

**DEPARTMENT OF TRANSPORT****NOTICE 1829 OF 2023****MARINE TRAFFIC ACT, 1981 (ACT NO. 2 OF 1981)****THE DRAFT MARINE TRAFFIC AMENDMENT REGULATIONS, 2023**

The Minister of Transport, in terms of section 14 of the Marine Traffic Act, 1981 (Act No. 2 of 1981), hereby publishes for comments the draft Marine Traffic Amendment Regulations 2023.

Interested persons are invited to submit written comments on these draft Marine Traffic Amendment Regulations to the Director-General, Department of Transport for the attention of Mr. TM Matlala within 30 days after publication of this notice.

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## SCHEDULE

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### GENERAL EXPLANATORY NOTE:

[        ] Words in bold typed in square brackets indicate omissions from existing Regulations.

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing Regulations.

### Definition

1. In this Schedule “the Regulations” means the Marine Traffic Regulations, 1985 published under Government Notice No. R. 194 in Government Gazette No. 9575 dated 01 February 1985.

### Amendment of regulation 1 of the Regulations

2. Regulation 1 of the Regulations is hereby amended—
  - (a) by the insertion, after the definition of “authorized agency” of the following definition:

“**Authority**’ means the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998 );”;

- (b) by the insertion after the definition of “authorized agency” of the following definition:

“**detention officer**’ for the purposes of Chapter VII, means a person authorised by the Authority in terms of regulations 19, 20 and 22;”;

- (c) by the insertion after the definition of “Merchant Shipping Act” of the following definition:

“**Notice**’ for the purposes of Chapter VII, means a Notice of Detention issued in terms of regulation 18;”;

- (d) by the insertion after the definition of “principal officer” of the following definition:

“**return of service**’ for the purposes of Chapter VII, means a declaration form issued in terms of regulation 20;”;

- (e) by the substitution for the definition of “South African national” of the following definition:

**“South African national**’, when used to describe any ship, submarine or other underwater vehicle, means a ship, submarine or other underwater vehicle which—

- (a) is registered or required to be registered in terms of the Merchant Shipping Act;
- (b) is licenced or required to be licenced in terms of the Merchant Shipping Act; or

- (c) is exempted from licensing in terms of the Merchant Shipping Act, but—
- (i) the whole of which is owned by persons all of whom are qualified in terms of the Merchant Shipping Act to own a South African ship; **[and]or**
  - (ii) the majority of the owners of which, either in number or extent of ownership, are persons resident in the Republic;”; and
- (f) by the insertion after the definition of “South African national” of the following definition:

“**the Act**’ means the Marine Traffic Act, 1981 (Act No. 2 of 1981);”.

### **Substitution of regulation 3 of the Regulations**

3. Regulation 3 of the Regulations is hereby substituted for the following regulation:

“**3.** For purposes of these **[regulations]Regulations** navigation in such a manner as is necessitated by **[their]a vessel’s** normal activities shall be deemed to constitute “passage” as defined in section 1 of the Act in the case of the following **[ships]vessels:**”.

### **Substitution of regulation 4 of the Regulations**

4. Regulation 4 of the Regulations is hereby substituted for the following regulation:

“**4.** The following **[ships]vessels** or classes of **[ships]vessels** are hereby exempted from the provisions of section 4(1) of the Act while **[they]the vessels** are engaged in their normal activities:

- (a) South African national fishing **[boats]vessels;**

- (b) South African national small vessels engaged in sporting or recreational activities;
- (c) foreign small vessels engaged in sporting or recreational activities, provided such vessels engage in such activities under the supervision of a local authority or other Government authority, or an **[authorized]**authorised agency;
- (d) South African national utility **[ships]**vessels; and
- (e) foreign fishing **[boats]**vessels which have been chartered or which have contracted or which are otherwise **[authorized]**authorised in accordance with the laws of the Republic to operate within the internal waters.”.

