amended by s 41, Act 40/1963]

(2) Any person thereto authorized by the Authority may at any time inspect the compasses of any ship referred to in subsection (1) and shall report to the Authority the result of his inspection; and the Authority may upon such report direct that the compasses

of the ship shall be adjusted in accordance with the regulations by an adjuster of compasses licensed under the regulations; and the master of the ship shall ensure that such direction is carried out.

Signalling lamps

229. The master or owner of a South African ship of one hundred or more gross register tons (or of such lower tonnage gross register as may be prescribed) shall not cause or permit the ship to proceed to sea unless she is provided with a signalling lamp in accordance with the regulations.

230. . . .

[S 230 repealed by s 30, Act 30/1959]

Registration of private code or signals

231. (1) If the owner of a ship, wherever registered, desires to use any signals for the purpose of a private code he may register them with the Authority, who may from time to time publish a list of the signals so registered.

(2) The Authority may refuse to register any signals which, in its opinion, cannot easily be distinguished from signals generally used as signals of distress, signals for pilots, signals of urgency, signals prescribed for indicating that a message is about to be sent relating to a danger, or from signals registered in the name of any other person.

[Subs (2) substituted by s 2(2), Act 5/1998]

(3) The Authority may, if it thinks fit, cancel the registration of any signal at any time.

[Subs (3) substituted by s 2(2), Act 5/1998]

(4) No person shall—

- (a) use any signal so registered, except by the authority of the person in whose name it is registered; or
- (b) use any signal the registration of which has been cancelled by the Authority.

Signals of distress

232. (1) The master of a vessel which is registered or licensed in the Republic or which, in terms of this Act, is required to be so licensed shall not, within or outside the Republic, and the master of any other vessel shall not, within the Republic or the territorial waters thereof, use or display or cause or permit any person under his authority to use or display, and no person shall use or display at a place on land within the Republic from which it can be seen from the sea—

- (a) any signal which by regulation is declared to be a signal of distress, except in the circumstances and for the purpose prescribed; or

- (b) any private signal, whether registered or not, which is likely to be mistaken for any such signal of distress.

[Subs (1) substituted by s 3, Act 24/1974, and amended by item 18 (Sch 2), Act 58/1998]

(2) Any person convicted of contravening subsection (1) shall be liable, in addition to any penalty imposed under section *three hundred and thirteen*, to pay compensation for any labour undertaken, risk incurred or loss sustained in consequence of the signal used or displayed having been taken to be a signal of distress. Such compensation may, without prejudice to any other remedy, be recovered in the same manner in which salvage is recoverable in terms of this Act.

Boat and fire drills and inspection of life-saving appliances

233. (1) The master of every—

- (a) passenger ship; or
- (b) ship (other than a passenger ship) of not less than five hundred gross register tons (or of such lower tonnage gross register as may be prescribed),

which is registered in the Republic, shall, if it be practicable to do so, cause—

- (i) boat drill and fire drill to be practised, in the case of a passenger ship, at least once in every week, and, in the case of a ship other than a passenger ship, at least once in every month; and
- (ii) the life-saving appliances on board the ship to be inspected to ascertain whether they are fit and ready for use, at least once in every such period as may be prescribed.

(2) The master of every such ship shall cause an entry to be made in the official log-book of every occasion on which boat drill and fire drill are practised or the said appliances are inspected; and if,—

- (a) in the case of a passenger ship, boat drill or fire drill is not practised in any week; or
- (b) in the case of a ship other than a passenger ship, boat drill or fire drill is not practised in any month; or
- (c) in the case of any ship, the said appliances are not inspected in any such period as is prescribed,

the master shall cause a statement to be entered in the official log-book of the reasons why the drill was not practised or the appliances were not inspected in that week, month or period.

234. . . .

[S 234 repealed by s 28, Act 94/1996]

Dangerous goods not to be carried

235. (1) No person shall send by or carry in any ship, except in accordance with the prescribed regulations, as cargo or ballast, any dangerous goods.

(2) No person shall send by any ship, or, if he be not the master or owner of a ship carry in that ship, any dangerous goods without distinctly marking, in one of the official languages of the Republic, their nature on the outside of the package containing the same, in accordance with the prescribed regulations, and without giving written notice of the nature of such goods and of the name and address of the sender thereof to the master or owner of a ship at or before the time of sending the same to be taken on board the ship.

(3) The master or owner of any ship may refuse to take on board any package or parcel which he suspects to contain dangerous goods, and may require such package or parcel to be opened to ascertain the fact.

(4) The provisions of this section shall not apply to ships' distress signals, or to the carriage of naval or military stores for the public service under conditions authorized by the Authority.

(5) This section shall apply—

- (a) to South African ships wherever they may be; and
- (b) to all other ships while they are within any port in the Republic, or are embarking or disembarking passengers within the territorial waters of the Republic, or are loading or discharging cargo or fuel within those waters.

[Para (b) amended by s 42, Act 40/1963]

Carriage of grain

236. (1) Whenever grain is loaded in any port in the Republic on board any ship, wherever she may be registered, or is loaded on board a South African ship in any port outside the Republic, the owner or the master of the ship, or any agent of the owner who is charged with the loading or with sending the ship to sea laden with the grain, shall take all precautions prescribed by regulation to prevent the grain from shifting and in addition shall take all other precautions to prevent the grain from shifting which in the circumstances are necessary and reasonable; and if all such precautions are not taken, the ship shall be deemed to be unseaworthy.

[Subs (1) amended by s 43, Act 40/1963]

(2) Whenever any ship, wherever she may be registered, having been loaded with grain outside the Republic without the taking of all such precautions as are referred to in subsection (1), enters any port in the Republic so laden, the owner or master of the ship shall be guilty of an offence and the ship shall be deemed to be unseaworthy: Provided that this subsection shall not have effect if the ship would not have entered any such port but for stress of weather or any other circumstances that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.

[Subs (2) amended by s 43, Act 40/1963]

(3) Subsections (1) and (2) shall not apply in respect of a ship loaded in all respects in accordance with any provisions approved by the Authority in the special case.

(4) On the arrival at a port in the Republic from a port outside the Republic of any ship, wherever she may be registered, carrying a cargo of grain, the master shall cause to be delivered to the proper officer a notice stating—

- (a) the draught of water and freeboard of the said ship after the loading of her cargo was completed at the final port of loading; and
- (b) the following particulars of the grain carried, namely,—
 - (i) the kind of grain and the quantity thereof, stated in cubic feet, bushels, or tons weight;
 - (ii) the mode in which the grain is stowed; and
 - (iii) the precautions taken to prevent the grain from shifting.

[Subs (4) amended by s 43, Act 40/1963]

(5) In this section the word "**grain**" includes wheat, maize, oats, rye, barley, rice, pulses, seeds and processed forms thereof, whose behaviour during transport in bulk is similar to that of grain in its natural state, and in subsection (4) the expression "**ship carrying a cargo of grain**" means a ship carrying a quantity of grain exceeding one-third of the ship's net register tonnage, reckoning 2,83 cubic metres or two tonne mass of grain as equivalent to one ton of net register tonnage.

[Subs (5) substituted by s 7, Act 3/1981]

Carriage of timber deck cargo

237. (1) Whenever a deck cargo of timber is loaded on a load line ship at a port in the Republic the owner or master shall cause the ship to be inspected by a surveyor who, if satisfied that the ship is suitable for the carriage of deck cargoes of timber and that such cargo is properly stowed and secured in accordance with the timber cargo regulations, shall issue a certificate to that effect.

[Subs (1) amended by s 31, Act 30/1959, and by s 44, Act 40/1963]

(2) Neither the owner nor the master of any such ship shall cause or permit her to proceed to sea from a port in the Republic unless there is on board a certificate issued under subsection (1) in force in respect of that ship.

(3) In any proceedings against an owner or master in respect of a contravention of the timber cargo regulations, it shall be a good defence to prove that the contravention was due solely to deviation or delay, being deviation or delay caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.

(4) This section shall apply to all ships wherever they may be registered.

Marking of heavy packages or objects

238. No person shall in the Republic consign to be loaded on any ship, and no owner or master of any ship in the Republic, wherever she may be registered, shall cause or permit to be loaded on that ship any package or object of a gross weight of one thousand kilograms or more, unless its weight is plainly and durably marked on the outside of the package or

object: Provided that in the case of a package or object of such a character that its exact weight would be difficult to ascertain an approximate weight may be so marked accompanied by the word "APPROXIMATE" or "ONGEVEER" or any reasonable abbreviation thereof.

[S 238 amended by s 9, Act 23/1997]

Report of alteration or damage affecting seaworthiness, efficiency or compliance with regulations

239. (1) If any alteration has been made in, or any damage has been sustained by, a South African ship so material as to affect her seaworthiness or her efficiency, whether in her hull, equipment or machinery, or her compliance with such of the construction regulations, the life-saving equipment regulations, the radio regulations, the collision regulations, the load line regulations or any other regulations which may have been made, as apply to her, the owner or master shall, as soon as possible, forward a report to the Authority, giving full particulars of the alteration or damage.

[Subs (1) substituted by s 28, Act 13/1965]

(2) If, by reason of the contents of a report made in terms of subsection (1), or for any other reason, the Authority is of the opinion or suspects—

- (a) that a South African ship is unseaworthy; or
- (b) that the hull, equipment or machinery of a South African ship is insufficient; or
- (c) that a South African ship does not comply with such of the regulations referred to in subsection (1) as apply to her,

it may give special directions for the inspection of the ship by a surveyor, notwithstanding the fact that a safety convention certificate, a local safety certificate or a load line certificate is still in force in respect of that ship.

[Subs (2) amended by s 2(2), Act 5/1998]

(3) Any ship in respect of which any such directions as are referred to in subsection (2) have been given may be detained by the proper officer.

(4) If any such directions are not complied with, the Authority may cancel any certificates issued in respect of that ship under this Chapter.

(5) For the purpose of this section the expression "**alteration**" in relation to the hull, equipment or machinery of a ship includes the renewal of any part thereof.

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 ship of South African nationality) to be navigated away from any port in the Republic;

- (b) any ship of South African nationality to be navigated away from any port whatsoever, in an unseaworthy state.

[S 240 substituted by s 6, Act 25/1985]

Obligation to secure seaworthiness of ship

241. (1) In every contract of service, express or implied, between the owner of a ship and the master or an apprentice-officer and in every agreement between the master and the crew there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner of the ship that he and the master and every agent charged with the loading, preparing for sea or sending to sea of the ship shall use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences, and to keep her in a seaworthy condition for the voyage and during the voyage.

(2) This section shall apply in respect of every contract to serve on a South African ship, wherever the contract be entered into, and in respect of every contract to serve on a ship not registered in the Republic, if the contract is entered into in the Republic.

Sending unseaworthy ship to sea in special circumstances

242. Nothing in sections *two hundred and forty* and *two hundred and forty-one* contained shall subject the owner or master of any ship to any liability, civil or criminal, by reason of the ship being sent or taken to sea in an unseaworthy state, if it be proved—

- (a) that he used all reasonable means to ensure the seaworthiness of the ship; and
- (b) that, owing to special circumstances, the sending or taking of the ship to sea in such an unseaworthy state was reasonable and justifiable.

Unseaworthy ships to be detained

243. If on complaint made to him in accordance with the provisions hereinafter contained, or without any complaint, a proper officer has reason to believe that a ship at any port in the Republic is unseaworthy, he shall, whether or not she is registered in the Republic, detain her until he is satisfied that she is in a seaworthy state.

Ships may be inspected

244. (1) If any ship is detained in terms of section *two hundred and forty-three*, the proper officer may, before releasing it, require those defects or deficiencies which are believed or alleged to exist to be inspected by a surveyor.

(2) The surveyor who makes the inspection under this section, shall report fully to the proper officer who detained the ship on such supposed or alleged defects or deficiencies.

(3) The proper officer shall transmit a copy of the surveyors' report to the Authority and to the master of the ship.

Complaint as to seaworthiness to be in writing

245. Every complaint in respect of the seaworthiness of a ship shall be in writing, stating the name and address of the complainant, and if the ship be detained, a copy of the complaint, including the name and address of the complainant, shall be served on the master of the ship together with the notice of detention issued under section *three hundred and thirty-five*.

Complainant as to unseaworthiness may be required to give security

246. Before a ship is detained by a proper officer under the provisions of section *two hundred and forty-three* in consequence of a complaint, he shall assure himself by all means at his disposal that the complaint is not vexatious, frivolous or unreasonable, and if he thinks fit so to do, he may, except where the complaint is made by three or more of the members of the crew of the ship, require the complainant to give security to his satisfaction for the expenses of the inspection and any loss which may be sustained by the owner on account of the detention of the ship.

Complainant to pay costs if not successful

247. (1) If, on inspection, it is determined that any ship detained under the provisions of section 243 was not an unseaworthy ship, the expenses incurred in connection with the inspection shall be paid to the Authority by the person making the complaint, and if it be proved that there was not reasonable cause, by reason of the condition of the ship or the act or default of the owner or master, for the detention of the ship, the Authority shall pay to the owner compensation for any damage suffered by him by reason of the detention.

