



MINISTRY of TRANSPORT  
Te MANATŪ WAKA

WELLINGTON NEW ZEALAND

**PURSUANT** to Section 36 of the Maritime Transport Act 1994

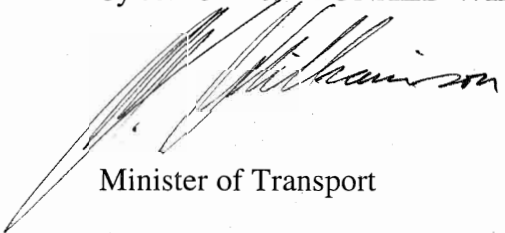
**I, MAURICE DONALD WILLIAMSON**, Minister of Transport,

**HEREBY MAKE** the following maritime rules.

**SIGNED AT** Wellington

This 4 day of October 1999

by **MAURICE DONALD WILLIAMSON**

  
Minister of Transport

**Maritime Rules**

**Part 90**

**Pilotage**

**(Appointment of Pilots and Pilotage Exemptions)**

**Maritime Transport Act 1994**

# **Maritime Rules**

**PART 90**

**PILOTAGE**

**(Appointment of Pilots and Pilotage Exemptions)**

# **Maritime Rules**

## **PART 90**

### **Part Objective, Extent of Consultation and Commencement**

#### **Objective**

The objective of Part 90 is to provide transitional provisions regarding the appointment of pilots and exemptions from pilotage requirements following the repeal of the Harbours Act 1950 by the Local Government Amendment Act (No 2) 1999. The rules in Part 90 provide, through the mechanisms of the Maritime Transport Act 1994, for measures that have equivalent effect to those formerly provided for in sections 212, 215, and 225 of the Harbours Act.

The intention of the transition provisions in the Local Government Amendment Act (No 2) 1999 and corresponding amendments to the Maritime Transport Act 1994 was for the pilotage regime under the Harbours Act to continue until maritime rules regarding pilotage were complete. The transition provisions in the Local Government Amendment Act (No 2) 1999 did not, however, address the matters contained in this rule. It is intended that more comprehensive pilotage rules will replace Part 90 once consultation on the new pilotage regime is complete.

The authority for making Part 90 is found in section 36(i) and (o) of the Maritime Transport Act 1994.

## Extent of Consultation

Informal consultation on a draft of Part 90 was held at a Harbourmasters Conference and a meeting of Regional Council representatives held in Wellington on 15 July 1999.

On 10 July 1999, the Maritime Safety Authority published in each of the daily newspapers in the four main centres of New Zealand a notice inviting comments on the proposed Part 90. A notice was also published in the *New Zealand Gazette* on 15 July 1999. The Authority then made draft Part 90 available to the public. Comments on the Part were requested to be made by 1 August 1999.

Twelve submissions were received on Part 90. All submissions and any verbal comments were considered, and where appropriate, the proposed rules were amended to take account of the comments made.

## Commencement

Part 90 as amended was referred to and signed by the Minister of Transport.

Part 90 will come into force 28 days after the date of its notification in the *Gazette*.

# MARITIME RULES

## PART 90

### PILOTAGE

#### (Appointment of Pilots and Pilotage Exemptions)

- 90.1 Entry into Force
- 90.2 Definitions
- 90.3 Requirement to be appointed or licensed pilot
- 90.4 Appointment and licensing of pilots
- 90.5 Requirement to carry pilot in pilotage district
- 90.6 Pilotage exemption certificates
- 90.7 Exemptions from compulsory pilotage
- 90.8 Bylaws

## 90.1 Entry into force

Part 90 comes into force on the 28th day after the date of its notification in the *Gazette*.