### Amendment of regulation 5 of the Regulations

5. Regulation 5 of the Regulations is hereby amended—

(a) by the substitution for subregulation (1) of the following subregulation:

“(1) The master of any **[ship]**vessel, other than a **[ship]**vessel contemplated in regulation 16(1) or exempted in terms of the Act or regulation 4, shall, prior to the time of such **[ ship's]**vessel's intended entry into internal waters other than a harbour or a fishing harbour, appoint a vessel's agent and apply during office hours to the principal officer at the nearest harbour for permission for such entry, stating the reasons for such entry, the **[ship's]**vessel's destination, route and the period for which it is intended to remain in such internal waters.”;

(b) by the substitution for subregulation (2) of the following subregulation:

“(2) The principal officer to whom an application is made in terms of subregulation (1), may—

- (a) permit such **[ship]**vessel to enter internal waters;

- (b) fix a reasonable period for the **[ship]vessel** to remain in internal waters;
- (c) specify the area in which the **[ship]vessel** is to remain or to anchor;
- (d) order or permit such a **[ship]vessel** to leave internal waters;
- (e) require such a **[ship]vessel** to enter or leave internal waters by such routes as may be determined by **[him]the principal officer**; or
- (f) require that one or more of the conditions set out in regulation 12 be complied with.”; and

(c) by the addition after subregulation (2) of the following subregulations:

“(3) The vessel referred to in subregulation (1) shall be liable for the payment of a levy and any charges imposed by the Authority.

“(4) Any person who contravenes the provisions of subregulation (1) shall be guilty of an offence and shall on conviction be liable to a minimum fine of R80 000.00 or imprisonment of two years.”.

### **Substitution of regulation 6 of the Regulations**

6. Regulation 6 of the Regulations is hereby substituted for the following regulation:

“6. Any **[ship]vessel** moored or berthed at a launching site is hereby exempted from the provisions of section 5 of the Act.”.

### **Substitution of regulation 7 of the Regulations**

7. Regulation 7 of the Regulations is hereby substituted for the following regulation:

“**Application for lay-up**

7. (1) Any person requiring permission by the **[Minister]Authority** in terms of section 5(1) of the Act to lay-up a **[ship]vessel** shall direct a written application for such permission to the principal officer at the harbour nearest to the proposed lay-up area, not less than **[30]10** days prior to the estimated time of arrival in such area of such **[ship]vessel** or, if more than one **[ship]vessel** is to be laid up, not less than **[30]10** days prior to the estimated time of arrival of the first **[ship]vessel**.

(2) An application referred to in subregulation (1) shall contain the following information in regard to the **[ship or ships]vessel or vessels** in question:

- (a) **[The]the** name, official number, port of registry and gross tonnage of the **[ship]vessel**, the name and address of the owner of the **[ship]vessel** and of the owner's agent in the Republic[.];
- (b) **[The]the** type of **[ship]vessel** and the nature of the cargo aboard, if any, including fuel and lubricating oil[.];
- (c) **[The]the** proposed location of lay-up and anchoring and mooring arrangements[.];
- (d) **[The]the** maximum intended draught of the **[ship]vessel** in question during the period of lay-up[.];
- (e) **[The]the** number of officers and crew to remain on board the **[ship]vessel** during the period of lay-up[.]; and
- (f) **[The]the** anticipated duration of the lay-up.”.

### **Amendment of regulation 8 of the Regulations**

8. Regulation 8 of the Regulations is hereby amended—

- (a) by the substitution for the heading of regulation 8 of the of the following heading:

**“Guarantee for possible loss or damage caused by a laid-up **[ship]vessel**”;** and

(b) by the substitution for regulation 8 of the following regulation:

“8. (1) **[The]**A person desiring to lay up a **[ship]vessel**, shall together with **[his]the** application referred to in regulation 7, satisfy the **[Minister]Authority** that **[he]the person** has the financial means to meet any claims for damage or loss suffered either by the Government of the Republic or by third parties as a result of the vessel being laid up.

(2) Evidence of **[such]the** financial means referred to in subregulation (1) shall be either in the form of a bank guarantee or other security acceptable to the **[Minister; such guarantee or other security]Authority**, having due regard to any insurance arrangements which the owner of the said **[ship]vessel** has made to cover **[such]the** claims referred to in subregulation (1).”.

