

National Ports Act 12 of 2005 (NPA)

Topic: Ports and Shipping

IN A CALABASH

Introduction

All ports operating within South Africa are owned by the State. These ports must be operated efficiently with due regard to sound economics, good governance and health, safety and environmental issues. The National Ports Authority and the ports regulator are responsible for the administration of South African ports. The National Ports Act 12 of 2005 (NPA) sets out the duties of the National Ports Authority and the ports regulator.

Objectives of the Act

The National Ports Authority and the ports regulator were established in terms of the NPA and tasked with the responsibility of managing South African ports.

The objects of the NPA is to–

- promote the development of an effective and productive South African ports industry;
- establish appropriate institutional arrangements to support the governance of ports;
- promote and improve efficiency and performance in the management and operation of our ports; and
- enhance transparency in the management of our ports.

Application of the Act and its implication to Tourism

The NPA applies to–

- any person who provides a port service or operates a port facility;
- a licensed operator, being a person who is licensed, or deemed to be licensed, to provide a port service or operate a port facility;
- any off-shore cargo handling facility within or beyond the port limits used for the transfer of cargo from a vessel to the land and vice versa;

- any pilot licensed to provide pilotage services;
 - all ports, being the ports of Richards Bay, Durban, East London, Nqura, Port Elizabeth, Mossel Bay, Cape Town, Saldanha Bay, Port Nolloth or a port which has been determined;
 - all port infrastructure, being the basic structure of a port, including breakwaters, seawalls, channels, basins, quay walls, jetties, roads, railways and infrastructure used for the provision of water, lights, power, sewerage and similar services;
 - port repair facilities, being all dry docks and vessel repair facilities within a port;
 - port services, including stevedoring, cargo handling, terminal operations, storage of cargo within a port, tug services, floating crane services, berthing services, fire fighting, security, radio and radar services, waste disposal, vessel repairs and any other services provided within a port which are designated as such by the authority by notice in the Gazette;
 - port terminals, being terminal infrastructure, cargo-handling equipment, sheds and other land-based structures used for the loading, storage, trans-shipment and discharging of cargo or the embarkation and disembarkation of passengers;
 - terminal infrastructure, being terminal buildings, workshops, substations, surfacing, rail sidings and terminal operations and infrastructure for the provision of water, lights, power, sewerage and similar services within terminal boundaries;
 - terminal operations, being services provided at a port terminal consisting of handling cargo, storing cargo, trans-shipment of cargo and delivering cargo to vessels and services related thereto; and
 - vessels, being any water-navigable craft or structure.
-

Summary of the provisions of the Act

Ports under jurisdiction of the authority

The ports of Richards Bay, Durban, East London, Nqura, Port Elizabeth, Mossel Bay, Cape Town, Saldanha Bay, Port Nolloth or a port which has been determined all fall under the jurisdiction of the authority.

Functions of authority

The main function of the authority is to own, manage, control and administer ports to ensure their efficient and economic functioning.

Establishment of regulator

The NPA established the ports regulator to regulate the ports.

Complaint against authority

Any complaint against the authority must be lodged with the regulator.

Investigation of complaint

The regulator may investigate any complaint against the authority and must conclude the investigation as quickly as possible.

Agreements in port operations and services

The authority may enter into an agreement with any person in respect of the design, construction, rehabilitation, development, financing, maintenance or operation of a port terminal or port facility, stevedoring onboard a vessel or the provision of services relating to the port.

Any such agreement must provide for the authority to monitor and annually review the relevant services, which will be done in accordance with the terms housed under the agreement.

License regarding port services and facilities

No person other than the authority may provide a port service or operate a port facility without a requisite license.

Any person may apply to the authority for a license. Within six weeks after receiving an application, the authority must either issue a license subject to specified terms and conditions or refuse to issue a license and give written reasons for such refusal.

The authority may exempt a person from having to obtain a license if an agreement has been concluded and the authority is satisfied that the activities of the person concerned are sufficiently regulated by the agreement.

Conditions of license



A license must set out–

- the duration of the license;
- the types of services or facilities to be provided by the licensed operator;
- the annual license fee payable by the licensed operator;
- the duties and obligations of the licensed operator in respect of the services or facilities provided by it; and
- such other terms and conditions as may be necessary.

The terms and conditions of a license may–

- control and restrict the creation, holding or disposal of shares in the licensed operator or its shareholders or interests in the undertaking of the licensed operator;
- restrict the carrying on of any trade or business which is not related to the activity authorised in the license;
- provide for the modification of the license;

- provide for the determination of performance standards; and
- provide for the control and, if necessary, the reasonable fixing of prices to be charged by a licensed operator.

