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GENERAL NOTICE

NOTICE 349 OF 2013

DEPARTMENT OF TRANSPORT

PUBLICATION FOR COMMENTS OF THE DRAFT MERCHANT SHIPPING AMENDMENT BILL, 2013

The above- mentioned draft Bill is hereby published for public comments. Interested persons are invited to submit written comments on the draft Bill within 30 days from the date of publication in the *Gazette*.

Submission should be posted to the Director – General Department of Transport for the attention of Mr. Trevor Mphahlele or Micheal Phungo

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REPUBLIC OF SOUTH AFRICA

DRAFT MERCHANT SHIPPING AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill)

(The English text is the official text of the Bill)

(MINISTER OF TRANSPORT)

[B —2013]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Merchant Shipping Act, 57 of 1951, so as to give effect to the Consolidated Maritime Labour Convention, 2006, and for related matters.

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

1. Section 2(1) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951) is amended—
 - (a) by the substitution in subsection 1 for the definition of “seaman” of the following definition:

“[“seaman”] seafarer’ means any person (except a master, pilot or [apprentice-officer] cadet) employed or engaged in any capacity as a member of the crew of a ship;”.

Substitution of section 91 of Act 57 of 1951

2. The following section is substituted for section 91 of the Merchant Shipping Act, 1951:

“Excessive number of cadets [and 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 that is registered or licensed in the Republic in excess of the number of cadets [or such officers] permitted by the regulations.”.

Substitution of section 92 of Act 57 of 1951

3. The following section is substituted for section 92 of the Merchant Shipping Act, 1951:

“Medical examination of cadets [and apprentice-officers]

92. No persons shall be employed as a cadet on board any [South African] ship that is registered or licensed in the Republic [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.”.

Amendment of sections 93(a)(iii) as amended by section 44 of Act 69 of 1962, substituted by section 7 of Act 13 of 1965, and by section 2 (2) of Act 5 of 1998; sections 94, 95, 96; section 97(b) as deleted by section 4 of Act 3 of 1982; section 97(c) as deleted by section 4 of Act 3 of 1982; section 97 as amended by section 19 of Act 40 of 1963 and by section 4 of Act 3 of 1982; and sections 98, 99 and 100 of the principal Act

4. The following sections of the Merchant Shipping Act, 1951 are amended—

(a) by deletion of sections 93, 94, 95, 96, 97, 98, 99 and 100.

Amendment of section 102 of Act 57 of 1951 and subsection (3)(f) as substituted by section 9 of Act 42 of 1969

5. Section 102 of the Merchant Shipping Act, 1951 is amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) The master of every [South African] ship that is registered or licensed in the Republic shall [of more than one hundred gross register tons shall, and the master of every other South African ship may,] enter into an agreement on behalf of the employer (in this Act called the agreement with the crew) with every [seaman] seafarer whom [he] the master engages to serve in that ship: Provided that the proper officer may refuse to allow the engagement of the [seaman] seafarer—”.

(b) by the substitution for paragraph (f) of the following paragraph:

“(f) the wages which each [seaman] seafarer is to receive, [;] will state the basic wages to be paid, payments to be made for overtime, bonuses, allowances paid, paid leave or any other additional payments, or in the case of a fishing vessel, the basic daily rate and commission scales;”;

(c) by the addition to after paragraph (h) of the following paragraphs:

“(i) the amount of annual leave or, where applicable, the formula used for calculating them;

(i) the health and social security protection benefits to be provided to the seafarer by the shipowner;

(k) the seafarer's entitlement to repatriation;

(l) reference to any collective bargaining agreement, where applicable;

(m) the minimum notice period that can be given by the seafarer or the shipowner, which shall not be less than seven calendar days."

(d) by the addition of subsection (5) (a) and (b), respectively after subsection (4):

"(5) (a) In this section and except onboard fishing vessels—

'basic wages' means the pay for normal working hours, eight hours in a day, and does not include payments made for overtime, bonuses, allowances paid, paid leave or any other additional payments;

'overtime' means time worked in excess of the normal working hours and includes work undertaken on Saturdays, Sundays and officially declared public holidays.

(b) In this section and onboard fishing vessels—

if there is in place an agreement with the employer, covering wages and conditions of employment agreed to under a registered Bargaining or Statutory Council, such conditions shall apply."