#### **Amendment of regulation 10 of the Regulations**

9. Regulation 10 of the Regulations is hereby amended—

(a) by the substitution for subregulation (1) of the following subregulation:

“(1) A period of lay-up shall not exceed six calendar months unless the **[Minister]Authority** extends such period upon written application made **[mutatis mutandis] with necessary changes**, in the manner prescribed in regulation 7(1) prior to the termination of the said period of six months.”;

(b) by the substitution for subregulation (2) of the following subregulation:

“(2) A period of lay-up commences when the **[ship]vessel** arrives in the area of lay-up.”; and

(c) by the substitution for subregulation (3) of the following subregulation:

“(3) A period of lay-up terminates—

- (a) when the **[ship]vessel** departs from the area of lay-up; **[or]**
- (b) one month after the serving of a notice by the **[Minister]Authority**, withdrawing **[his]the** permission for the lay-up; or

(c) immediately upon the serving of a notification by the **[Minister]Authority**, withdrawing **[his]the** permission for a lay-up under the circumstances whereby the lay-up is prejudicial to the peace, good order or security of the Republic.”.

### **Amendment of regulation 11 of the Regulations**

10. Regulation 11 of the Regulations is hereby amended—

(a) by the substitution for the heading of regulation 11 of the following heading:

**“Inspection of laid-up **[ship]vessel**”;**

(b) by the substitution for regulation 11 of the following regulation:

“11. An **[authorized]authorised** person shall at any time have access to and may inspect a laid-up **[ship]vessel**, its cargo, stores, machinery in use and such certificates as are required in terms of the laws of the Republic to be carried on board the **[ship]vessel**.”.

### **Substitution of regulation 12 of the Regulations**

11. Regulation 12 of the Regulations is hereby substituted for the following regulation:

**“Conditions of lay-up**

12. The **[Minister]Authority** may require any person who is permitted to lay-up a **[ship]vessel**, to comply with one or more of the following conditions in respect of the **[ship]vessel** while so laid-up:

- (1) (a) Any **[ship]vessel** to be laid up shall be retained in Class **[. The]and the** person desiring to lay-up a **[ship or ships]vessel or vessels** shall submit to the principal officer at the harbour nearest to the proposed lay-up area the following documents not less than 14 days prior to the arrival of the **[ship]vessel** or the first of the **[ships]vessels**:
- (i) **[A]a** copy of the certificate of classification; or
  - (ii) a copy of the lay-up report or of the conditions of lay-up as provided for by the classification society or by a society recognised by the **[Minister]Authority** as being competent to issue such a certificate; and
  - (iii) confirmation of adequate insurance for the vessel.
- (b) The certificates referred to in subparagraphs (i) and (ii) of paragraph (a) shall be kept on board the **[ship]vessel**.

(2) **[Unladen tankers]An unladen tanker** shall be ballasted to not less than 35 percent of deadweight while **[ships]vessels** other than **[tankers]tankers** shall be fully ballasted.

- (3) (a) Cargo oil tanks, pipelines and bilges shall be empty, cleaned of sludge and of other deposits and shall be gas-freed.
- (b) **The[said] tanks referred to in paragraph (a)** may be inerted in **[ships] a ship** in which an inert gas system is fitted.
- (4) (a) In the case of a **[ship]vessel** in which the tanks are gas-freed, a certificate, issued by an **[authorized]authorised** agency, shall be produced at the commencement of the lay-up and thereafter at intervals not exceeding two months.
- (b) Gas-free tests shall be conducted weekly.

- (5) (a) Anchoring or mooring arrangements shall be carried out to the satisfaction of the principal officer concerned.
- (b) A spare or second anchor shall be held ready for immediate use.

(6) The position of the **[ship]vessel** shall be checked daily and anchors and chain cable shall be inspected **[regularly]at least twice during a watch and more frequently during inclement weather.**

(7) Fire fighting equipment shall be maintained in good order and shall be tested at intervals not exceeding one week.