[Subs (1) substituted by s 2(2), Act 5/1998]

(2) The provisions of this section in respect of payment of the cost of the inspection shall not have effect where the complaint is made by members of the crew of the ship complained of, unless, in the opinion of the Authority, such complaint was frivolous or vexatious.

Expenses to be paid by owner if complaint founded

248. If, on inspection, it is found that any complaint in respect of a ship detained under section *two hundred and forty-three* was well-founded, all expenses incurred in connection with the inspection shall be paid by the owner, and the ship shall not be released until they are paid.

Reports of dangers to navigation

249. (1) The master of a South African ship on meeting with dangerous ice, a dangerous derelict, dangerous storm or any other direct danger to navigation, shall forthwith send information accordingly by all means of communication at his disposal and in accordance with the regulations, to ships in the vicinity and to such authorities on shore as may be prescribed.

(2) Any person in charge of a radio station which is under the control of the Postmaster-General or which is carried on under licence issued by the Postmaster-General, shall on receiving the prescribed signal that a message is about to be sent under this section, refrain from sending messages for a time sufficient to allow other stations to receive the message, and shall transmit the message in such manner as may be required by the Authority. Compliance with this subsection shall be deemed to be a condition of every licence granted by the Postmaster-General under the Radio Act 3 of 1952, or any amendment thereto. Nothing in this subsection shall interfere with the transmission by radio of any signal which by regulation has been declared to be a signal of distress.

[Subs (2) amended by s 32, Act 30/1959]

(3) For the purpose of this section, the expression "**dangerous storm**" means a hurricane, typhoon, cyclone, or other storm of a similar nature and the master of a ship shall be deemed to have met with a dangerous storm if he has reason to believe that there is such a storm in his vicinity.

Careful navigation near ice

250. The master of a South African ship, when ice is reported on or near his course, shall at night either proceed at a moderate speed or change course so as to keep well clear of the ice reported and of the area of danger.

Safety certificates and memoranda issued before commencement of this Act

251. Any certificate or memorandum issued under the authority of the Government of the Republic before the coming into operation of this section, and being of a similar nature to any certificate or memorandum for the issue of which provision is made by this Chapter, shall, during the period for which it is expressed to be valid, be deemed to have been issued under this Act.

[S 251 amended by s 45, Act 40/1963]

Period of grace for compliance with certain provisions

252. (1) Nothing contained in section *two hundred, two hundred and three, two hundred and twelve* or *two hundred and nineteen* shall prohibit a ship from going to sea without the certificates referred to in those sections until after the expiration of one year from the date on which, in terms of a proclamation issued under section *three hundred and fifty-eight*, those sections are put into operation.

(2) Nothing contained in section *two hundred and twenty-seven* shall require the master of any ship to produce any certificate referred to in that section until after the expiration of one year from the date on which, in terms of a proclamation issued under section *three hundred and fifty-eight*, the first-mentioned section is put into operation.

Provisions of this chapter not to be applied to ships not registered in the Republic driven into Republic ports by stress of weather

253. Notwithstanding the fact that any provision of this Chapter is expressed to apply to ships not registered in the Republic while they are within the Republic or within the territorial waters thereof, that provision shall not be applied to a ship not registered in the Republic if she would not have been within the Republic or within the territorial waters thereof but for stress of weather or any other circumstances that neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled.

Admissibility in evidence of safety and load line certificates and surveyors' reports

254. Every safety convention certificate, local safety certificate, and load line certificate and every report made by a surveyor in terms of any provision of this Act shall be admissible in evidence.

Part IV—Collisions, accidents at sea, and limitation of liability

Division of loss in case of collision

255. (1) Whenever by the fault of two or more ships damage or loss is caused to one or more of them or to the cargo or freight of one or more of them or to any property on board one or more of them, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was at fault: Provided that—

- (a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and
- (b) nothing in this section shall operate so as to render any ship liable for any loss or damage to which her fault has not contributed; and
- (c) nothing in this section shall affect the liability of any person under any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

(2) For the purposes of this chapter, references to damage or loss caused by the fault of a ship shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

Damages for personal injury

256. (1) Whenever loss of life or personal injuries are suffered by any person on board a ship owing to the fault of that ship and of any other ship or ships, the liability of the owners of the ships concerned shall be joint and several.

(2) Nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought

against him by the person injured, or any person entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

Right of contribution

257. (1) Whenever loss of life or personal injuries are suffered by a person on board a ship owing to the fault of that ship and of any other ship or ships, and a proportion of the damages is recovered against the owner of one of the ships which exceeds the proportion in which she was in fault, the said owner may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively in fault: Provided that no amount shall be so recovered which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2) In addition to any other remedy provided by law, the person entitled to any contributions under subsection (1) shall, for the purpose of recovering the contribution, have, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

258. . . .

[S 258 repealed by s 28, Act 94/1996]

Report to proper officer of accidents to and on board ships

259. (1) The owner or master of any ship—

- (a) which has been lost, abandoned or stranded; or
- (b) which has been seriously damaged or has caused serious damage to any other ship; or
- (c) on which any casualty resulting in loss of life or serious injury to any person or an accident has occurred; or
- (d) which has been in a position of great peril either from the action of some other ship or for any other reason; or
- (e) which, having left any port in the Republic, has put back to that port; or
- (f) which has fouled or done any damage to any harbour, dock or wharf or to any lightship, buoy, beacon or sea mark,

shall within 24 hours after the ship has arrived in a port or, if the event occurred in a port, within 24 hours after the event occurred, but before the ship departs from that port, report the event to the nearest proper officer in the form prescribed, stating the nature of the event and of the probable cause thereof, the name of the ship, her official number, the port to which she belongs, the place where the event occurred and the place where the ship then is, and giving all other available relevant information: Provided that any event resulting in loss of life or serious injury shall forthwith be so reported by the fastest means of communication available.

(1A) (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 persons" 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.

[Subs (1A) inserted by s 10(a), Act 23/1997]

(2) Subsection (1) 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 licensed and to or in respect of or on board of which any such event as is referred to in subsection (1) has occurred anywhere, and shall apply to a ship registered in a country other than the Republic only while 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.

[Subs (2) substituted by s 10(b), Act 23/1997, and item 19 (Sch 2), Act 58/1998]

(3) Subsection (1)(f) shall not apply to any vessel belonging to Transnet Limited and used by that authority in connection with the working of its harbours.

(4) (a) Any employee, employer or user who learns about an event referred to in subsection (1), shall forthwith notify the owner or master concerned of such event.

(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.

[Para (b) added by s 10(c), Act 23/1997]

(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.

[Subs (5) added by s 10(d), Act 23/1997]

[S 259 amended by s 21, Act 42/1969; substituted by s 15, Act 18/1992; and amended by s 10, Act 23/1997, and item 19 (Sch 2), Act 58/1998]

Notice to Authority of loss of ship

260. If the owner or the agent of the owner of a South African ship or of a ship plying between ports in the Republic or between a port in the Republic and any other port has reason, owing to the non-appearance of the ship or to any other circumstances, to believe or to fear that the ship has been wholly lost, he shall as soon as conveniently may be notify the

Authority in writing of the loss or the feared loss and of the probable occasion thereof, stating the name of the ship, her official number, the port to which she belongs, and giving all other available relevant information.

[S 260 amended by s 46, Act 40/1963]

When owner not liable for whole damage

261. (1) The owner of a ship, whether registered in the Republic or not, shall not, if any loss of life or personal injury to any person, or any loss of or damage to any property or rights of any kind, whether movable or immovable, is caused without his actual fault or privity—

- (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 206,67 special drawing rights for each ton of the ship's tonnage; or

[Para (a) amended by s 33(a), Act 30/1959, and substituted by s 7(a), Act 25/1985, and by s 11(1)(a), Act 23/1997]

- (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 66,67 special drawing rights for each ton of the ship's tonnage; or

[Para (b) amended by s 33(b), Act 30/1959, and substituted by s 7(b), Act 25/1985, and by s 11(1)(a), Act 23/1997]

- (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 206,67 special drawing rights for each ton of 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 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 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.

[Para (c) amended by s 33(c) and (d), Act 30/1959, and substituted by s 7(c), Act 25/1985, and by s 11(1)(a), Act 23/1997]

(2) The provisions of this section shall extend and apply to the owners, builders or other persons interested in any ship built at any port or place in the Republic, from and including the launching of such ship until the registration thereof under the provisions of this Act.

(3) The provisions of this section shall apply in respect of claims for damages in respect of loss of life, personal injury and loss of or damage to property or rights arising on any single occasion, and in the application of the said provisions claims for damages in respect of loss, injury or damage arising out of two or more distinct occasions shall not be combined.

(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.

[Subs (4) added by s 33(e), Act 30/1959, and substituted by s 4(a), Act 16/1995, and by s 11(1)(b), Act 23/1997]

(5) . . .

[Subs (5) added by s 33(e), Act 30/1959, substituted by s 7(d), Act 25/1985, and deleted by s 4(b), Act 16/1995]

Tonnage how calculated

262. (1) For the purpose of section *two hundred and sixty-one*, the tonnage of a ship shall be her gross register tonnage.

[Subs (1) substituted by s 8, Act 25/1985]

(2) There shall not be included in such tonnage any space occupied by seamen or apprentice-officers and appropriated to their use which has been certified by a surveyor to comply in all respects with the requirements of this Act.

(3) The measurement of such tonnage shall be—

- (a) in the case of a South African ship, according to the law of the Republic;
- (b) in the case of a treaty ship registered elsewhere than in the Republic, according to the law of the treaty country where the ship is registered;

[Para (b) amended by s 51, Act 69/1962]

(c) in the case of a foreign ship, according to the law of the Republic, if capable of being so measured.

(4) In the case of any foreign ship, which is incapable of being measured under the law of the Republic, the Authority shall, after consideration of the available evidence concerning the dimensions of the ship, give a certificate stating what would, in its opinion, have been the tonnage of the ship if she had been duly measured according to the law of the Republic; and the tonnage so stated in such certificate shall, for the purpose of section 261, be deemed to be the tonnage of the ship.

[Subs (4) substituted by s 2(2), Act 5/1998]

Application of this Part to persons other than the owners

263. (1) Any obligation imposed by this Part upon any owner of a ship shall be imposed also upon any person (other than the owner) who is responsible for the fault of the ship; and in any case where, by virtue of any charter or lease, or for any other reason, the owner is not responsible for the navigation and management of the ship, this Part shall be construed to impose any such obligation upon the charterer or other person for the time being so responsible, and not upon the owner.

(2) For the purposes of section 261 the word "**owner**" in relation to a ship shall include any charterer, any person interested in or in possession of such ship, and a manager or operator of such ship.

[Subs (2) added by s 8, Act 3/1981]

CHAPTER VI

SPECIAL SHIPPING ENQUIRIES AND COURTS OF ENQUIRY AND COURTS OF SURVEY

Preliminary enquiry into shipping casualties

264. (1) The Authority may in its discretion appoint any competent person to hold a preliminary enquiry—

- (a) in the case of a ship which is registered or licensed in the Republic or which is in terms of this Act required to be so licensed, whenever—
 - (i) an allegation of incompetency or misconduct is made against the owner, the master or any member of the crew of such ship; or
 - (ii) (aa) such ship has been lost, abandoned or stranded;
(bb) an accident has occurred on board such ship or such ship has been damaged or has caused damage to any other ship; or
(cc) loss of life or serious injury to any person on board such ship has occurred; at any place whatsoever;

[Para (a) amended by item 20 (Sch 2), Act 58/1998]

- (b) in the case of a ship registered or required to be so registered in a country other than the Republic, whenever, in a port of or within the territorial waters of the Republic, any event referred to in paragraph (a)(ii) has occurred;
- (c) in the case of any ship, wherever registered or required to be so registered, whenever an allegation referred to in paragraph (a)(i) is made against an employer or any person on board the ship while such ship is in a port of or within the territorial waters of the Republic;
- (d) in the case of a ship registered in a foreign country, whenever any event referred to in paragraph (a)(ii) has occurred elsewhere than in a port of or within the territorial waters of the Republic, and—

- (i) such ship subsequently arrives at a port in the Republic and an enquiry into the casualty has not been held by any competent court or other investigatory body in any other treaty country; or
- (ii) in the case of a treaty ship, evidence is obtainable in the Republic as to the circumstances in which such ship proceeded to sea, or was last heard of, or any event referred to in paragraph (a)(ii) has occurred.

[Subs (1) amended by s 2(2), Act 5/1998]

(2) The Authority may request the Director-General of Labour to assign a person designated as an inspector under section 28 of the Occupational Health and Safety Act 85 of 1993 to assist a person appointed under subsection (1) to hold a preliminary enquiry.

[Subs (2) substituted by s 12(a), Act 23/1997, and by s 2(2), Act 5/1998]

(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.

[Subs (3) added by s 12(b), Act 23/1997]

[S 264 amended by s 52, Act 69/1962, and s 47, Act 40/1963; substituted by s 22, Act 42/1969, and s 16, Act 18/1992; and amended by s 12, Act 23/1997, s 2, Act 5/1998, and item 20 (Sch 2), Act 58/1998]

Report to Authority by person who has held preliminary enquiry

265. (1) Upon the conclusion of an enquiry by a person appointed in terms of section *two hundred and sixty-four* he shall without delay transmit to the Authority a report containing a full statement of the case, and of his opinion thereon, accompanied by such report of or extracts from the evidence and such observations as he thinks fit.