Routine inspections

Any person duly authorised by the authority in writing may enter any premises occupied by a licensed operator during office hours to inspect any activity, process, building or facility therein in order to determine whether license conditions are being complied with.

Special powers in emergency

In the event of an emergency which creates a real and imminent threat to the national interest of South Africa or public safety, the authority may–

- suspend the license of a licensed operator, take temporary possession of any port facility or undertaking relating to a port service of such licensed operator and operate it in such a manner as it deems fit; or
- withdraw, either partially or totally, the use of any port service or facility from any person or class of persons or from the public in general,

for as long as such threat exists.

When the authority takes possession of any port facility, adequate compensation must be paid in the agreed amount between the Authority and the affected licensed operator or in the amount determined by the shareholding Minister, whose decision is binding upon the parties.

Off-shore cargo-handling facilities

No person may erect or operate an off-shore cargo-handling facility except in terms of a license issued by the authority.

Protection of environment

The authority must ensure that a fair and reasonable balance is achieved between the protection of the environment and the establishment, development and maintenance of ports.

The authority must ensure that sustainable and transparent port planning processes are undertaken when formulating any port development framework.

When undertaking any port planning process, the authority must ensure that stakeholders are consulted and that all relevant biophysical and economic aspects are taken into account.

Closure of port

The authority may only close a port which is non-viable after the Cabinet has issued a written directive authorising the closure of such port.

Authority's tariff book

The authority must, with the approval of the ports regulator, determine tariffs for services and facilities offered by the authority and annually publish a tariff book containing those tariffs.

Fees payable to authority



The authority may charge fees for the provision of port and other services, including–

- vessel traffic service charges;
- pilotage dues for the provision of pilotage;
- light dues for the provision of navigational aids along the coast of the Republic and within ports;
- towage dues for the provision of tug services;
- berthing charges for the use of berthing facilities and services;
- port and ship security;
- land rentals;
- port dues for the provision and maintenance of entrance channels, breakwaters, basins, navigational aids and maintenance dredging inside port limits;
- cargo dues for the provision and maintenance of port infrastructure;
- berth dues for vessels occupying quays or repair quays while not engaging in the loading or unloading of cargo;
- granting concessions and licenses;
- off-shore cargo-handling facilities; and
- any other services provided by the Authority in the performance of its functions.

The fees become due to the authority and payable without demand when the services have been rendered and facilities have been provided.

Safety of navigation and shipping in ports

The authority must–

- control marine and other traffic in each port;
- control the entry, stay, movement and operations of vessels in ports and the departures of vessels from ports;
- regulate the loading, unloading and storage of cargo and the embarkation and disembarkation of passengers in ports;
- provide or procure pilotage services, license pilots and regulate the safe provision of pilotage services by licensed pilots;
- provide or procure tug services, license tug service providers and regulate the safe provision of tug services by licensed tug service providers;
- provide, operate and maintain adequate and efficient lighthouses and other navigational aids within the port limits and at such other places as the authority may determine;

- undertake dredging and maintain channels at the depths published by the authority; and
- remove or cause to be removed any obstruction or object from the waters of the ports that may pose a danger to shipping or navigation,

for the purpose of ensuring safety of navigation and shipping in ports.

The authority may–

- order that a vessel which has been arrested or attached by order of court or another relevant authority be moved to another place within the port and, if necessary, move such vessel to that place;
- search for, raise, remove or destroy any sunken, stranded or abandoned vessel or wreck within the port limits and recover the costs incurred in connection with such searching, raising, removal or destruction from the owner of the vessel or any other person who had the beneficial use of the vessel at the time it sank, became stranded or was abandoned;
- search for and remove any wreck or obstruction which may endanger the safety of any vessel entering or leaving the port and recover the costs of such search and removal from the owner of the wreck or obstruction or from any person responsible for the presence of such wreck or obstruction;
- give notice to the owner or other person legally responsible for the upkeep of any vessel within port limits, calling upon such owner or person to remove or otherwise dispose of such vessel, or part thereof, which is not seaworthy, or is likely to become an obstruction, wreck or derelict or a threat to the environment or public safety and recover from that owner or person all costs incurred for the removal or disposal should the owner or person fail to comply with such notice within the time specified therein; and
- after written demand for any costs and on non-payment thereof, institute an admiralty action in terms of the Admiralty Jurisdiction Regulation Act 105 of 1983 to recover the costs.

The harbour master is the final authority in respect of all matters relating to pilotage, navigation, navigational aids, dredging and all other matters relating to the movement of vessels within port limits in respect of the port for which he or she is appointed.