(8) Anchor and radio telephone watches shall be kept at all times.

(9) The **[ship]vessel** shall display the correct navigation lights and shapes and make the required sound signals in accordance with international practice.

(10) The permission of the principal officer concerned shall be obtained at all times when any repair work, requiring the use of hot welding or cutting equipment, is to be undertaken outside the port limits.

(11) **[No]Any** article or matter of any kind, other than effluent from water closets, latrines and washplaces that has passed through the approved treatment plant, shall not be discharged into the sea.”.

### **Amendment of regulation 13 of the Regulations**

12. Regulation 13 of the Regulations is hereby amended—

(a) by the substitution for the heading of regulation 13 of the following heading:

**“Application to stop or anchor a [ship]vessel for repairs”;**

(b) by the substitution for subregulations (1) and (2) of the following subregulations:

“13. (1) A person desiring a [ship]vessel to be stopped or anchored for repairs in the territorial or internal waters outside a harbour or fishing harbour shall without delay apply for the [Minister’s]Authority’s permission for such stopping or anchoring and shall direct such an application to the principal officer at the harbour nearest to the proposed location of stopping or anchoring.

(2) When applying in terms of subregulation (1) the applicant shall furnish the following information in regard to the [ship]vessel in question:

- (a) [The]the name, official number, port of registry, type and gross tonnage of the [ship.]vessel;
- (b) [The]the name and address of the owner of the [ship]vessel and of the owner's agent in the Republic[.];
- (c) [The]the nature of the cargo aboard the [ship]vessel, including fuel and lubricating oil[.];
- (d) [The]the reason for the proposed stopping or anchoring of the [ship.]vessel;
- (e) [The]the proposed location of such stopping or anchoring[.];
- (f) [The]the anticipated duration of such stopping or anchoring[.]; and
- (g) [Prevailing]prevailing weather conditions.”.

**Amendment of regulation 14 of the Regulations**

13. Regulation 14 of the Regulations is hereby amended—

(a) by the substitution for the heading of regulation 14 of the following heading:

**“Conditions for stopping or anchoring of a [ship]vessel”;**

(b) by the substitution for subregulations (1) and (2) of the following subregulations:

“14. (1) **[The]**A person who has been granted permission in terms of regulation 13, shall comply with such measures specified by the principal officer concerned as **[he]**the principal officer may reasonably deem necessary for minimising the risk of stranding, for the safety of the **[ship]**vessel, its crew, passengers or cargo, for preventing pollution of the sea or for maintaining the peace good order or security of the Republic.

(2) The **[said]** measures referred to in subregulation (1) shall be carried out at the expense of the owner of the **[ship]**vessel.”.

#### **Amendment of regulation 15 of the Regulations**

14. Regulation 15 of the Regulations is hereby amended—

(a) by the substitution for the heading of regulation 15 of the following heading:

**“Notification of departure of **[ship]**vessel”;**

(b) by the substitution for regulation 15 of the following regulation:

“15. **[The]**A person who has been granted permission in terms of regulation 13, shall cause the **[ship]**vessel to proceed on its normal course immediately after the reason for the stopping or anchoring has ceased to exist and **[he]** shall forthwith notify the principal officer concerned of the departure of the **[ship]**vessel.”.

#### **Substitution of regulation 17 of the Regulations**

15. Regulation 17 of the Regulations is hereby substituted for the following regulation:

## **“CHAPTER VI**

### **PLACES OF DEPARTURE AND ARRIVAL ALONG THE SHORE**

17. (1) **[No ship]**A vessel shall not be launched or otherwise proceed to sea from, or **[shall]** be landed, beached, moored, or berthed at, any place along the shore other than a harbour, fishing harbour or launching site.

(2) Any person who contravenes the provisions of subregulation (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding **[R200]**R40 000.00 or imprisonment of one year.”.