(2) . . .

[Subs (2) added by s 17, Act 18/1992, amended by s 5, Act 16/1995, and deleted by s 13, Act 23/1997]

Convening of court of marine enquiry in the Republic

266. (1) The Minister may, in his discretion, and whether or not a preliminary enquiry has been made under section *two hundred and sixty-four*, convene a court (hereinafter referred to as a court of marine enquiry) to hold a formal investigation into any such allegation or event as is referred to in that section.

(2) A formal investigation shall not be held into any allegation against the master or a member of the crew of a ship registered in any treaty country other than the Republic, or into any event that has occurred in respect of or on board any such ship, save at the request or with the consent of the government of that treaty country: Provided that this restriction shall not apply if—

- (a) the allegation relates to the master or a member of the crew of a ship which is wholly engaged in plying between ports in the Republic, or the event has occurred at any place whatsoever in respect of or on board any such ship; or

- (b) the event has occurred in a port in the Republic or within the territorial waters of the Republic in respect of or on board a ship other than a ship referred to in paragraph (a).

[Subs (2) amended by s 53, Act 69/1962, and by s 48, Act 40/1963, and substituted by s 18, Act 18/1992]

Constitution of court of marine enquiry

267. (1) A court of marine enquiry shall consist of a judge or ex-judge of the Supreme Court, magistrate, ex-magistrate, advocate or attorney, who shall be the presiding officer, and either two or four other members.

[Subs (1) substituted by s 9, Act 3/1981]

(2) The members of the court shall be appointed by the Minister, and all members other than the presiding officer shall be persons of suitable nautical, engineering or other special skill, knowledge or experience, and, whenever possible, at least one member shall be in active sea-going service.

(3) The members of the court other than the presiding officer shall be selected from a list of persons approved by the Minister from time to time in accordance with the regulations: Provided that the Minister may appoint as a member of the court a person whose name does not appear on the said list, if it appears to him expedient to do so by reason of the special nature of the investigation.

(4) If by death, resignation or any other cause the number of members of the court is reduced, the remaining members shall, if they consist of the presiding officer and at least one other member, constitute the court.

(5) If the court, as originally constituted or as reduced for any reason referred to in subsection (4), consists of the presiding officer and two other members, the presiding officer and one other member shall form a quorum; and if it consists of the presiding officer and more than two other members, the presiding officer and two other members shall form a quorum.

How decisions of court of marine enquiry are reached and announced

268. (1) Any matter of law arising for decision at any investigation held by a court of marine enquiry, and any question arising thereat as to whether a matter for decision is a matter of fact or a matter of law, shall be decided by the presiding officer, and no other member shall have a voice in any such decision.

(2) The presiding officer may adjourn the argument upon any such matter or question as is mentioned in subsection (1), and may sit alone for the hearing of such argument and the decision of such matter or question.

(3) Whenever the presiding officer gives a decision in terms of subsection (1), he shall give his reasons for that decision.

(4) Upon all matters of fact the decision of the majority of the members of the court shall be the decision of the court.

(5) The decision of the court upon any matter in terms of subsection (4) shall be declared by one of the members concurring in that decision, and the reasons therefor shall

be stated by at least one such member. Any member who dissents from the decision of the court may declare his dissent and his reasons therefor.

(6) If for any reason a majority of the members of the court (of, if the court consists of only two members, both members) are not agreed upon any matter of fact upon which a decision is necessary in order that the investigation may be completed, the presiding officer shall report that fact to the Authority, and thereupon the Minister may refer the matter back to the court for reconsideration or may discharge the members of the court and, if he thinks fit, appoint another court of marine enquiry to hold the formal investigation.

Powers of court of marine enquiry in respect of master or member of crew

269. (1) If a court of marine enquiry finds that any master or member of the crew is incompetent or has been guilty of any act of misconduct, or that loss, abandonment or stranding of or serious damage to any ship or loss of life or serious injury to any person has been caused by the wrongful act or default of any master or member of the crew, it may, subject to the provisions of section 283, cancel the certificate of competency or service of the master or member of the crew or suspend it for a stated period or, whether or not the master or member of the crew holds a certificate of competency or service, prohibit his employment in any stated capacity in a ship for a stated period or impose a fine not exceeding R2 000 upon him or reprimand him.

(2) Subsection (1) shall apply in respect of masters or members of the crew of all ships which are registered or licensed in the Republic or which are in terms of this Act required to be so licensed, and in respect of masters or members of the crew of ships registered in a country other than the Republic only if those ships are wholly engaged in plying between ports in the Republic.

[Subs (2) substituted by item 21 (Sch 2), Act 58/1998]

[S 269 amended by s 49, Act 40/1963; substituted by s 23, Act 42/1969; amended by s 4, Act 24/1974; substituted by s 19, Act 18/1992; and amended by item 21 (Sch 2), Act 58/1998]

Convening of maritime courts outside the Republic

270. Whenever—

- (a) a complaint which appears to a proper officer outside the Republic to require immediate investigation is made to him by the master or any member of the crew of a South African ship; or
- (b) the interest of the owner of a South African ship or of the cargo thereof appears to such an officer to require it; or
- (c) an allegation of incompetency or misconduct is made to him against the master or any of the ship's officers of a South African ship; or
- (d) any South African ship is lost, abandoned or stranded at or near the place where such an officer may be, or whenever the crew or part of the crew of any South African ship which has been lost, abandoned or stranded arrives at that place; or
- (e) any loss of life or any serious injury to any person has occurred on board a South African ship at or near that place,

he may, in his discretion, convene a court (hereinafter referred to as a maritime court) to investigate the said complaint or allegation or the matter affecting the said interest or the cause of the loss, abandonment or stranding of the ship or of the loss of life or of the injury to the person.

Constitution of maritime courts

271. (1) A maritime court shall consist of the proper officer who convenes it and either two or four other members.

(2) The other members of the court shall be appointed by the proper officer who convenes it, and shall be persons of suitable nautical, engineering or other special skill, knowledge or experience, and, whenever possible, at least one member shall be in active sea-going service.

(3) If by death, resignation or any other cause the number of members of the court is reduced to not less than two, the remaining members shall constitute the court.

(4) If the court, as originally constituted, or as reduced for any reason referred to in subsection (3), consists of three members, two members shall form a quorum; and if it consists of more than three members, three members shall form a quorum.

(5) The proper officer who convened the court shall be the presiding officer unless for any reason referred to in subsection (3) he ceases to be a member of the court, in which event the proper officer (or his successor) shall appoint one of the other members of the court to be the presiding officer.

How decisions of maritime courts are reached and announced

272. (1) The decision of the majority of the members of a maritime court shall, subject to the provisions of paragraphs (a) and (b) of subsection (1) of section *two hundred and seventy-three*, be the decision of the court.

(2) The decision of the court shall be declared by one of the members concurring in that decision, and the reasons therefor shall be stated by at least one such member. Any member who dissents from the decision of the court may declare his dissent and his reasons therefor.

(3) If for any reason a majority of the members of the court (or, if the court consists of only two members, both members) are not agreed upon any matter upon which a decision is necessary in order that the investigation may be completed, the presiding officer, if he is the proper officer, shall discharge the members of the court, and, if he thinks fit, he may summon another maritime court to hold the investigation, or, if he is not the proper officer, he shall report the fact to the proper officer, and thereupon the proper officer may refer the matter back to the court for reconsideration or may discharge the members of the court, and, if he thinks fit, summon another maritime court to hold the investigation.

Powers of maritime courts

273. (1) A maritime court may, after hearing and investigating the case, and subject to the provisions of section *two hundred and eighty-three*—

- (a) if unanimous that the safety of a South African ship or her cargo or crew or the interest of the owner of a South African ship or of the cargo thereof requires it, remove the master and appoint another qualified person to act in his stead;
- (b) if unanimous that any master or ship's officer of a South African ship is incompetent or has been guilty of any act of misconduct, or that loss, abandonment or stranding of or serious damage to any ship or loss of life or serious injury to any person has been caused by the wrongful act or default of any master or ship's officer of a South African ship, suspend the certificate of competency or service of that master or ship's officer for a stated period, or, whether or not the master or ship's officer holds a certificate of competency or service, prohibit his employment in any stated capacity in a ship for a stated period or reprimand him.

[Para (b) substituted by s 24, Act 42/1969, and by s 5, Act 24/1974]

- (c) discharge a seaman from a South African ship and order the wages of any seaman so discharged or any part of those wages to be forfeited;
- (d) decide any questions as to wages or fines or forfeitures arising between any of the parties to the proceedings;
- (e) direct that any or all of the costs incurred by the master or owner of a South African ship in procuring the imprisonment of any seaman or apprentice-officer in a port outside the Republic, or in his maintenance while so imprisoned, shall be paid out of and deducted from the wages of that seaman or apprentice-officer, whether then or subsequently earned;
- (f) exercise the same powers with regard to persons charged before it with the commission of offences at sea or abroad as consular representatives can in terms of section *three hundred and forty-one*;
- (g) punish any master or member of the crew of a South African ship respecting whose conduct a complaint is brought before it for any offence under this Act of which he has been found guilty by the court and shall for that purpose have the same powers as a magistrate's court would have if the case were tried in the Republic: Provided that where an offender is sentenced to imprisonment, the proper officer shall approve the place of imprisonment, whether on land or on board ship: Provided further, that the court may direct that any fine imposed upon an offender shall be paid out of and deducted from his wages and paid over to the proper officer, who shall transmit it to the Authority.
- (h) if it considers such a step expedient, order a survey to be made of any South African ship which is the subject of investigation;
- (i) . . .

[Para (i) deleted by s 34, Act 30/1959]

(2) All orders made by a maritime court shall, whenever practicable, be entered in the official log-book of the ship which forms the subject of investigation or on board which the casualty or occurrence or conduct investigated took place, and be signed by the presiding officer of the court.

Appeal from surveyor to court of survey

274. (1) If a surveyor who has inspected a vessel—

- (a) makes a statement in his report of his inspection with which the owner (or his agent) or the master of the vessel is dissatisfied; or
- (b) gives notice under subsection (2) of section *two hundred and fourteen*, subsection (2) or (3) of section *two hundred and sixteen* or subsection (1) of section *two hundred and twenty-three*; or
- (c) declines to give the certificate referred to in subsection (3) of section *two hundred and fourteen*, subsection (4) of section *two hundred and sixteen* or subsection (2) of section *two hundred and twenty-three*,

the owner (or his agent) or the master, as the case may be, may, subject to the provisions of subsection (2) of this section and section *two hundred and eighty-two*, appeal to a court of survey.

(2) Whenever a surveyor inspects any vessel, he shall, if the owner (or his agent) or the master of the vessel so requires, be accompanied on the inspection by some person nominated by the owner (or his agent) or the master, as the case may be, and if the person so nominated agrees with the surveyor as to the statement made or the notice given by the surveyor or the refusal by the surveyor to give a certificate; there shall be no appeal to a court of survey from that statement, notice or refusal.

[Subs (2) amended by s 35, Act 30/1959]

Convening of court of survey

275. Whenever an appeal to a court of survey lies in terms of section *two hundred and seventy-four* and has been duly noted, the Minister shall, subject to the provisions of section *two hundred and eighty-two*, convene a court (hereinafter referred to as a court of survey) to hear the appeal.

Constitution of court of survey

276. (1) A court of survey shall consist of a magistrate and either two or four other members.

(2) The members of the court shall be appointed by the Minister, and all members other than the presiding officer shall be persons of suitable nautical, engineering or other special skill, knowledge or experience.

(3) Whenever a foreign ship is the subject of an appeal the Minister may consult a diplomatic or consular representative of the country in which that ship is registered before nominating the members.

(4) The members of the court other than the presiding officer shall be selected from a list of persons approved by the Minister from time to time in accordance with the regulations: Provided that the Minister may appoint as a member of the court a person whose name does not appear on the said list, if it appears to him expedient to do so by reason of the special nature of the questions involved in the appeal.

(5) If by death, resignation or any other cause the number of members of the court is reduced to not less than two, the remaining members shall constitute the court.

(6) If the court, as originally constituted, or as reduced for any reason referred to in subsection (5), consists of three members, two members shall form a quorum; and if it consists of more than three members, three members shall form a quorum.

(7) The magistrate appointed as a member of the court as originally constituted shall be the presiding officer unless for any reason referred to in subsection (5), he ceases to be a member of the court, in which event the Minister shall appoint one of the other members of the court to be the presiding officer.

How decisions of courts of survey are reached and announced

277. (1) The decision of the majority of the members of a court of survey shall be the decision of the court.

(2) The decision of the court shall be declared by one of the members concurring in that decision, and the reason therefor shall be stated by at least one such member. Any member who dissents from the decision of the court may declare his dissent and his reasons therefor.

(3) If for any reason a majority of the members of the court (or, if the court consists of only two members, both members) are not agreed upon the question what the decision upon the appeal should be, the presiding officer shall report the fact to the Authority, and thereupon the Minister may refer the appeal back to the court for reconsideration, or may discharge the members of the court and appoint another court of survey to hear the appeal.