## 90.2 Definitions

In Part 90:

**"Bylaws"** means bylaws continued by or amended under section 15(1)(b) of the Local Government Amendment Act (No 2) 1999:

**"Bulk ship"** means any ship designed for the bulk carriage of oil, gas, or chemical cargoes:

**"Certificate of competency"** means a certificate of competency as master or skipper, being a maritime document issued or recognised under the Maritime Transport Act 1994:

**"Director"** means the person who is for the time being the Director of Maritime Safety under section 439 of the Maritime Transport Act 1994:

**"Harbourmaster"** means a harbourmaster who is appointed under section 650B of the Local Government Act 1974, or whose appointment under the Harbours Act 1950 was continued in force by section 15(2) of the Local Government Amendment Act (No 2) 1999:

**"Local authority"** means a local authority as defined in section 2 of the Local Government Act 1974 that has responsibility for a pilotage district:

**"Pilot"**, in relation to any ship, means any person not being the master or a member of the crew of the ship who has the conduct of the ship:

**"Pilotage district"** means a pilotage district –

- (a) defined under the Harbours Act 1950 and continued in force by section 15(3) of the Local Government Amendment Act (No 2) 1999; or
- (b) amended or defined by section 15(4) of the Local Government Amendment Act (No 2) 1999:

**"Pilotage exemption certificate"** means a pilotage exemption certificate –

- (a) continued by section 15(2) of the Local Government Amendment Act (No 2) 1999; or
- (b) issued under rule 90.6:

**"Region"** means –

- (a) in respect of a regional council or a unitary authority that has responsibility for a pilotage district, a region as defined in section 2 of the Local Government Act 1974; and
- (b) in respect of a district council that has responsibility for a pilotage district, a district as defined in section 2 of the Local Government Act 1974:

**“Ship”** means every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes –

- (a) a barge, lighter, or other like vessel:
- (b) a hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates:
- (c) a submarine or other submersible.

### **90.3 Requirement to be appointed or licensed pilot**

No person may act as a pilot within any pilotage district unless that person –

- (a) has been appointed or licensed by the local authority within whose region the pilotage district is located to act as a pilot within that pilotage district and holds a certificate to that effect; or
- (b) in the case of a pilotage district for which no local authority is responsible, has been licensed by the Director to act as a pilot within that pilotage district and holds a certificate to that effect.

### **90.4 Appointment and licensing of pilots**

- (1) A local authority with a pilotage district within its region may appoint and license persons to act as pilots within that pilotage district, in accordance with the General Harbour (Nautical and Miscellaneous) Regulations 1968 and bylaws.
- (2) An appointed pilot shall be a pilot who is appointed by the local authority whether as an employee or otherwise. A licensed pilot shall be a pilot who is licensed by the local authority, but is employed by a port company or other person or is self-employed.
- (3) The Director may license any person who meets the requirements of regulation 59(1) of the General Harbour (Nautical and Miscellaneous) Regulations 1968 to act as a pilot within any pilotage district for which no local authority is responsible.

### **90.5 Requirement to carry pilot in pilotage district**

A master of a ship that proceeds in a pilotage district, other than in any waters where bylaws provide that pilotage is not compulsory, must ensure that a pilot who has been appointed or licensed to act in that district is carried on board the ship, unless –

- (a) the master holds a pilotage exemption certificate; or
- (b) the ship is exempt from compulsory pilotage by virtue of section 15(5) of the Local Government Amendment Act (No 2) 1999 or rule 90.7.

## **90.6 Pilotage exemption certificates**

- (1) A person who holds a certificate of competency may apply to a local authority to be examined as to his or her competency to pilot ships within the applicable pilotage district.
- (2) On receipt of the application and any fee prescribed by bylaws, the local authority must arrange for the applicant to be examined by the Harbourmaster or some other person or persons that the local authority has appointed for that purpose.
- (3) If the applicant is, on examination, found to be competent to act as a pilot in relation to the ship or ships in the pilotage area or part of the pilotage area to which the application relates, the local authority must issue a pilotage exemption certificate to that effect.
- (4) The certificate must show the name of the person to whom it was granted, the maximum size of the ship to which it applies in terms of tonnage, draught or length and the pilotage district or part thereof to which it relates.
- (5) The effect of the certificate is to allow that person, subject to any bylaws, to pilot the ships to which it applies, and of which he or she is the master at that time, within the pilotage district, or part thereof, to which it relates, as if he or she were a duly appointed or licensed pilot.
- (6) Despite anything in any bylaws, a pilotage exemption certificate shall not be valid for the master of a bulk ship, but the Director may, on the application of a local authority, exempt the master of any particular ship from the foregoing prohibition in accordance with section 47 of the Maritime Transport Act 1994.
- (7) If it appears to a local authority that navigation within the pilotage district attached to the harbour under its control, or within any part thereof, has been significantly affected by the execution of harbour works or the occurrence of other changes, it may, after obtaining the written approval of the Director, cancel all pilotage exemption certificates relating to the district, or the affected part, granted by it before a date, when, in the opinion of the local authority, navigation within the district or the part in question became significantly affected by the harbour works or other changes.
- (8) A pilotage exemption certificate ceases to have any force at the expiration of any continuous period of 1 year (reckoned from a date not earlier than the date on which it was granted) if, during that period, the holder has not on at least 2 occasions exercised his or her authority to pilot a ship pursuant to the certificate.