The harbour master may give such written or verbal instructions as may be necessary for–

- promoting or securing conditions conducive to the ease, convenience or safety of navigation in the port;
- regulating the movement or mooring and unmooring of a vessel in the port;
- controlling the manner in which cargo, fuel, water or ship's stores are taken on, discharged or handled;
- regulating the removal or disposal of any residues and mixtures containing oil or noxious liquid substances, sewage and garbage from vessels in a port and requiring any such matter to be deposited in reception facilities in the port;
- the detention of a vessel suspected of causing oil pollution and ensuring that the total cost of the pollution clean-up operation is recovered or acceptable guarantees are provided prior to the vessel being given permission to leave the port; and
- carrying into effect the provisions of the Act.

The harbour master must take such steps as may be necessary to bring an instruction to the notice of any person likely to be affected by it.

Pilotage

A pilot must navigate every vessel entering, leaving or moving in a port.

Pilotage is not compulsory in respect of any vessel or class of vessels that have been exempted from pilotage by the authority in writing.

The pilot's function is to navigate a vessel in the port, to direct its movements and to determine and control the movements of the tugs assisting the vessel under pilotage.

The pilot must determine the number of tugs required for pilotage with the concurrence of the master of the vessel.

In the event of a disagreement between the pilot and the master of the vessel regarding the number of tugs to be used, the harbour master takes the final decision.

The master of the vessel must at all times remain in command of the vessel and neither the master nor any person under the master's command may, while the vessel is under pilotage, interfere in any way with the navigation or movement of the vessel or prevent the pilot from carrying out his or her duties, except in an emergency, when the master may intervene to preserve the safety of the vessel, cargo or crew and take whatever action he or she considers reasonably necessary to avert the danger.

When the master of the vessel intervenes, he or she must immediately inform the pilot of the vessel and, after having restored the situation, must permit the pilot to proceed with the execution of his or her duties.

The master of the vessel must ensure that the officers and crew are at their posts, that a proper lookout is kept and that the pilot is given all assistance necessary in the execution of his or her duties.

Lighthouses and other navigational aids

The authority must operate and maintain lighthouses and other navigational aids under its control in terms of standards determined by the South African Maritime Safety Authority in order to assist the navigation of vessels within port limits and along the coast of the Republic.

Duties of licensed operators

A licensed operator must–

- provide the port services and operate the port facilities specified in its license;
- comply with the Act and any other law;
- meet the performance standards specified in its license; and
- provide reliable, efficient and economical port services and facilities to port users in accordance with the conditions of the license granted to it.

Reports

Every licensed operator must–

- within three months after the end of each financial year, submit to the authority a report of its licensed operations during that financial year, including–
 - o the quality and level of its service in the financial year under review;

- o its compliance with the terms and conditions of its license, the Act and the regulations;
- o steps taken to eliminate anti-competitive and discriminatory practices;
- o its audited annual financial statements;
- o the quality and level of performance with regard to such environmental criteria and social responsibility requirements as may be set by the authority or required by other national legislation; and
- from time to time, and where applicable, submit to the authority–
 - o such statistical information relating to its licensed operations as may reasonably be required by the authority;
 - o its cargo forecast over the period and in the form determined by the authority; and
 - o future development plans relating to any service or facility which it is obliged to provide under the conditions of its license.



WHAT HAPPENS IF YOU DO NOT COMPLY?

A person is guilty of an offence if he or she–

- wilfully or negligently endangers the safety of navigation, persons or property in a port;
- having been directed or summonsed to appear before the regulator, without sufficient cause–
 - o refuses so to appear;
 - o refuses to be sworn in or to make an affirmation after being directed to do so;
 - o refuses to answer, or fails to answer to the best of his or her knowledge, any question put; or
 - o refuses to comply with a requirement to produce a book, document or item specified in the directive summons;
- without lawful authority, interferes with a pilot while a vessel is under pilotage;
- fails to hold a license or comply with any conditions attaching thereto;
- hinders or obstructs an authorised person;
- fails to comply with a requirement for a routine inspection; or
- fails to comply with an instruction of the harbour master.

Any person convicted of an offence is liable on conviction to a fine or to imprisonment for a period not exceeding five years, or both.



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

- Persons using port or facilities to hold a license and/or enter into an agreement detailing the relationship with the National Port Authority;
- Compliance with license terms and conditions and service levels set out under any agreement.
- Reports submitted when required; and
- Compliance with rules, orders, directives and health, safety and environmental standards.

FURTHER INFORMATION

Regulators

Minister of Transport

Harbour master

National Ports Authority (Pty) Ltd, a division of Transnet

Ports regulator