Substitution of section 110 of Act 57 of 1951 as amended by section 22 of Act 40 of 1963

6. The following section is substituted for section 110 of the Merchant Shipping Act, 1951:

"Employment of children on ships prohibited

110. The owner or master of a ship which is registered or licensed 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] sixteen years in any capacity on board the ship.”.

Substitution of section 111 of Act 57 of 1951 and subparagraph (i) is substituted by section 2 (2) of Act 5 of 1998

7. Section 111 of the Merchant Shipping Act, 1951 is amended—

(a) by the substitution for section 111 of the following section:

“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 that is registered or licensed in the Republic 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] to work at night: Provided that—“;

(b) by the substitution for paragraph (a)(i) and (ii) of subsection (1) of the following subparagraphs:

“(a) (i) to the employment of a young person on such work as aforesaid in 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) if the effective training of the young person concerned would be impaired; or

(iii) if the specific nature of the training requires that the young person to performs duties at night.”;

(c) by the deletion of paragraph (b)

(d) by the substitution for subsection (2) of the following subsection:

“(2) There shall be included in every agreement with the crew of a **[South African] ship that is registered or licensed in the Republic** a list of the young persons who are members of the crew **[, together with particulars of the dates of birth, and, in the case of a ship in which there is no such agreement, the master of the ship shall, if a 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].”;**

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

“(3) There shall be included in every agreement with the crew of a [South African] ship that is registered or licensed in the Republic a short summary of the provisions of this section.”;

(f) by the substitution for subsection (4) of the following subsection:

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

(g) by the deletion of paragraph (4) (a) and (b), subsection (5) and (6);

(h) by the insertion after the definition of “ship” of the following definition:

“ ‘night’ means a period of at least nine hours starting no later than midnight ship’s time and ending not earlier than 05h00 ship’s time.”

Insertion of section 111A of Act 57 of 1951

8. The following section is inserted in the Merchant Shipping Act, 1951 after section 111:

“Entitlement to leave

111A (1) Every seafarer employed or engaged on a ship that is registered or licensed in the Republic shall be entitled to leave accrued at the rate of at least 2.5 days per month of employment, or onboard a fishing vessel as stipulated in an agreement concluded with a registered Bargaining or Statutory Council.

(2) The amount of a seafarer's entitlement to leave and the wages due during that period of leave are to be stated in the articles of agreement.

(3) Leave is deemed to commence when the seafarer is on the proper return port.

(4) In this section "month" means a period of thirty (30) days and includes Saturdays, Sundays and officially declared public holidays."

Amendment of section 121 of Act 57 of 1951, and subsection (1) as substituted by section 13 (a) of Act 42 of 1969

9. Section 121 of the Merchant Shipping Act, 1951 is amended by the substitution for subsection (1) of the following subsection:

"(1) [When a seaman of a South African ship is discharged, the] The master or the owner of [such] a ship that is registered or licensed in the Republic shall cause to be delivered to [such] a [seaman] seafarer, on monthly basis or onboard a fishing vessel on the day of arrival in port after

month end where the total period between delivery of the account shall not exceed forty five days, a full and true account of his or her wages in a form approved by the Authority.”.

Amendment of section 130 of Act 57 of 1951

10. Section 130 of the Merchant Shipping Act, 1951 is amended:

(a) by the substitution for subsection (2) of the following subsection:

“(2) The seafarer is entitled to remit any portion of or all his or her wages to any person he or she designates.”;

(b) by the addition of the following subsection, after subsection (5):

“(6) Costs incurred in remitting the wages of a seafarer shall be incurred by the master or the shipowner.”.

Insertion of sections 159A of Act 57 of 1951

11. The following section is inserted in the Merchant Shipping Act, 1951 before section 160:

“On-board complaints procedure

(1) A master or owner of a ship that is registered or licensed in the Republic shall make available, onboard a ship, the complaints procedure

(2) If a seafarer of a ship that is registered or licensed in the Republic considers—

(a) that his or her rights in terms of the Consolidated Maritime Labour Convention have been breached, he or she may lodge a complaint with the master.

(3) On receiving a complaint from a seafarer, the master shall—

(a) record the complaint in the official log-book;

(b) investigate the complaint or cause it to be investigated;

(c) attempt to resolve the complaint within twenty four hours; and

(d) record his or her findings and any action taken in the official log-book.