## **90.7 Exemptions from compulsory pilotage**

- (1) All ships of not more than 100 tons gross tonnage shall be exempted from compulsory pilotage.
- (2) A local authority may exempt from compulsory pilotage within its pilotage district any ship of more than 100 tons gross tonnage but less than 500 tons gross tonnage.
- (3) Any exemption granted pursuant to rule 90.7(2) may be granted subject to such conditions relating to safety or good navigation as the local authority may specify, and may be amended or revoked by the local authority.

## **90.8 Bylaws**

Except where a rule specifies to the contrary, nothing in Part 90 shall be construed as affecting or limiting the provisions in bylaws that are continued by or amended under section 15(1)(b) of the Local Government Amendment Act (No 2) 1999.

# Maritime Rules

## PART 90

### Consultation Details

*(This text does not form part of the rules contained in Part 90. It provides details of the consultation undertaken in making the rules.)*

#### Summary of Consultation

As a result of the formal consultation process thirteen organisations provided written comments on the draft of Part 90 "Pilotage (Appointment of Pilots and Pilotage Exemptions)". Auckland Regional Council, Lyttelton Port Company and Port of Timaru Ltd had no comment on the proposed rules Part.

#### General

Canterbury Regional Council and Taranaki Regional Council commented that provision should be made for the withdrawal and suspension of pilotage exemption certificates and for withdrawal of pilot licences. Otago Regional Council agreed that provision should be made for the withdrawal of pilot licences along similar lines to the provisions in rule 90.6.

*MSA has decided not to include provision for the withdrawal of pilot licences and the suspension of pilotage exemption certificates. The intention of Part 90 as an interim rules Part was to preserve the status quo as it was prior to the repeal of the Harbours Act 1950. It appears that the withdrawal of pilot licences and the suspension of pilotage exemption certificates were not dealt with under the Harbours Act but under bylaws that have been continued in force.*

*The original intention was for Part 90 to continue the power to withdraw a pilotage exemption certificate that was found in section 219 of the Harbours Act. Following a report on Part 90 made by the Regulations Review Committee the MSA has decided to delete rule 90.6 which prescribed this power. The report of that Committee considered that the rule was an inappropriate legislative vehicle for this power without a specific empowerment provision in the Maritime Transport Act. The Committee also had concerns over the vagueness of the grounds for withdrawal and the lack of a process for ensuring that natural justice is observed in the exercise of the power.*

*MSA is also reluctant to make the proposed amendment, as the interim nature of this rule and the limited time available for consultation have meant that persons directly affected by this proposal have not been consulted on this issue.*

Taranaki Regional Council commented that, while its bylaws cover the cancellation of pilots' licences and the suspension of pilotage exemption certificates, there is no provision for the suspension of a pilot's licence. The Council proposes that Part 90 should cover this power.

*MSA does not support this proposal for the reasons provided above.*

Otago Regional Council commented that no provision was made for requiring compulsory pilotage within established pilotage areas and that this should be included in rules, as anticipated by sections 60A and 65A of the Maritime Transport Act.

*MSA has accepted this proposal for the reasons stated, and because it is appropriate that the requirement from which an exemption is given be stated in the same rules Part.*

A further submission by Otago Regional Council relates to liability of the regional councils for pilot error. The Council proposes that immunity from such liability for regional councils be incorporated into Part 90. Otago Regional Council also submits that the harbourmaster's power to require a pilot to make a written report should be carried over from the repealed Harbours Act.