(4) Notwithstanding the provisions of this section, if a ship has been detained or it is proposed to detain a ship by reason of a report made or a notice given by a surveyor, or by reason of a refusal by a surveyor to grant a certificate, and appeal is made against the making of the report or the giving of the notice or the refusal to grant the certificate, the ship shall, if she has been detained, be released, and if she has not yet been detained, shall not be detained after the first meeting of the court, unless a majority of the members of the court are in favour of her being detained.

Powers of court of survey

278. A court of survey or, if an appeal has been referred to an expert or experts under section *two hundred and eighty-two*, that expert or those experts, may, if the appeal is against—

- (a) any statement in a report by a surveyor, dismiss the appeal, in which event the statement shall stand, or uphold the appeal and cancel or vary the statement; or
- (b) any notice given by a surveyor, dismiss the appeal and confirm that notice or uphold the appeal and set aside the notice; or
- (c) the refusal by a surveyor to grant a certificate, dismiss the appeal and confirm that refusal or uphold the appeal and grant the certificate.

Interested persons not to serve on courts of marine enquiry, maritime courts or courts of survey

279. (1) No person who is connected, directly or indirectly, with the ship which forms the subject of investigation by a court of maritime enquiry or a maritime court, or which forms the subject of an appeal to a court of survey, or on board which the casualty or occurrence or conduct to be investigated by a court of marine enquiry or a maritime court took place, or with the owners of that ship, shall be appointed as a member of that court or under section *two hundred and eighty-two*.

(2) Nothing in subsection (1) contained shall prohibit the appointment as a member of a court of marine enquiry or a maritime court or a court of survey or under section *two hundred and eighty-two* of any person who is in the employ of or entitled to receive a pension from the Government of the Republic, merely on the ground that the said Government is the owner of the ship referred to in subsection (1).

[Subs (2) amended by s 50, Act 40/1963]

Procedure at court of marine enquiry or maritime court or court of survey

280. (1) A court of marine enquiry, a maritime court or a court of survey, or an expert or experts to whom an appeal has been referred under section *two hundred and eighty-two* may, subject to the provisions of this Act, determine the procedure to be followed at the investigation or the hearing of the appeal.

(2) Every such investigation shall, unless the court decide otherwise, be held in open court, and the hearing of every such appeal shall be held in open court; and the decision or finding shall, at the conclusion of the investigation or hearing, or as soon afterwards as possible, be delivered in open court.

Court of survey may cause ship to be surveyed

281. (1) A court of survey may appoint a surveyor to inspect the ship which is the subject of appeal and report thereon to the court.

(2) The owner and master of the ship and any person, appointed by the owner or master, and also any person appointed by the Authority, may attend at any inspection made in terms of this section.

Reference in difficult cases to scientific persons

282. (1) If the Authority is of opinion that an appeal to a court of survey involves a question of construction or design or of scientific difficulty or an important principle, it may refer the appeal to one or more experts approved by the Minister and selected by agreement between the Authority and the appellant, or, in default of any such agreement, by the Minister, and thereupon the appeal shall be determined by such experts instead of by the court.

[Subs (1) substituted by 2(2), Act 5/1998]

(2) The Authority, if the appellant in any appeal so requests and gives security to the satisfaction of the Authority to pay any relative costs, shall refer the appeal to one or more experts selected in terms of subsection (1).

(3) An expert or experts to whom an appeal is referred in terms of subsection (1) or (2) shall have the same powers as a court of survey.

(4) If an appeal is referred to more than one expert, the provisions of section *two hundred and seventy-seven* shall apply, *mutatis mutandis*, to the hearing of the appeal.

(3) If an appeal is referred under subsection (1) to more experts than one, the Authority shall appoint one of them as presiding officer.

Opportunity of making a defence

283. (1) If at an investigation by a court of marine enquiry or a maritime court it is alleged or suggested that the conduct of any person has amounted to a punishable act or omission, that person shall be given a reasonable opportunity for making a defence.

(2) A court of marine enquiry shall not cancel or suspend a certificate or prohibit the employment of a person or impose a fine upon him or reprimand him, and a maritime court shall not suspend a certificate or prohibit the employment of a person or reprimand him—

(a) unless the holder of the certificate or other person has been present at the hearing of any evidence on which the decision of the court to cancel or suspend his certificate or to prohibit his employment or to impose a fine upon him or to reprimand him is based, or, if he has not been so present, unless a transcript of the notes of such evidence has been furnished to him at least 48 hours before he is called upon to make his defence; and

[Para (a) substituted by s 25(b), Act 42/1969, and by s 20, Act 18/1992]

(b) unless copies of any written depositions or reports upon which such decision is based have been furnished to him and a copy of the charges laid against him has been served upon him in the manner prescribed, at least forty-eight hours before he is called upon to make his defence, and if after a copy of a charge laid against him has been served upon him the charge is amended, he has been given a reasonable opportunity of making a defence to the amended charge.

[Subs (2) amended by s 25(a), Act 42/1969, and by s 20, Act 18/1992]

(3) If the holder of the certificate concerned or other person has been summoned to attend before the court and has not done so, or if upon being asked in writing or otherwise whether he wishes to make a defence he has not replied that he wishes to do so, it shall not be necessary to furnish to him the notes, depositions or reports referred to in subsection (2).

[Subs (3) substituted by s 25(c), Act 42/1969]

Court may require delivery of certificate during course of investigation

284. A court of marine enquiry may at any time during the progress of the investigation order any master or member of the crew affected by the investigation, and a

marine court may at any time during the progress of the investigation order any master or ship's officer affected by the investigation, to deliver his certificate to the court forthwith.

[S 284 substituted by s 21, Act 18/1992]

Witnesses to be allowed expenses

285. Every witness summoned by a person appointed under section *two hundred and sixty-four* to make a preliminary enquiry or by a court of marine enquiry, a maritime court or a court of survey or an expert or experts to whom an appeal has been referred upon section *two hundred and eighty-two* shall be paid such expenses as would be allowed to any witness attending or subpoenaed to give evidence in a civil case before a magistrate's court.

Transmission to Authority of record and decision of court of marine enquiry, maritime court, or court of survey

286. (1) The presiding officer of a court of marine enquiry, maritime court of court of survey or body of experts to whom an appeal has been referred under section *two hundred and eighty-two*, or, if an appeal has been referred to only one expert that expert shall, at the conclusion of the investigation or hearing transmit to the Authority the notes of evidence and as many copies as the Authority may require of the record of the proceedings and the report and decisions; and any member of the court or any one of the experts who dissents from any decision may attach to the record his written reasons for so dissenting, and the presiding officer shall transmit such written reasons with the record.

(2) When the investigation affects a master or member of the crew of a ship other than a South African ship the Authority shall transmit a copy of the court's finding or decision, together with the notes of the evidence, to the proper authority in the country where the ship is registered.

[Subs (2) substituted by s 22, Act 18/1992]

Effect of cancellation or suspension of certificate or prohibition of employment

287. The cancellation or suspension of a certificate by the Authority or a court of marine enquiry, or the suspension of a certificate by a maritime court, or the prohibition of employment by a court of marine enquiry or a maritime court, shall—

- (a) if the certificate was issued in the Republic or if the prohibition of employment is in respect of a South African citizen, be effective everywhere and in respect of all ships; and
- (b) if the certificate was issued elsewhere in the Republic or if the prohibition of employment is in respect of a citizen of a country other the Republic, be effective—
 - (i) within the Republic and the territorial waters of the Republic in respect of all ships; and

- (ii) outside the Republic and the territorial waters of the Republic only in respect of ships which are registered or licensed in the Republic or which are in terms of this Act required to be so licensed.

[Subpara (ii) substituted by item 22 (Sch 2), Act 58/1998]

[S 287 substituted by s 26, Act 42/1969, and amended by item 22 (Sch 22), Act 58/1998]

Delivery of Republic certificate which has been cancelled or suspended

288. A master or member of the crew who is the holder of a certificate issued in the Republic shall, if such certificate has been cancelled or suspended by the Authority or a court of marine enquiry or suspended by a maritime court, deliver his certificate to the court on demand, or if it is not demanded by the court, to the Authority.

[S 288 substituted by s 23, Act 18/1992, and by s 2(2), Act 5/1998]

Certificate not be endorsed

289. If the certificate of a master or member of the crew is suspended by the Authority or a court of marine enquiry or a maritime court, or if the employment of a master or member of the crew is prohibited or if a fine is imposed upon him or he is reprimanded by a court of marine enquiry or if he is reprimanded by a maritime court, or if a direction is given by the Authority under section 87(2) in respect of the holder of a certificate, no person shall make any endorsement to that effect on the certificate of the master or member of the crew.

[S 289 substituted by s 27, Act 42/1969, and by s 24, Act 18/1992]

Powers of Minister in respect of cancelled or suspended certificates

290. The Minister may, if he thinks the justice of the case requires it—

- (a) set aside the suspension of a certificate suspended by a court of marine enquiry or a maritime court, or shorten or lengthen the period of suspension of, or cancel, a certificate so suspended; or
- (b) grant a new certificate of the same grade or any lower grade in the place of a certificate cancelled by any such court or grant a new certificate of any lower grade in the place of a certificate suspended by any such court, if the certificate was issued in the Republic, or return any certificate so cancelled or suspended, if it was issued elsewhere than in the Republic; or

[Para (b) substituted by s 28(a), Act 42/1969]

- (c) set aside the prohibition of employment by a court of marine enquiry or a maritime court or shorten or lengthen the period of the prohibition, or set aside the fine imposed or the reprimand by any such court.

[Para (c) added by s 28(b), Act 42/1969, and substituted by s 25, Act 18/1992]

Rehearing

291. (1) Whenever an investigation has been held by a court of marine enquiry or a maritime court, the Minister may order the case to be reheard, either generally or as to any part thereof, and shall so order—

- (a) if new and important evidence which could not be produced at the investigation has been discovered; or
- (b) if for any other reason there has been in his opinion ground for suspicion that a miscarriage of justice has occurred.

(2) The Minister may order the case to be reheard by the court of marine enquiry or the maritime court, as the case may be, consisting (if such is practicable) of the same members who, or other members than, constituted the court when it held the investigation in the first instance; and may, if the investigation was held by a maritime court, order the case to be reheard by a court of marine enquiry.

Appeals against decisions of courts of marine enquiry and maritime courts

292. (1) Any person aggrieved by any decision of a court of marine enquiry or a maritime court may appeal to the High Court within the area of jurisdiction of which—

- (a) in the case of a court of marine enquiry, the court was held; or
- (b) in the case of a maritime court, the ship which formed the subject of investigation, or on board which the casualty or occurrence investigated by the court took place, is registered.

(2) An appeal to a High Court shall, if the appeal is made merely on a point of law, be heard by a judge of that court, and in every other case by a judge of that court assisted by at least one assessor acting in an advisory capacity, who shall be a person of suitable nautical, engineering or other special skill, knowledge or experience summoned by the judge for the purpose.

(3) The court to which the appeal is made may confirm or quash or vary the decision appealed from, or remit the case for rehearing either generally or as to any part thereof by the court from whose decision the appeal is brought, consisting (if such is practicable) of the same members who, or other members than, constituted that court when it held the investigation in the first instance.

(4) An appeal under this section shall be made in the manner and subject to the conditions and in accordance with the provisions laid down in the regulations.

CHAPTER VII

WRECKS AND SALVAGE

293 to 306 inclusive . . .

[Ss 293 to 306 inclusive repealed by s 28, Act 94/1996]

CHAPTER VIII
CARRIAGE OF GOODS BY SEA

307 to 311 inclusive . . .

[Ss 307 to 311 inclusive repealed by s 5, Act 1/1986]

CHAPTER IX
OFFENCES, PENAL PROVISIONS AND LEGAL PROCEDURE

Offences not expressly mentioned

312. Any person who contravenes any provision of this Act or who fails to comply with any provision thereof with which it was his duty to comply shall be guilty of an offence.

Penalties for offences

313. (1) Every person who is guilty of an offence under this Act for which no penalty is specially provided in subsection (2) or (3) of this section or section 323(4) or under section 356(5) shall on conviction be liable to a fine, or to imprisonment for a period not exceeding three months.

(2) Every person who is guilty of an offence under this Act mentioned in Column 1 hereunder shall on conviction be liable to a penalty not exceeding the penalty mentioned in Column 2 hereunder opposite the offence:

Column 1	Column 2
<i>Contravening or failing to comply with the following provisions</i>	<i>Penalty</i>
Section 201	Fine, or imprisonment for a period not exceeding three months, and, in addition, for every passenger in excess of the number permitted by the certificate or memorandum, a fine of double the highest fare payable by any passenger on board.
Section 9(2), 16, 19(2), 36(2), 65(2), 68, 72, 117(1), 118, 172, 174(2)(c) or (e), 200(1)(c) or (d), 203(9), 212(b), 213, 219(a)(ii), 228(1), 232(1), 250 or 303(1)	Fine, or imprisonment for a period not exceeding six months.
Section 32(2)	Fine, or imprisonment for a period not exceeding six months, and, in addition, a fine not exceeding R100 for every day during which the offence continues after conviction.
Section 73(1), 174(2)(d), (f) or (g), 200(1)(a) or (b), 212(a), 219(a)(i) or (b), 221(1), 235(1) or (2), 236(1), 237(1) or (2), 316(a), (b), (e), (f), (g) or (h) or 320	Fine, or imprisonment for a period not exceeding one year.

