

# Marine Traffic Act 2 of 1981 (MTA)

## Topic: Shipping and Marine Traffic

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### IN A CALABASH

#### Introduction

**Like the rules of the road, rules of the sea controlling marine traffic are in place worldwide.**

**South Africa has its own set of marine traffic laws in place.**

#### Objectives of the Act

The Marine Traffic Act 2 of 1981 (MTA) regulates and lays down certain rules pertaining to marine traffic in South Africa.

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#### Application of the Act and its implication to Tourism

The Act applies to every ship using South African territorial waters and to the master of such ship or, if the master is not the owner, to the owner of such ship.

In terms of the tourism industry, the Act applies to any tourism activities which take place in the waters of South Africa.

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#### Summary of the provisions of the Act

##### Right of innocent passage

In terms of the MTA, every ship which complies with relevant legislation has the right of innocent passage through South African territorial waters.

##### Suspension of passage

If the Minister, after consultation with the Minister of Defence, considers it essential for the protection of the security of the Republic, he or she may suspend the passage of

ships in specified areas of the territorial waters for a specified period or prohibit entry into internal waters.

Such suspension or prohibition shall not take effect before a ship is given notice.

The master of a ship who wilfully fails to observe such suspension or prohibition shall be guilty of an offence.

### **Offshore installations**

The master or any person on board a ship in charge of the navigation of such ship will be guilty of an offence if–

- the ship damages an offshore installation;
- the ship enters a safety zone, or drops or drags anchor nearer than 500 meters to a pipeline or a telecommunications line unless it is rendering an emergency service or previously agreed service to the offshore installation in question; or
- while engaged in fishing, the ship bottom trawls nearer than 500 meters to such a pipeline or telecommunications line.
- Note: No liability arises where the master or person on board the ship in charge of the navigation acted for the purpose of securing the safety of the ship, any other ship or an offshore installation, preventing damage to the ship, any other ship or the cargo or an offshore installation or saving a life and such action was necessary for that purpose or was reasonable in the circumstances.

### **Minister may determine safety zone**

The Minister may, in respect of an offshore installation other than a pipeline, by notice in the *Gazette*, determine that the area specified in the notice will be the safety zone for the offshore installation in question.

### **Passage deemed to be not innocent**

The passage of a ship in the territorial waters which carries or has on board persons, cargo or any appliance or apparatus, the use of which may constitute a threat against the sovereignty, territorial integrity or political independence of South Africa will be deemed to be not innocent.

The authority may require the master of such ship–

- to stop or anchor the ship;
- to declare the ship's name, official number, flag, type, gross tonnage, destination and cargo;
- to move the ship to a place specified by the authority;
- to produce for inspection by an authorised person all papers or documents relative to the ship and its cargo and allow him or her to make copies thereof;
- to allow authorised persons onboard the ship to inspect the ship, its equipment and cargo; and
- to deliver any person to an authorised person having powers of arrest in order to be dealt with according to law.
- If the master of the ship fails to perform any act which he or she has been required to perform within the time specified by the Authority, the authority may cause such act to be performed, with the employment of such force as may be necessary.

If the authority is satisfied that the passage of the ship is not innocent, it may cause the ship, its cargo or part thereof to be detained for a period not exceeding seven days or such further period as an order of a division of the Supreme Court of South Africa may authorise.

The authority may require the master of a ship who fails to comply with any provision of the Act or any other law to immediately remove his or her ship from the territorial waters.

This does not apply to a foreign warship or a foreign ship owned or used by a government for non-commercial purposes.

### **Notice to be given of proceedings in respect of foreign ships**

If any action in terms of the Act is contemplated or taken in respect of any foreign ship, or if any proceedings in terms of the Act are contemplated or taken against the master or owner or a member of the crew of or any person on board of any foreign ship, the Authority may, if the master of the ship so requests, advise the agents of the ship and the consular representative of the country whose flag the ship flies at the nearest harbour, of the action or proceedings taken or contemplated and of the grounds therefor.

### **Entry into and departure from internal waters**

The master of any ship shall not allow the ship to enter or leave internal waters other than by a harbour or a fishing harbour. The master of a ship who contravenes the provisions shall be guilty of an offence.

### **Immobilising, laying-up, stopping or anchoring outside harbours or fishing harbours**

Except with the permission of the authority, no person may immobilise or lay-up a ship outside a harbour or fishing harbour within the territorial waters or internal waters. When this occurs, the authority may require the master or owner to lodge sufficient security for the recovery of any costs which may be incurred by the authority in enforcing any condition applicable to the immobilising or laying-up of the ship or in the exercise of its powers.

No person shall stop or anchor a ship for repairs within the territorial waters or internal waters outside a harbour or fishing harbour unless the main engine is kept in readiness for immediate use.

Any person who contravenes the Act will be guilty of an offence.

## **Ships and wreckage not to be sunk or abandoned**

No person may intentionally—

- sink, dump or dispose of, or cause to be sunk, dumped or disposed of, a ship, a wreck or a hulk except at a place agreed to by the authority; or
- abandon a ship which is not in distress, a wreck, a hulk or an object which may interfere with navigation,
- within the territorial waters or internal waters.
- Any person who contravenes the Act will be guilty of an offence.



### **WHAT HAPPENS IF YOU DO NOT COMPLY?**

Any person who contravenes or fails to comply with the provisions of the MTA will be guilty of an offence and, depending on the circumstances, sentenced to a fine, to imprisonment or to both such fine and such imprisonment.

If any person—

- admits to the authority that he or she has contravened or failed to comply with any provision of the Act or the Convention, which constitutes an offence under the Act;
- agrees to abide by the decision of the authority; and
- deposits with the authority such sum as may be required of him or her but not exceeding the maximum fine which may be imposed 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 deposit to be forfeited.

There shall be a right of appeal to the Minister from a determination or order by the authority 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.

The imposition of a penalty will be deemed not to be a conviction for an offence, but no prosecution in respect of the offence in question may thereafter be instituted.



### RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

- Entry into and departure from internal waters via a harbour or a fishing harbour;
- No immobilising, laying-up, stopping or anchoring outside harbours or fishing harbours, except with the permission of the authority;
- Ships and wreckage not to be sunk or abandoned;
- Awareness of Acts and related protocols and right of innocent passage;
- No damage to offshore installations;
- Awareness of safety zone; and
- Awareness of rights of authority when passage deemed to be not innocent.

### FURTHER INFORMATION

#### **Regulators**

Minister of Transport  
South African Maritime Safety Authority

#### **Website**

[www.samsa.org.za](http://www.samsa.org.za)