*Liability provisions are now provided in section 60B of the Maritime Transport Act. This makes it clear that neither a pilot nor a person or body corporate providing a pilot will be liable for the negligence or want of skill of the pilot while acting as the pilot of a ship.*

*The power to require a pilot to make a written report is a harbourmaster power which is beyond the scope of maritime rules. If this is not adequately provided for in the Local Government Act 1974, administrative or contractual measures should be considered to ensure this power is available.*

South Port New Zealand Ltd comments that limits on pilot liability under sections 214(a) and (b) of the repealed Harbours Act have not been carried over, nor have provisions for bonds to be provided by pilots.

*The pilot liability limitation provisions are now found in section 60B of the Maritime Transport Act 1994. The requirement for pilots to provide a bond has been removed in favour of a complete waiver of pilot liability for neglect or want of skill while acting as a pilot.*

Canterbury Regional Council commented that the rule should be drafted in a manner that preserves the effect of pilotage bylaws continued by the Local Government Amendment Act (No 2) 1999.

*MSA agrees that the rule should be drafted to ensure that it does not displace pilotage bylaws and has added the phrase "in accordance with bylaws continued or amended by section 15(1)(b) of the Local Government Act (No 2) 1999" where necessary. In addition rule 90.8 has been added ensuring that the effect of existing bylaws is preserved.*

Northland Regional Council fully supported the introduction of Part 90 and considered a replacement was needed for section 225 of the Harbours Act providing the ability to grant exemptions from pilotage for ships under a specified tonnage.

*MSA notes that section 15 of the Local Government Amendment Act (No 2) 1999 continues all existing exemptions made pursuant to section 225 of the Harbours Act. Nevertheless, we agree to this proposal in case further exemptions are required that cannot be dealt with by the making of bylaws.*

Southland Regional Council queries whether sections 216, 218, 225, 227, 228 and 229 of the repealed Harbours Act are also to be carried over by the maritime rules.

*Section 225 has now been carried over as rule 90.7. MSA notes that existing exemptions under section 225 have been continued in force by section 15(5) of the Local Government Amendment Act (No 2) 1999. The remaining sections have been sufficiently covered by replacement provisions in the Maritime Transport Amendment Act 1999 and the Local Government Amendment Act (No 2) 1999. Section 216 is now covered by section 60A of the Maritime Transport Act 1994. Section 218, while desirable, is not essential and will be replaced by section 41(6) once the comprehensive rule review of pilotage is complete. Sections 227 and 228 are sufficiently covered by safety and fraud offences under the Maritime Transport Act 1994.*

Port Nelson Ltd commented that Part 90 does not carry over any provisions permitting local authorities to charge for pilotage for ships with an annual pilotage rates exemption certificate. Port Nelson Ltd also supported a provision enabling local authorities to remove a pilot's licence.

*The maritime rules are not authorised to impose fees or charges. In this case, fees for pilotage and pilot exemption ships are best dealt with through bylaws made under section 684B(h) of the Local Government Act 1974. The proposal to remove a pilot's licence has been dealt with above. It is noted that existing bylaws providing for removal of pilot licences are continued in force.*

Coastal Tankers Limited submitted an extensive proposal in relation to pilotage rules generally and pilot exemptions for bulk oil carriers in particular.

*Due to the interim nature of this rules Part and the limited consultation undertaken in its drafting, it has been decided that it is more appropriate to consider this proposal when the regime for pilots and pilotage is completely reviewed later next year. It should be noted that this proposal was received before consultation on this interim Part 90 was initiated and was no doubt aimed at the more comprehensive overhaul of the pilotage system to be undertaken next year.*

## **90.1 Entry into force**

Otago Regional Council submits that Part 90 should come into force on the day after its notification in the Gazette, as it is urgently required to fill a gap in legislation.

*Section 448(3) of the Maritime Transport Act requires a minimum of 28 days notice in the Gazette before a maritime rule can come into force.*

## **90.2 Definition of "pilot"**

Southland Regional Council comments that the definition of the term "pilot" is too broad and should be limited by reference to rule 90.3, namely, the requirement that no pilot may act unless he or she has been licensed or appointed by a local authority. This view is supported by South Port New Zealand Ltd.