Column 1	Column 2
<i>Contravening or failing to comply with the following provisions</i>	<i>Penalty</i>
Section 9(3), 11(2), 25, 65(3), 66, 67, 174(1) 204(3), 234(1) or (2), 296, 299(2), 314, 315 or 316(c)	Fine, or imprisonment for a period not exceeding two years.
Section 214(1)	Fine, or imprisonment for a period not exceeding two years, and in addition, a fine of R4 000 for every 25 mm or fraction thereof by which the appropriate load line on each side of the ship was submerged or would have been submerged if the ship had no list.
Section 240	<p>For vessels of less than 25 gross tons, a fine, or imprisonment for a period not exceeding six months.</p> <p>For vessels of 25 gross tons and over but less than 100 gross tons, a fine, or imprisonment for a period not exceeding one year.</p> <p>For vessels of 100 gross tons and over but less than 500 gross tons, a fine, or imprisonment for a period not exceeding two years.</p> <p>For vessels of 500 gross tons and over but less than 1 000 gross tons, a fine, or imprisonment for a period not exceeding three years.</p> <p>For vessels of over 1 000 gross tons, a fine, or imprisonment for a period not exceeding four years.</p>
Section 259(1)(c)	Fine, or imprisonment for a period not exceeding three years.
Section 316(d)	Fine, of treble the value of the ship or goods received or had in possession, or R12 000, whichever is the greater, or imprisonment for a period not exceeding three years.

(3) Every person who, being the master of a ship involved in a collision, fails to comply with the provisions of section 258(1) or who, being the master of a ship to which any provision of the collision regulations applies, without reasonable cause contravenes or fails to comply with that provision, shall on conviction be liable to a fine, or imprisonment for a period not exceeding two years.

[S 313 substituted by s 10, Act 5/1976, and by s 27, Act 18/1992]

Bribery

314. No person shall, in respect of a matter relating to this Act—

- (a) not being authorized so to do, give or promise to give, directly or indirectly, any reward to an officer or a person who is employed by the Government, or upon whom any duty is imposed or to whom any function is entrusted by or under this Act, in respect of the performance or non-performance, by any such officer or person, of his employment, duty or function; or
- (b) agree with or propose to any such officer or person to do, or permit anything in contravention or evasion of this Act; or
- (c) being an officer or a person referred to in paragraph (a)—

- (i) demand or receive except from or through the Government or in accordance with the provisions of this Act, any reward in respect of the performance or non-performance of his employment, duty or function; or
- (ii) by any wilful act, neglect or default do or permit or agree to do or permit anything in contravention or evasion of this Act.

Forgery and other fraudulent acts

315. No person shall—

- (a) forge any document issued under this Act; or
- (b) make any false representation for the purpose of procuring the issue of any document under this Act, or for the purpose of inducing any person to do any act which by this Act he is authorized to do; or
- (c) produce or otherwise put off any forged document purporting to be a document issued under this Act, which he knows to be forged; or
- (d) knowingly produce or otherwise use any document issued under this Act which has been cancelled or suspended or which has expired or to which he is not entitled; or
- (e) make in any document, produced or delivered to any person authorized to receive it under this Act, any statement which he knows is untrue in any particular; or
- (f) produce or deliver any document which contains any statement which he knows is untrue in any particular to any person authorized to receive it under this Act; or
- (g) lend to any person who he knows is not entitled thereto a document issued under this Act or allow any such document to be used by any such person.

Obstructing administration of Act

316. No person shall—

- (a) damage, destroy, conceal or dispose of any vessel or goods to prevent the detention, forfeiture or seizure thereof under this Act; or
- (b) rescue, damage or destroy any vessel or goods detained, forfeited or seized under this Act; or
- (c) being the owner or master of a vessel which has been detained under this Act, or any other person under the control of either of them, cause or permit the vessel to proceed to sea without the permission of the proper officer; or
- (d) knowingly receive or have in his possession any vessel or goods forfeited under this Act; or
- (e) being the master of a vessel proceeding to sea, wrongfully take to sea any officer authorized to detain the vessel or any surveyor or other officer when on board the vessel in the execution of his duty; or
- (f) insult, resist, hinder or mislead any person or court upon whom any duty is imposed or any power is conferred or to whom any function is entrusted by or under this Act,

in the discharge of that duty or the exercise of that power or the performance of that function, or refuse or fail to give all reasonable assistance, when called upon to do so, to any such person or court in such discharge, exercise or performance, or hinder or prevent any other person from assisting any such person or court in such discharge, exercise or performance; or

- (g) hinder or prevent any witness from attending in obedience to any summons issued under this Act; or
- (h) hinder or prevent the service of any document under this Act.

Stowaways

317. (1) No person shall go to sea in a ship without the consent of the owner, master, a ship's officer or some other person entitled to give that consent, or secrete himself for the purpose of going to sea without that consent.

(2) Every person who goes to sea in a ship without the consent mentioned in subsection (1) shall so long as he remains in the ship be deemed to belong to the ship and be subject to the same laws and regulations for preserving discipline as if he were a member of the crew and had signed the agreement with the crew.

(3) Subsections (1) and (2) shall apply to any person who goes to sea or secretes himself for the purpose of going to sea—

- (a) in a South African ship going to sea from any port whatsoever; or
- (b) in a ship (other than a South African ship) going to sea from a port in the Republic; or
- (c) in a ship (other than a South African ship) going to sea from a port outside the Republic and bound for a port in the Republic.

[Para (b) amended by s 53(a), Act 40/1963]

[Para (c) amended by s 53(a), Act 40/1963]

(4) The master of any South African ship arriving at any port within or outside the Republic, and the master of any ship other than a South African ship arriving at a port in the Republic, shall, if any person has gone to sea in that ship without the consent mentioned in subsection (1), report the fact in writing to the proper officer as soon as practicable after the arrival of the ship.

[Subs (4) amended by s 53(b), Act 40/1963]

Ships not to be boarded without authority

318. No person not being duly authorized by or under this Act or any other law shall—

- (a) without the permission of the owner or master, go on board any ship, whether registered in the Republic or not, which is about to arrive, is arriving or has arrived in the Republic; or
- (b) remain on board any such ship at a port in the Republic, after being required to leave by the owner or master or by a police officer, an officer of customs or proper officer.

Offences in connection with passenger ships

319. (1) No person shall—

- (a) if, on account of his being drunk or disorderly, he has been refused admission to a passenger ship by the owner thereof or any person in his employ, and if he has received or been tendered a refund of his fare (if he has paid it), go on board the ship; or
- (b) if, on account of his being drunk or disorderly on board any passenger ship, he has been requested by the master or any other person employed in the ship to leave the ship at any place in the Republic at which he can conveniently do so, and if he has received or been tendered a refund of his fare (if he has paid it), refuse or fail to comply with the request; or
- (c) after warning by the master of or any other person employed in a passenger ship, molest or continue to molest any passenger on the ship; or
- (d) after having been refused admission to a passenger ship by the owner thereof or any person in his employ on account of the ship being full, and having received or been tendered a refund of his fare (if he has paid it), go on board the ship; or
- (e) if, having gone on board a passenger ship at any place in the Republic, he has been requested, on account of the ship being full, by the master of or any other person employed in the ship to quit the ship, before it has left that place, and has received or been tendered a refund of his fare (if he has paid it), refuse or fail to comply with the request; or
- (f) travel in any passenger ship without first paying his fare, and with intent to evade payment thereof; or
- (g) if he has paid his fare for a certain distance, knowingly proceed in a passenger ship beyond that distance without first paying the additional fare for the additional distance, and with intent to evade payment thereof; or
- (h) if he has arrived in a passenger ship at a place to which he has paid his fare, knowingly refuse or fail to quit the ship; or
- (i) being on board a passenger ship, and being requested by the master of or any other person employed in the ship, either to pay his fare or exhibit his ticket or other document showing payment of his fare, refuse or fail to comply with the request; or
- (j) being on board a passenger ship, and being requested by the master or any other person employed in the ship to furnish his name and address, refuse or fail to comply with the request or furnish a false name or address.

(2) The provisions of subsection (1) shall apply in respect of all passenger ships wherever registered while they are in the Republic or the territorial waters thereof.

Obstruction of navigation of ship

320. No person shall without reasonable excuse do anything to obstruct or injure any of the equipment of any ship wherever registered, or obstruct, impede or molest any of the crew in the navigation and management of the ship or otherwise in the execution of their duties about the ship.

Conveyance of deserter on board ship

321. Whenever any seaman or apprentice-officer of a South African ship or other treaty ship is convicted by any court of the Republic, or any seaman or apprentice-officer of a South African ship is convicted by a court of a treaty country other than the Republic, of desertion or absence without leave or other breach of discipline, the court shall, if the voyage has not yet been completed, and if the master or any ship's officer or the owner or his agent so requires, instead of imposing upon him any fine or sentence of imprisonment, cause him to be conveyed on board for the purpose of proceeding on the voyage: Provided that the court may decline to exercise this power in any particular case, if for any reason it thinks it advisable so to decline.

[S 321 amended by s 54, Act 69/1962]

Imprisoned seamen may be sent back on board

322. If a seaman or apprentice-officer of a South African ship or other treaty ship is undergoing a sentence of imprisonment in the Republic, or if a seaman or apprentice-officer of a South African ship is undergoing a sentence of imprisonment in a treaty country other than the Republic, for the offence desertion or absence without leave or other breach of discipline, any person who is a judicial officer of a court within whose area of jurisdiction the place of imprisonment is situated may, during his imprisonment, and before his engagement is at an end, and on the application of the master or owner or agent of the ship, and notwithstanding that the period of imprisonment has not concluded, cause the seaman or apprentice-officer to be conveyed on board his ship for the purpose of proceeding on the voyage, and the seaman or apprentice-officer shall not thereafter be required to serve the remaining portion of the period of imprisonment.

[S 322 amended by s 54, Act 69/1962]

Deduction from wages and payment to proper officers, etc. of fines

323. (1) Every fine imposed on a seaman belonging to a South African ship for any act of misconduct for which his agreement prescribes a fine in accordance with the regulations shall be deducted as follows:

- (a) if the seaman is discharged in the Republic, and the act of misconduct and the entry in the log-book required by this Act in respect thereof are proved to the satisfaction of the proper officer before whom the discharge takes place, the master or owner shall deduct the fine from the wages of the seaman concerned;
- (b) if the seaman is discharged outside the Republic, and the act of misconduct and the entry as aforesaid are proved to the satisfaction of the proper officer by whose sanction he is discharged, the master or owner shall deduct the fine as aforesaid,

and an entry shall be made in the official log-book of the ship and signed by the proper officer referred to, and the master or owner shall pay over the amount of the fine deducted to that proper officer.

(2) A proper officer shall remit any amounts received by him under this section to the Authority and render such accounts in respect thereof, as the Authority requires.

(3) The Authority, if it is satisfied that any such act of misconduct was committed and that the deduction of a fine was properly made, shall cause the amount of the fine to be paid into the Maritime Fund established by section 38 of the South African Maritime Safety Authority Act 5 of 1998; and if the Authority is not so satisfied, it shall cause the amount deducted to be refunded to the seaman.

[Subs (3) substituted by s 2(2), Act 5/1998]

(4) If a master or owner fails without reasonable cause to pay over to the proper officer any fine as required by this section, he shall be guilty of an offence and liable on conviction to a fine not exceeding six times the amount of the unpaid fine.

(5) An act of misconduct for which a fine has been imposed and deducted from the wages of the seaman, shall not be otherwise punished under this Act.

Authority may impose penalty upon admission of guilt

324. (1) If any person—

- (a) admits to the Authority that he has contravened any provision of this Act, or that he has failed to comply with any such provision with which it was his duty to comply; and
- (b) agrees to abide by the decision of the Authority; and
- (c) deposits with the Authority such sum as may be required of him, but not exceeding the maximum fine which may be imposed upon a conviction for the contravention or failure in question,

the Authority may, after such enquiry as it deems necessary, determine the matter summarily and may, without legal proceedings, order by way of penalty the whole or any part of the said deposit to be forfeited.

[Subs (1) substituted by s 2(2), Act 5/1998]

(2) There shall be a right of appeal to the Minister from a determination or order by the Authority under subsection (1) whereby a penalty exceeding R2 000 is imposed, provided such right is exercised within a period of three months from the date of such determination or order.

[Subs (2) substituted by s 6, Act 16/1995, by s 6, Act 88/1996, and by s 2(2), Act 5/1998]

(3) The imposition of a penalty under subsection (1) shall not be deemed to be a conviction of a criminal offence, but no prosecution for the relative offence shall thereafter be competent.

(4) Nothing in this section shall in any way affect liability to forfeiture of ships, shares therein or goods.