(4) Should the situation remain unresolved or the breach of the seafarer's rights is still considered to exist, he or she may lodge that complaint with the Authority, Commission for Conciliation, Mediation and Arbitration or any legally recognised institution.”.

Amendment of 162 of Act 57 of 1951

12. Section 162 of the Merchant Shipping Act, 1951 is amended—

(a) by the substitution in subsection (1) for the words proceeding paragraph (a) of the following words:

"If [three or more seamen or] a seafarer
[*apprentice officers*] of a [South African]
ship that is registered or licensed in the
Republic [~~consider~~] considers—".

Insertion of sections 356 (1)(xxiA) of Act 57 of 1951

13. The following paragraph is inserted in the Merchant Shipping Act, 1951 before paragraph (xxii):

"(xxiA) as to the recruitment, placement
and social protection of seafarers;".

Insertion of sections 356 (1) (xxiAA) of Act 57 of 1951

14. The following paragraph is inserted in the Merchant Shipping Act, 1951 after paragraph (xxiA):

"(xxiAA) as to the seafarers accident
insurance;".

Short title and commencement

15. (1) This Act is the Merchant Shipping Amendment Act, 2013.

(2) This Act commences on a day fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE MERCHANT SHIPPING AMENDMENT BILL

MAIN OBJECTS

1. This Bill amends the Merchant Shipping Act, 1951 (Act No. 57 of 1951) (the "MSA"). The Bill's main objects:
 - (a) to bring domestic legislation in line with Consolidated Maritime Labour Convention adopted by the International Labour Organization, Geneva, 2006 ("the Convention") and Work in Fishing Convention, 2007
2. It is the attention of the South African Government to ratify the Convention.

ANALYSIS OF CLAUSES

3. *Clause 1* amends section 2(1) of the Act by replacing "seaman" with "seafarer" for gender sensitivity.
4. *Clause 2 and 3* amend respectively section 91 and 92 of the MSA to delete obsolete wording of apprentice-officers. Also amend South African

ship to replace it with ship that is registered or licensed in the Republic to cover all ships irrespective of their size.

5. *Clause 4* repeals sections 93, 94, 95, 96, 97, 98, 99 and 100 of the MSA, all of which the apprentice-officers no longer exist.
6. *Clause 5* amends section 102 of the MSA as follows:
 - (a) Subsection (1) requires all ships to enter into an agreement with the crew, irrespective of their tonnage.
 - (b) Paragraph (f), (i), (j), (k), (l) and (m) insert respectively the details to be contained in the agreement with the crew.
 - (c) Subsection (5) inserts new definitions of “basic wages” and “overtime”. The definitions cover payment for normal working days; and time worked in excess of normal working hours, respectively.
7. *Clause 6* amends section 110 of the MSA by prohibiting any ship to employ person under the age of sixteen. This introduces consistency with regulation 1.1 of the Convention. South Africa intends to ratify the Convention.
8. *Clause 7* amends section 111 of the MSA as follows:

- (a) Subsection (1) by allowing young person to work at night in a ship provided that he or she is on school-ship or training-ship approved by the Authority.
- (b) Subsection (8) inserts new definitions of "night". The definition covers a period not later than midnight and earlier than 05h00.
9. *Clause 8* inserts new section 111A in the MSA to introduce entitlement of seafarer's leave. Subsection (4) inserts new definition of a "month". The definition covers period of thirty days.
10. *Clause 9* amends section 121 (1) of the MSA to introduce a duty on the master or the owner of a ship to furnish the seafarer with monthly account of his or her wages.
11. *Clause 10* amends section 130 (2) of the MSA to give seafarer an option to remit all or part of his or her wages at the cost of the master or shipowner.
12. *Clause 11* inserts new section 159A in the MSA. The new section obliges the owner or the master to have complaints procedure on board the ship; and seafarer's rights to complain following such procedures.
13. *Clause 12* amend section 162 (1) of the MSA to allow even one seafarer to lodge a complaint to the proper officer

14. *Clause 13* inserts new section 356(1) (xxiA) in the MSA for the recruitment, placement and social protection of seafarers.
 15. *Clause 14* inserts new section 356 (1) (xxiAA) in the MSA as to the seafarers accident insurance.
 15. *Clause 15* is a standard provision dealing with the short title and commencement of the enactment. Commencement is to be on a day proclaimed by the President.
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