### **Substitution of regulation 18 of the Regulations**

16. Regulation 18 of the Regulations is hereby substituted for the following regulations:

## **“CHAPTER VII**

### **DETENTION OF **[SHIPS]**VESSELS, CARGOES OR PART THEREOF**

#### **Notice of detention of **[ship]**vessel or cargo**

18. When a **[ship]**vessel and its cargo or **[part]**part thereof or a **[ship]**vessel or its cargo or part thereof is to be detained under section 9(3) of the Act a principal officer shall sign and issue a Notice of Detention in the form of Annexure A **[(hereinafter in this Chapter referred to as a "Notice")]**, setting forth the grounds and conditions of detention.”.

### Substitution of regulation 19 of the Regulations

17. The following regulation is hereby substituted for regulation 19 of the Regulations:

#### “Service of Notice

19. (1) Subject to the provisions of subregulation (2) a Notice shall be served upon the master of the **[ship]vessel** in question by **[an authorized person (hereinafter in this Chapter referred to as a "detention officer")]**a duly authorised detention officer who shall exhibit the original Notice to such master and deliver a copy thereof to **[him]the master**, and return the original Notice to the principal officer.

(2) If the master of the **[ship]vessel** in question refuses or fails to accept service of the Notice, or if for any other reason service of the Notice cannot be effected, the detention officer shall leave a copy of the Notice in a conspicuous place on such **[ship]vessel**, which action shall then be deemed to be proper service.”.

### Substitution of regulation 20 of the Regulations

18. Regulation 20 of the Regulations is hereby substituted for the following regulation:

#### “Return of service

20. (1) **[The]**A detention officer who has served a Notice in terms of regulation 19, shall forthwith complete and sign a declaration in the form of Annexure B **[(hereinafter in this Chapter referred to as a "return of service")]**.

(2) The detention officer in subregulation (1) shall thereupon forthwith deliver the original of the Notice served by **[him]the detention officer**, together with the return of service, to the principal officer who issued the Notice and a copy thereof to each of the following persons:

- (a) **[The]the** consular representative in the Republic, if any, of the state in which the **[ship]vessel** is registered;
- (b) the **[ship's]vessel's** agent in the Republic, if any;
- (c) the Commissioner for Customs and Excise or other proper officer of customs at the harbour where the **[ship]vessel** is anchored, moored or berthed; and
- (d) the harbour authority or other authority, if any, who has jurisdiction or control over the sea where the **[ship]vessel** is anchored, moored or berthed.”.

### **Substitution of regulation 21 of the Regulations**

19. Regulation 21 of the Regulations is hereby substituted for the following regulations:

#### **“Clearance outward may be refused**

**21.** (1) The officer referred to in regulation 20(2)(c) shall refuse to give the master of a **[ship]vessel** to which the Notice and the return of service relate or which was seized in terms of section 9(4)(b) of the Act, clearance outward until **[he]the officer** has received the Notice of Release contemplated in regulation 22(1).

- (2) If the detained or seized **[ship]vessel** is not in a harbour or a fishing harbour the **[Minister]Authority** may take such steps or make such arrangements as **[he]the Authority** may deem necessary to prevent such **[ship]vessel** from leaving the internal waters or the territorial waters.”.

### **Substitution of regulation 22 of the Regulations**

20. Regulation 22 of the Regulations is hereby substituted for the following regulations:

### **“Release from detention**

**22.** (1) When a **[ship]vessel** or cargo or part thereof which has been detained, is released from such detention as contemplated in section 9(4)(a) of the Act, the principal officer shall forthwith sign and issue a notice of release from detention substantially in the form of Annexure C.

(2) The original notice of release from detention referred to in subregulation (1) shall be retained by the principal officer who shall forthwith cause a copy thereof to be delivered by a detention officer to the master of the **[ship]vessel** in question and to every person referred to in regulation 20(2)(a) to (d) to whom a copy of the relevant Notice and its accompanying Return of Service have been delivered by the detention officer.

(3) The detention officer shall in writing advise the principal officer of the date and time on which **[he]the detention officer** has delivered the notice of release from detention to every person referred to in regulation 20(2)(a) to (d).”.

### **Short title and commencement**

21. These Regulations are called the Marine Traffic Amendment Regulations, 2023 and are published for comments.