Release from forfeiture or mitigation of penalties

325. The Authority may—

- (a) direct that any ship or any share in a ship or any goods detained, seized or forfeited under this Act be released or delivered to the owner thereof; or

- (b) mitigate or remit any penalty incurred under this Act, not being a sentence imposed after conviction by a court of law,

on such conditions as to it appear proper: Provided that if the owner of any ship, share or goods referred to in paragraph (a) accepts such conditions he shall not thereafter be entitled to institute or maintain any action or other proceedings for damages on account of the detention, seizure or forfeiture.

[S 325 amended by s 2(2), Act 5/1998]

Appropriation of wages to satisfy award of compensation in offences against discipline

326. When a seaman or apprentice-officer has been convicted of desertion as defined by section 175 or of absence without leave as defined by section 176 or of contravening any of the provisions of section 174(1), (2) or (3), and the court trying the case has made an award of compensation under section 300 of the Criminal Procedure Act 51 of 1977 any wages that have accrued or that may thereafter accrue to him may be applied to the satisfaction of the award.

[S 326 amended by s 39, Act 30/1959, and substituted by s 28, Act 18/1992]

Jurisdiction in respect of offences committed outside the Republic

327. (1) If any person—

- (a) being a South African citizen, is charged with having committed an offence on board a South African ship on the high seas, or on board a South African ship in any port outside the Republic, or on board any ship (other than a South African ship) irrespective of whether he belongs to that ship or not; or

[Para (a) substituted by s 10, Act 3/1981]

- (b) not being a South African citizen is charged with having committed an offence on board a South African ship on the high seas,

and that person is found within the area of jurisdiction of any court in the Republic which would have had jurisdiction to try the offence if it had been committed within the said area, that court shall have jurisdiction to try the offence.

(2) If any South African citizen—

- (a) is charged with having committed an offence on board a South African ship during a voyage to a port in any treaty country (other than the Republic), or on board a South African ship in a port in any treaty country (other than the Republic); or

[Para (a) amended by s 55(a), Act 69/1962]

- (b) who is a seaman belonging to a South African ship which is in a port in any treaty country (other than the Republic), is charged with having committed an offence in that treaty country,

[Para (b) amended by s 55(a), Act 69/1962]

and he is found within the area of jurisdiction of any court in that treaty country which, according to the laws in force in that treaty country, would have had jurisdiction to try the offence if the act or omission which under the laws in force in the Republic constitutes the

offence were also punishable under the criminal law in force in that treaty country, and if the act had been committed or the omission had occurred on board a ship registered in that treaty country or within the said area, that court shall have jurisdiction to try the offence, provided the Minister has generally or in the particular case requested that the courts of that treaty country shall exercise such jurisdiction.

[Subs (2) amended by s 55(a), Act 69/1962]

(3) The Minister may by notice in the *Gazette* declare that the provisions of subsection (2) shall apply in respect of the courts of any foreign country mentioned in that notice as if that foreign country were a treaty country; and thereupon the said provisions shall apply in respect of the courts of that foreign country as if it were a treaty country.

[Subs (3) amended by s 40, Act 30/1959, and by s 55(b), Act 69/1962]

(4) In this section the expression "**offence**" means any act or omission which is punishable under the criminal law in force in the Republic.

Jurisdiction of magistrates' courts to impose punishment

328. Notwithstanding anything to the contrary contained in any other law, a magistrate's court shall have jurisdiction to impose any punishment prescribed by this Act: Provided that this section shall not apply in respect of any compensation referred to in subsection (2) of section *two hundred and thirty-two* or to any forfeiture under section *three hundred and thirty-four*.

329. . . .

[S 329 repealed by s 16(1), Act 105/1983]

330 and 331 . . .

[Ss 330 and 331 repealed by s 28, Act 94/1996]

332. . . .

[S 332 repealed by s 16(1), Act 105/1983]

Inquiry into cause of death on board ship

333. (1) If any person dies on board any foreign-going South African ship the proper officer at the port where the crew of the ship is discharged, or the proper officer at any earlier port of call in the Republic, shall, on the arrival of the ship at that port, inquire into the cause of the death, and shall make in the official log-book an endorsement to the effect, either that the statement of the cause of death in the book is in his opinion true, or the contrary, according to the result of the inquiry.

[Subs (1) amended by s 55, Act 40/1963]

(2) If in the course of an inquiry it appears to the proper officer that a death has been caused on board the ship by violence or other improper means, he shall either report the

matter to the Authority, or if the emergency of the case so requires, take immediate steps for bringing the offender or offenders to justice.

Forfeiture of ships, shares in ships and goods

334. All ships, shares or interests in ships of goods which are dealt with contrary to the provisions of this Act, or by means of which any offence under this Act is committed, or in connection with which or concerning which any false statement is made or any forged document or any document containing any false statement is produced or used for any purpose of this Act, or in connection with which an offence is committed under subsection (2) of section *eleven*, section *twenty-five*, subsection (3) of section *sixty-five*, section *sixty-six*, section *sixty-seven*, section *two hundred and forty* or paragraph (c) of section *three hundred and sixteen*, read with section *three hundred and twelve*, shall be liable for forfeiture.

Method of detaining a vessel or a share in a ship or goods

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

[Subs (1) substituted by s 14, Act 23/1997]

(2) The detention shall be effected by the service of a notice of detention in accordance with the provisions of this section.

(3) A notice of detention shall be in the prescribed form, shall be signed by the proper officer, shall declare that the vessel or share or goods are thereby detained, and shall set forth the grounds of detention.

(4) A notice of detention of a vessel or share in a ship shall be served upon the master of the vessel, and a notice of detention of goods shall be served upon the person in whose physical possession they are, and thereupon the vessel or share or goods shall be deemed to be detained for the purposes of this Act.

(5) A copy of every notice of detention shall forthwith be transmitted by the officer who issued it to the Authority.

(6) Whenever the Authority directs the proper officer to release a detained vessel or share in a ship or any detained goods, the proper officer shall issue a notice declaring that that vessel or share or those goods are released.

(7) A notice of release shall be in the prescribed form and shall be signed by the proper officer.

(8) A notice of release of a vessel or a share in a ship shall be served upon the master of the vessel, and a notice of release of goods shall be served upon the person in whose possession they are, and thereupon the vessel or share or goods shall be deemed to be released.

Procedure in forfeiture of a ship, a share in a ship or goods

336. (1) Whenever under subsection (2) of section *twelve*, subsection (9) of section *forty-three* or section *three hundred and thirty-four* a ship or a share in a ship is or any goods are liable to forfeiture, the Authority may direct the proper officer to issue a notice of forfeiture of that ship or share or those goods in pursuance of that provision.

(2) A notice of forfeiture shall—

- (a) be in the prescribed form;
- (b) be signed by the proper officer;
- (c) set forth the grounds on which, and refer to the provisions of this Act under which, the forfeiture is claimed; and
- (d) state that unless the ship or share is or the goods are released in accordance with the provisions of subsection (8) or under an order of court, the ship, share or goods will be forfeited;
- (e) be served, in the case of a ship or share in a ship, upon the master of the ship, and, in the case of goods, upon the owner or if he is not within the Republic or his address is not known, upon the person in whose physical possession they are.

(3) The owner or any other person interested in any ship, share in a ship or goods in respect of which a notice of forfeiture has been issued, who objects to the forfeiture thereof, shall, within the period of thirty days from the date upon which the notice of forfeiture was served, or within such further period as may be fixed by the court under subsection (7), give notice in writing to the Authority or to the proper officer who issued the notice, that he claims the release of the ship, share or goods, as the case may be.

(4) If notice is not given by the owner or interested person in terms of subsection (3), no legal proceedings shall thereafter be instituted by him against the State, the Minister, the Authority, the Authority or any other officer for the release of the ship, share or goods or based merely upon the detention, seizure or forfeiture thereof.

[Subs (4) substituted by s 2(2), Act 5/1998]

(5) When notice has been given in terms of subsection (3), the person giving such notice may, within the period of ninety days from the date on which it was delivered to the Authority, or within such further period as may be fixed by the court under subsection (7), but not earlier than thirty days from the date upon which the said notice was so delivered, institute proceedings in a court of competent jurisdiction for the release of the ship, share or goods.

(6) If—

- (a) notice is not given in terms of subsection (3); or
- (b) such notice having been given, proceedings are not instituted in terms of subsection (5); or
- (c) such proceedings having been instituted, the court dismisses the claim for release, the ship, share or goods shall be forfeited and become the property of the State—

- (i) upon expiry of the period of thirty days from the date upon which the notice of forfeiture was served, or upon expiry of such further period as may be fixed by the court under subsection (7); or
- (ii) upon expiry of the period of ninety days from the said date, or upon expiry of such further period as may be fixed by the court under subsection (7); or
- (iii) upon dismissal by the court of the claim for release, respectively.

(7) A court having jurisdiction to try a claim for the release of the ship, share or goods, may, before or after the expiry of the period referred to in subsection (3) or (5), extend such period, if it thinks that the interests of justice so require.

(8) The Authority may at any time before the forfeiture has become effective in terms of subsection (6) direct that a notice of forfeiture be withdrawn, and thereupon the provisions of subsections (6), (7) and (8) of section *three hundred and thirty-five* shall, *mutatis mutandis*, apply.

Seizure of a ship, a share in a ship or goods detained or liable to forfeiture

337. (1) The Authority or proper officer may, if it or he deems it expedient to do so, in order that any ship, share in a ship or goods in respect of which a notice of detention or of forfeiture has been served in terms of section 335 or 336, or in respect of which it is intended to cause such a notice to be so served, may be secured against damage, destruction, concealment, removal or rescue, cause that ship or share or those goods, as the case may be, to be seized by a person thereto authorized for the purpose.

[Subs (1) substituted by s 2(2), Act 5/1998]

(2) The seizure of a ship or goods shall be effected by the physical taking possession thereof, and the seizure of a share in a ship shall be effected by the physical taking possession of that ship.

(3) The person effecting seizure of any ship, share in a ship or goods shall, upon demand, exhibit his written authority to do so, and, if at the time of seizure a notice of detention or forfeiture has not yet been served, shall serve upon the person in whose possession the ship or goods are seized a notice setting forth that it is intended to cause a notice of detention or forfeiture to be served and the grounds on which that intention is based.

No clearance to be granted to detained ship

338. Whenever in terms of this Act a ship must be or has been detained an officer of customs shall, and whenever in terms of this Act a ship may be detained an officer of customs may, refuse to grant a clearance to that ship.

Detention of foreign ship that has occasioned damage

339. (1) Whenever injury has in any part of the world been caused to property belonging to the Government of the Republic or the Government of any other treaty country or to a South African citizen or a citizen of any treaty country (other than the Republic) by

a foreign ship, and at any time thereafter that ship is found within the Republic or the territorial waters thereof, a High Court may, upon the application of any person who alleges that the injury was caused by the misconduct or want of skill of the master or any member of the crew of the ship, issue an order directed to any proper officer or other officer named, requiring that officer to detain the ship until such time as the owner, master or consignee thereof has satisfied any claim in respect of the injury, or has given security to the satisfaction of the court, to pay all costs and damages that may be awarded in any legal proceedings that may be instituted in respect of the injury. Any proper officer or other officer to whom the order is directed shall detain the ship accordingly.

[Subs (1) amended by s 56, Act 69/1962, and by s 56, Act 40/1963]

(2) Whenever it appears that, before an application can be made under this section, the ship in respect of which the application is to be made will have departed from the Republic or the territorial waters thereof, any proper officer may detain the ship for such time as will allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention unless the same is proved to have been made without reasonable grounds.

(3) In any legal proceedings in relation to any such injury aforesaid, the person giving security shall be made defendant and shall be stated to be the owner of the ship that has occasioned the damage.

Notice to be given to consular representative of proceedings taken in respect of foreign ships

340. If any foreign ship is detained under this Act, or if any proceedings are taken under this Act against the master or owner of any foreign ship, notice shall forthwith be served on the consular representative of the country in which the ship is registered at or nearest to the port where the ship is for the time being, and such notice shall specify the grounds on which the ship has been detained or the proceedings have been taken.

Conveyance of accused persons and witnesses to the Republic

341. (1) Whenever any complaint is made to any consular representative of the Republic or of any other treaty country—

(a) that any offence against property or person has been committed at any place, either ashore or afloat, outside any treaty country by any master, seaman, or apprentice-officer who at the time when the offence was committed, or within three months before that time, was employed in any South African ship; or

[Para (a) amended by s 57, Act 69/1962]

(b) that any offence on the high seas has been committed by any master, seaman, or apprentice-officer belonging to any South African ship,

that consular representative may inquire into the case and may, if in his opinion reasonable grounds of suspicion exist against the alleged offender, take any steps in his power for the purpose of placing him under the necessary restraint and of sending him as soon as practicable in safe custody to the Republic.

[Subs (1) amended by s 57, Act 69/1962]

(2) The consular representative may order the master of any ship registered in and bound to the Republic to receive and afford a passage and subsistence during the voyage to any such alleged offender as aforesaid and also to any persons who in the opinion of the consular representative are material witnesses to the offence. The master shall comply with any such order. The consular representative may endorse upon the agreement with the crew such particulars with respect to any alleged offenders or witnesses sent in the ship as he considers advisable.

(3) The master of a ship to whose charge an alleged offender has been so committed shall, on his ship's arrival in the Republic hand the alleged offender over to a member of the police who shall take him to a police station or charge office. The alleged offender shall thereafter be detained until a warrant is obtained for his further detention upon a charge of an offence or until he is released by reason that no charge is to be brought against him, and unless so released he shall as soon as possible be brought before a judicial officer upon a charge of an offence: Provided that he shall not be so detained for a longer period than forty-eight hours unless a warrant for his further detention is obtained.

(4) The expense of imprisoning any such alleged offender and of conveying him and the witnesses to a port in the Republic in any manner other than in the ship to which they respectively belong, shall be paid out of moneys provided by Parliament for that purpose.

Service of documents

342. Where for the purposes of this Act any document is to be served on any person, that document may be served—

- (a) in any case by delivering a copy thereof personally to the person on whom the document is to be served; or by sending such copy to him, in accordance with the regulations, by registered post, enclosed in an envelope upon which is written his name and address; or by leaving such copy for him with a member of his household at his dwelling; or, if no person belonging to his household can be found there, then by affixing such copy to the principal outer door of the said dwelling or of any place where he actually resides or was last known to reside; or
- (b) if the document is to be served on the master of a ship or on a person belonging to a ship, by leaving a copy thereof for him on board that ship with the person being or appearing to be in command or charge of the ship; and
- (c) if the document is to be served on the master of a ship, and there is no master, and the ship is within the Republic or the territorial waters thereof, by serving it on the owner of the ship, if he is within the Republic, or on an agent of the owner residing in the Republic, or if no such agent is known or can be found, by affixing a copy thereof to the mast of the ship.

343. . . .

[S 343 repealed by s 2(1), Act 40/2002]

Indemnification of State and Authority and certain persons in employ of State and Authority

343bis. Notwithstanding anything to the contrary in any law contained, the State and the Authority and their officers and employees acting in the performance of their duties shall not be liable for—

- (a) any loss or damage caused by the death of, or injury to, any person while conveyed in any vessel owned, operated or chartered by the State through its Department of Transport or by the Authority, or while entering or embarking upon or being in such vessel for the purpose of being conveyed in it, or while being in or alighting from such vessel after having been conveyed in it, if that person was so conveyed or to be so conveyed otherwise than in the performance of his duties as an officer or employee of the State or the Authority and otherwise than for reward; or
- (b) any loss of or damage to any goods conveyed in such a vessel otherwise than in the interests of the State or the Authority and otherwise than for reward.

[S 343bis inserted by s 29, Act 13/1965, and substituted by s 2(2), Act 5/1998]

Exemption from liability

343ter. A safety officer, a safety appointee, a safety representative or a safety committee or any member thereof, as referred to in section 355A, shall not incur any civil liability by reason of the fact that he failed to do anything which he should have done in terms of the provisions of sections 3, 9(5), 223, 259, 264, 313, 343ter, 355A, 356 and 356ter, read with section 2.

[S 343ter inserted by s 29, Act 18/1992]

Prescription

344. (1) The period of extinctive prescription in respect of legal proceedings to enforce any claim or lien against a ship or its owners in respect of any damage to or loss of another ship, its cargo or freight, or any goods on board such other ship, or damage for loss of life or personal injury suffered by any person on board such other ship, caused by the fault of the former ship, whether such ship be wholly or partly in fault, shall be two years and shall begin to run on the date when the damage or loss or injury was caused.

[Subs (1) substituted by s 29, Act 94/1996]

(2) The period of extinctive prescription in respect of legal proceedings under this Act to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injury shall be one year and shall begin to run on the date of payment.

(3) Any court having jurisdiction to try proceedings referred to in subsection (1) or (2) shall, before or after the expiry of such period, if it satisfied that owing to the absence of the defendant ship from the Republic and its territorial waters and from the country to which the plaintiff's ship belongs or in which the plaintiff resides or carries on business and its territorial waters, the plaintiff has not during such period had a reasonable opportunity of arresting the defendant ship, extend such period sufficiently to give him such reasonable opportunity.

(4) . . .

[Subs (4) deleted by s 2(1), Act 40/2002]

Payment of allowances to persons appointed to make preliminary inquiries into shipping casualties, to members of courts of marine enquiry, maritime courts or courts of survey and assessors

345. Any person appointed under section *two hundred and sixty-four*, any member of a court of marine enquiry, maritime court or court of survey, any expert to whom an appeal has been referred under section *two hundred and eighty two* or any assessors summoned under subsection (2) of section *two hundred and ninety two* shall, if he or she is in the employ of the Government of the Republic, be paid such allowances towards subsistence and transport as may be prescribed (otherwise than under this Act) for Government employees of his or her class, and if he or she is not in the employ of the Government of the Republic, or if no such allowances have been prescribed for Government employees of his or her class, he or she shall be paid such allowances towards subsistence and transport as may be prescribed by the regulations made under this Act.

[S 345 amended by s 57, Act 40/1963, and substituted by s 30, Act 94/1996]

Presumption of knowledge

346. Whenever at the trial of any person charged under this Act the question arises whether the accused knew at any particular time that a statement referred to in the indictment, summons or charge was untrue, and it is proved or admitted that that statement was untrue, the accused shall be presumed to have known at the particular time referred to that the statement was untrue, unless the contrary is proved, and unless it is proved also that his ignorance was not due to negligence on his part.

Presumption in case of collision

347. If any damage to person or property arises from the non-observance by any ship of any of the collision regulations, the damage shall be deemed to have been caused by the wilful default of the person in charge of the deck of the ship at the time, unless it is proved that the circumstances of the case made a departure from the regulations necessary.

Mode of making declaration

348. Declarations required by this Act shall be made in the Republic before a proper officer or commissioner of oaths, and outside the Republic before a proper officer or any person who by the law of the place where it is made is authorized to administer an oath, and may be made on behalf of a corporate body by the secretary or any other officer of that body authorized by it for the purpose.

Power to dispense with declarations and other evidence

349. When in terms of this Act any person is required to make a declaration, or any documentary or oral evidence is required to be produced to the proper officer, and it is shown to the satisfaction of that officer that for reasonable cause that person is unable to make the declaration, or that the evidence cannot be produced, the said officer may, with the approval of the Authority and on the production of such other evidence, and subject to such terms as he may think fit, dispense with the declaration or evidence.

Admissibility of documents in evidence

350. (1) Any document which is by this Act declared to be admissible in evidence shall on production from the proper custody be admissible in evidence, and shall be prima facie evidence of the particulars stated therein in pursuance of this Act or in pursuance of any duty under this Act.

(2) A copy of or extract from any such document shall also be admissible in evidence and be prima facie evidence of the particulars stated in such copy or extract, if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document has been entrusted; and that officer shall, upon payment of the prescribed fee furnish a copy or extract so certified to any person applying for it.

Evidence as to agreement with crew

351. In any legal or other proceedings a seaman may bring forward evidence to prove the contents of any agreement with the crew, without producing or giving notice to produce the agreement or any copy thereof.

Acts done by courts and functionaries of the Republic in relation to treaty ships other than South African ships

352. Whenever any law enacted before or after the coming into operation of this section and in force in any treaty country (other than the Republic) provides that any court or functionary of the Republic may or shall exercise any authority or perform any act in relation to ships registered or entitled to be registered in that treaty country, their owners, masters, seamen, or apprentice-officers, such court or functionary may exercise any such authority or perform any such act, and all things done by such court or functionary under this section shall have the same effect as if that law had been enacted in the Republic.

[S 352 substituted by s 58, Act 69/1962]

Acts done by courts and functionaries of other treaty countries in relation to South African ships

353. (1) Every provision of this Act which purports to require any court or functionary of any treaty country (other than the Republic) or any person other than a South African citizen to exercise any authority or perform any act outside the Republic in relation to South African ships, their owners, masters, seamen or apprentice-officers shall be

construed as being permissive only and to mean that any such court or functionary or person is thereby empowered so to exercise such authority or perform such act.

(2) If any court or functionary of any treaty country (other than the Republic) exercises any authority or performs any act in relation to any ship registered or entitled to be registered in the Republic, her owner, master, seamen or apprentice-officers, which by any statutory enactment in force in that treaty country such court or functionary is empowered to exercise or perform, all things done outside the Republic by such court or functionary in accordance with the said enactment shall have the same effect as if they had been done in accordance with an Act of the Parliament of the Republic, provided the Minister has generally or in the particular case requested that the courts or functionaries of that treaty country shall exercise such authority or perform such act or has in manner prescribed by regulation recognized the exercise of the authority or the performance of the act or adopted any decision made in the exercise of the authority.

[S 353 substituted by s 59, Act 69/1962]

CHAPTER X

GENERAL

354. . . .

[S 354 repealed by s 26, Act 57/1998]

Application of certain labour laws to seamen

355. (1) Nothing in this Act contained shall affect the application of the provisions of the Labour Relations Act 28 of 1956 or of the Wage Act 5 of 1957 to seamen in respect of their employment as such.

(2) To the extent to which any provisions of this Act which, but for the provisions of this section, would apply to any seamen are inconsistent with any agreement or award under the Labour Relations Act 28 of 1956, or any determination under the Wage Act 5 of 1957, which is binding in respect of those seamen, the provisions of this Act referred to shall not apply in respect of those seamen.

(3) Any agreement or award under the Labour Relations Act 28 of 1956, or any determination under the Wage Act 5 of 1957, which is binding in respect of any seamen employed on board any ship which is registered in the Republic or on board any ship which is not registered in the Republic and is wholly engaged in plying between ports in the Republic, while the ship is in the Republic, shall be binding in respect of such seamen while the ship is outside the Republic.

(4) No seaman who is an employee, as defined in section 1 of the Labour Relations Act 28 of 1956, who is not a person referred to in section 2(2) of that Act, and who is engaged on or belongs to any South African ship, shall be guilty of an offence under section 174(2)(b), (c), (d) or (f), section 175 or section 176 merely by reason of the fact that he has taken part in a strike or in the continuation of a strike, as defined in section 1 of that Act, in such circumstances that the act or omission by which he has taken part therein does not constitute an offence under section 65 of that Act: Provided that this subsection shall not

apply in respect of any act which is committed or any omission which occurs while the ship is at sea.

(5) In this section the expression "**seamen**" includes all persons employed or engaged in any capacity on board any ship.

[S 355 amended by s 41, Act 30/1959, and by s 58, Act 40/1963, and substituted by s 30, Act 18/1992]

Appointment of safety officers, safety appointees and safety committees and election of safety representatives

355A. (1) For the purposes of safety on board vessels—

- (a) an employer may appoint a safety officer, a safety appointee and a safety committee in the manner prescribed by regulation;
- (b) a group of employees may from their number elect a safety representative in the manner prescribed by regulation.

(2) A safety officer, safety appointee and safety committee shall, subject to the provisions of section 343*ter*, perform such functions as may be prescribed by regulation.

(3) A safety representative may in the manner prescribed by regulation, and subject to the provisions of section 343*ter*, on behalf of the employees which he represents make representations and submit requests to and consult with any employer, safety officer, safety appointee or safety committee.

(4) An employer shall comply with the requirements prescribed by regulation to enable a safety officer, safety appointee, safety committee and safety representative to perform their duties.

(5) Nothing in this section shall be construed as conferring a right upon any person to inspect any place, article, substance or document which is subject to restrictions on the grounds of national security, unless he satisfies any test or complies with any requirement imposed on account of such restrictions by or on behalf of the State.

[S 355A inserted by s 31, Act 18/1992]

Regulations

356. (1) The Minister may make regulations—

- (i) 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;

[Para (i) substituted by s 15(a), Act 23/1997]

- (ii) prescribing the powers and duties of officers or other persons employed in the administration of this Act;
- (iii) prescribing the services rendered or work done in pursuance of this Act for which fees shall be paid, the amount of such fees, and when and by whom such fees shall be paid;

(iv) . . .

[Para (iv) deleted by item 23(a) (Sch 2), Act 58/1998]

(v) . . .

[Para (v) deleted by item 23(a) (Sch 2), Act 58/1998]

(vi) as to the procedure to be followed in the event of a certificate issued under this Act being mislaid, lost or destroyed;

(vii) . . .

[Para (vii) deleted by item 23(a) (Sch 2), Act 58/1998]

(viii) . . .

[Para (viii) deleted by item 23(a) (Sch 2), Act 58/1998]

(ix) prescribing the manner in which a ship shall be inspected, surveyed and measured for any purpose under this Act, and the particulars and statements which shall be contained in the report or certificate of a surveyor;

(x) prescribing the minimum numbers of the several classes of seamen required to be engaged as part of the crew of a ship;

(xi) prescribing what proportion of any of the several classes of seamen comprising the crew of a South African ship shall be South African citizens;

(xii) prescribing the qualifications which any person employed on board a ship in a particular capacity is required to hold;

(xiii) prescribing—

(a) the scope and conduct of examinations to be passed by a person desiring the grant under this Act of a certificate of competency or qualification as of any description testifying to his ability to perform work or duties of a particular kind on board a ship, and the standards required for passing;

[Subpara (a) substituted by s 27(a), Act 57/1998]

(b) the age and qualifications of the candidates, including the service at sea and other service which they must have performed and the training which they must have undergone;

(c) the fees to be paid by candidates for examination; and

(d) the qualifications of examiners and the conditions under which they are appointed, including the remuneration to be paid to them;

(xiiiA) regulating the recognition of certificates of competency or service granted by other competent authorities;

[Para (xiiiA) inserted by s 27(b), Act 57/1998]

(xiiiB) as to the approval by specified persons of seafarer training institutions and training courses;

[Para (xiiiB) inserted by s 27(b), Act 57/1998]

(xiv) as to the inspection of certificates which in terms of this Act any person employed on board a ship in any particular capacity is required to hold;

- (xv) prescribing the classes of South African ships on which cadets or apprentice-officers may be employed as such, the maximum number of cadets or apprentice-officers which may be employed as such on different classes of South African ships, the terms of indentures of apprentice-officers, the minimum wages which such apprentice-officers shall be paid and the manner of payment thereof;
- (xvi) regulating the manner and extent to which a ship shall be manned;
- (xvii) as to the medical examination of persons engaged to serve in ships, including the particulars to be contained in medical certificates;
- (xviii) as to the relief, maintenance and return to a proper return port of shipwrecked seamen and apprentice-officers and seamen and apprentice-officers found otherwise in distress in any place outside the Republic;
- (xix) prescribing the crew accommodation and the accommodation for passengers to be provided on board a South African ship;
- (xx) prescribing the class or classes of ships on which qualified and approved medical practitioners shall be employed as such;
- (xxi) as to the licensing and conduct and inspection of houses in which seamen and apprentice-officers are lodged, the charges that may be made in such houses for food and lodging, and the payment of fees for such licences;
- (xxii) providing for the care and treatment of sick seamen (including masters and apprentice-officers) in hospitals, and for the recovery of expenses in connection therewith;
- (xxiii) providing for the maintenance by the master in respect of every seaman on his ship of a card on which shall be made a copy of every entry made in respect of the seaman in the official log-book in terms of paragraph (d) of section *one hundred and eighty-three*;
- (xxiv) providing for the vaccination against smallpox and the inoculation against yellow fever and typhoid fever of seamen (including masters and apprentice-officers) at the expense of the owner of the ship on which they serve;
- (xxv) prescribing the precautions to be taken in connection with the design and construction of ships and in respect of other matters to prevent the entrance of rats into ships;
- (xxvi) as to the ventilation to be provided when coal is loaded or carried in a ship as cargo or ballast;
- (xxvii) as to the dissemination of information concerning dangers to navigation;
- (xxviii) prescribing what signals are to be regarded as signals of distress, and the circumstances in and the purposes for which such signals are to be used;
- (xxix) as to the examination and licensing of adjusters of compasses;
- (xxx) prescribing the class or quantity of goods which may be carried in ships, and the manner in which such goods may be so carried;
- (xxxi) as to the carriage of ballast and the precautions to be taken to prevent shifting thereof;

- (xxxii) as to the conditions governing the installation, working and use of any anchors, chains, cables, and loading and discharging gear and any other machinery whatsoever on board or in connection with ships, and the strength and quality thereof, and the precautions to be taken to prevent persons being injured thereby or by falling articles;
- (xxxiii) prescribing with what radio and other navigational aids ships must be provided;
- (xxxiv) as to the inspection of equipment on ships;
- (xxxv) prescribing rules to be followed in respect of—
 - (a) the convening of courts of marine enquiry, maritime courts and courts of survey;
 - (b) the appointment of the members of such courts and of the experts to whom appeals are to be referred under section *two hundred and eighty-two*; and
 - (c) the noting and prosecution of appeals from courts of marine enquiry of maritime courts to High Courts,and prescribing the procedure to be followed by courts of marine enquiry, maritime courts, courts of survey and experts to whom appeals are referred under section *two hundred and eighty-two*;

[Para (xxxv) substituted by s 42(b), Act 30/1959]

- (xxxv)*bis* empowering courts of marine enquiry or maritime courts to order the payment of compensation by persons who have made frivolous or unjustified complaints, and empowering such courts, courts of survey or experts to whom appeals have been referred under section *two hundred and eighty-two* to make orders as to costs, including the costs incurred by the State in connection with the convening of such courts, the appointment of the members of such courts or of the experts and in connection with any investigation made by such courts or experts, and the costs incurred by the parties;

[Para (xxxv)*bis* inserted by s 42(b), Act 30/1959]

- (xxxv)*ter* prescribing the scales according to which costs shall be calculated, and providing for the taxation or assessment of costs;

[Para (xxxv)*ter* inserted by s 42(b), Act 30/1959]

- (xxxv)*quat* as to—
 - (a) the enforcement of judgements pronounced by High Courts on appeals from courts of marine enquiry or maritime courts; and
 - (b) the enforcement of orders for the payment of compensation made by courts of marine enquiry or maritime courts and for the payment of costs made by such courts, courts of survey or experts to whom appeals have been referred under section *two hundred and eighty-two*;

[Para (xxxv)*quat* inserted by s 42(b), Act 30/1959]

- (xxxvi) prescribing the standards of seaworthiness to be observed in respect of vessels to which the Safety Convention does not apply, and regarding the marking and inspection of such vessels and the life-saving appliances and first-aid apparatus with which such vessels shall be equipped;

[Para (xxxvi) substituted by s 11(a), Act 5/1976]

- (xxxviA) (a) requiring such life-saving appliances to comply with specifications determined by the South African Bureau of Standards mentioned in the Standards Act 29 of 1993;

[Subpara (a) substituted by s 32(a), Act 18/1992, and by s 15(b), Act 23/1997]

- (b) determining the circumstances under which such life-saving appliances shall for the purposes of this Act be deemed to comply with such specifications;

[Para (xxxviA) inserted by s 11(b), Act 5/1976]

- (xxxvii) prescribing the period of pre-sea training required of seamen, and apprentice-officers;

- (xxxviii) requiring ships, vessels or other craft which are not by this Act required to comply with any of its provisions, to comply with such of the said provisions as may be specified, subject to such exemptions, restrictions or modifications as may be prescribed;

- (xxxix) prescribing the class or classes of ships on which supplies of antiscorbutics, medicines and appliances for the treatment and prevention of diseases and accidents likely to occur at sea and of first-aid equipment are to be carried;

[Para (xxxix) substituted by s 6(b), Act 24/1974, and by s 11(c), Act 5/1976]

- (xl) prescribing scales according to which supplies of antiscorbutics, medicines and appliances for the treatment and prevention of diseases and accidents likely to occur at sea and of first-aid equipment are to be carried on board a ship of a prescribed class;

[Para (xl) added by s 6(b), Act 24/1974, and substituted by s 11(c), Act 5/1976]

- (xliA) as to the design, construction, 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;

[Para (xliA) added by s 7(a), Act 16/1995, and substituted by s 15(c), Act 23/1997]

- (xli) as to the design, manufacture, construction, installation, operation, use, handling, alteration, repair, maintenance and conveyance of machinery and safety equipment on vessels;

[Para (xli) added by s 6(b), Act 24/1974, and substituted by s 11(c), Act 5/1976, and by s 32(b), Act 18/1992]

- (xliA) as to the safety equipment and other facilities to be provided or installed on vessels by employers, owners and users, the persons to whom they are to be provided and the circumstances in which they are to be provided or installed and the application thereof;

[Para (xliA) inserted by s 32(b), Act 18/1992]

- (xliB) as to the safety measures to be taken in relation to vessels by employers, employees, owners and users;

[Para (xliB) inserted by s 32(b), Act 18/1992, and substituted by s 15(d), Act 23/1997]

- (xliC) as to the performance of work on vessels in hazardous or potentially hazardous conditions or circumstances;

[Para (xliC) inserted by s 32(b), Act 18/1992]

- (xliD) as to the first-aid and medical equipment to be kept available on vessels by owners, employers and users, the places where such equipment are to be kept,

the requirements with which such equipment shall comply, the inspection of such equipment, the application of first-aid and the qualifications which persons applying first-aid shall possess;

[Para (xliD) inserted by s 32, Act 18/1992]

(xliE) as to the compilation by employers of safety directives in respect of vessels, the matters to be dealt with in such directives and the manner in which such directives shall be brought to the attention of employees and other persons at a workplace;

[Para (xliE) inserted by s 32(b), Act 18/1992]

(xliF) as to the appointment and functions of safety officers, safety appointees and safety committees and the election, training and functions of safety representatives;

[Para (xliF) inserted by s 32(b), Act 18/1992]

(xliG) as to the duties of owners, masters and employers;

[Para (xliG) inserted by s 32(b), Act 18/1992]

(xli)*bis* . . .

[Para (xli)*bis* inserted by s 9(a), Act 25/1985, and deleted by item 23(a) (Sch 2), Act 58/1998]

(xlii) prescribing such other matters as are necessary or useful to be prescribed for carrying out the purposes of this Act.

[Para (xlii) added by s 6(b), Act 24/1974]

[Subs (1) amended by s 42(a), Act 30/1959]

(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—

- (a) the Safety Convention;
- (b) the International Collision Regulations Convention;
- (c) the Load Line Convention;
- (d) the Tonnage Convention; and
- (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 with in the said conventions.

[Subs (2) amended by s 42(a), Act 30/1959, by s 19(a) and (c), Act 3/1982, and by ss 2(c) and 7(b), Act 16/1995, and substituted by s 15(e), Act 23/1997]

(3) The Minister may by regulation apply, subject to such exemptions, restrictions and modifications as may be desirable, any of the regulations made under subsection (2), to ships to which and in circumstances in which the provisions of the conventions mentioned in that subsection do not apply.

[Subs (3) amended by s 42(a), Act 30/1959, and by s 59(a), Act 40/1963, and substituted by s 19(d), Act 3/1982, by s 7(d), Act 16/1995, and by s 15(e), Act 23/1997]

(4) (a) Any regulation made under subsection (1) or (2) may make provision in terms of any document which the Minister or any person considers relevant from time to time, without stating the text thereof, by mere reference to the number, title and year of issue

of that document or to any other particulars by which that document is sufficiently identified.

(b) References in the regulations to any such document shall, unless expressly stated otherwise, be references to that document as revised or re-issued from time to time.

(c) A copy of the complete text of each such document, as revised or re-issued from time to time, shall be kept at such places in the Republic as the Authority directs and shall be available for public inspection.

(d) The provisions of section 31 of the Standards Act, 1993 (Act No. 29 of 1993), shall not affect the operation of this section.

[Subs (4) deleted by s 59(b), Act 40/1963, and inserted by s 27(c), Act 57/1998]

(5) Any regulations made under subsections (1) and (2) may prescribe penalties for contravention thereof or failure to comply therewith, of a fine, or imprisonment for a period not exceeding one year: Provided that if by any such regulation a penalty is prescribed for any act or omission for which a different penalty is prescribed by section *three hundred and thirteen* or *three hundred and twenty-three*, the provisions of the said sections shall prevail.

[Subs (5) amended by s 19(e), Act 3/1982, and by s 32(c), Act 18/1992]

(6) Different regulations may be made under subsections (1) and (2) in respect of ships falling within different classes or categories or of different tonnage or in respect of ships built before or after a date stated in the regulations.

(7) . . .

[Subs (7) amended by s 42(c), Act 30/1959; deleted by s 19(f), Act 3/1982; added by s 9(b), Act 25/1985; and deleted by item 23(b), Act 58/1998]

Conventions in Schedules to have force of law

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

[Subs (1) substituted by s 28 (a), Act 57/1998]

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

[Subs (2) substituted by s 28(a), Act 57/1998]

(3) In interpreting the Safety Convention—

(a) references to the Administration shall, in relation to ships of South African nationality, be construed as a reference to the Authority or any officer or organization acting on his authority; and

(b) the English text shall prevail in the event of conflict between the English and Afrikaans texts.

[S 356bis inserted by s 60, Act 40/1963, substituted by s 20, Act 3/1982, amended by s 33, Act 18/1992, and substituted by s 8, Act 16/1995, and s 16, Act 23/1997 and amended by s 28(b), Act 57/1998]

356ter* . . .

[S 356ter repealed by s 29(1), Act 57/1998]

356quat** . . .

[S 356quat repealed by s 30(1), Act 57/1998]

Exemption from stamp duty

357. Notwithstanding anything to the contrary in any law in force relating to stamp duty, an affidavit, certificate, receipt or other document required or issued under any provisions of this Act except a bill of lading, shall be exempt from stamp duty.

[S 357 amended by s 61(1)(b), Act 40/1963]

Short title and commencement

358. This Act shall be called the Merchant Shipping Act, 1951, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*: Provided that the State President may from time to time by proclamation in the *Gazette* bring into operation only such portions of this Act as he may specify in such proclamation.

* Section 29(2) of Act 57/1998 provides that, after its commencement, any standard previously incorporated in the regulations in terms of repealed section 356ter is deemed to be a document referred to in section 356(4).

** Section 30(2) of Act 57/1998 provides that, after its commencement, any standard previously incorporated in the regulations in terms of repealed section 356quat is deemed to be a document referred to in section 356(4).