*The definition of "pilot" is that found in section 2 of the Maritime Transport Act. It is not possible for rules to alter definitions in the authorising legislation unless the term is used in a context requiring a different meaning. It may be possible to consider a clarification of the meaning of "conduct" in the comprehensive review of pilotage rules later next year.*

## 90.2 Definition of "local authority"

Otago Regional Council comments that the definition of this term should be refined to apply to those authorities who have pilotage districts.

*MSA agrees and has amended the definition of "local authority" to clarify that it means a local authority that has responsibility for a pilotage district.*

## 90.3 Requirement to be appointed or licensed

Canterbury Regional Council commented that the distinction between appointed and licensed pilots should be discontinued.

*MSA will consider this proposal in the comprehensive review of pilotage rules later next year. The intention of this interim Part is to preserve the status quo as it was before the repeal of the Harbours Act. It is noted that pilotage bylaws and the General Harbours (Nautical and Miscellaneous) Regulations continued by the Local Government Amendment Act (No 2) 1999 continue to refer to appointed pilots. The rule therefore ensures consistency with this legislation.*

## 90.4 Appointment of pilots

Otago Regional Council comments that there is nothing in the rule to establish competency over time once a pilot has been established. The Council also notes that "drunkenness" has been removed from rule 90.6 as a ground for withdrawing a pilotage exemption certificate.

*MSA will consider the continued competency of pilots issue in its comprehensive review of pilotage rules. "Drunkenness" was omitted on the basis that this would be a difficult ground to prove. Rule 90.6 has now been removed on the recommendation of the Regulations Review Committee.*

Port of Greymouth Management commented that the word "region" should be replaced by "region or district" to take into account pilotage districts that are administered by district councils not regional councils.

*MSA agrees and has defined "region" as meaning both district and region as defined by the Local Government Act 1974.*

## 90.5 Pilotage Exemption certificates

Canterbury Regional Council proposed adding the words "and be issued with a pilotage exemption certificate" at the end of paragraph (1). The reason given is to ensure the issue of certificates is done in accordance with existing bylaws.

*We do not agree. The issue of the pilotage exemption certificate is dealt with under paragraph (2) of rule 90.5, which provides for the granting of exemption in accordance with bylaws. The additional requirements of any bylaws are preserved by rule 90.8, which specifies that Part 90 does not modify the operation of bylaws continued in force by the Local Government Amendment Act (No 2) 1999.*

Southland Regional Council comments that the phrase “some other person or persons” should be given specificity to identify standards that examining persons must reach. This view is echoed by South Port New Zealand Ltd.

*MSA will look at this proposal in its comprehensive review of pilotage rules. It is not within the scope of this interim Part to make such an amendment, which would modify the existing arrangements that the rule is intended to preserve pending review.*

Otago Regional Council suggests that the phrase “amended by” should be amended to “amended under”.

*MSA agrees with this comment and the rule is amended accordingly.*

## **90.6 Power to withdraw pilotage exemption certificate**

Canterbury Regional Council suggests that the power to withdraw a pilotage exemption certificate should be at the discretion of the local authority or the Director if the holder of the certificate breaches any of the provisions of the bylaws under which the certificate is issued or is convicted of any offence under sections 61, 64 or 65 of the Maritime Transport Act 1994, and may be in addition to or instead of any other penalties. The power to suspend a pilotage exemption certificate should also be included in the rule.

*MSA does not support this proposal for these interim rules for the reasons stated in the General Comment to these Consultation Details.*

Wellington Regional Council commented that the power to suspend a certificate should be given to the Harbourmaster to make clear who within a local authority should take the initial action to remove a pilot exemption certificate. The Council comments that current bylaws give the Harbourmaster the power to suspend a certificate and the Council the power to withdraw the certificate and that these powers should be reflected in the rules.

*As noted in the general comments, following a report on Part 90 made by the Regulations Review Committee the MSA has decided to delete rule 90.6. The report of that Committee considered that the rule was an inappropriate legislative vehicle for this power without a specific empowerment provision in the Maritime Transport Act. The Committee also had concerns over the vagueness of the grounds for withdrawal and the lack of a process for ensuring that natural justice is observed in the exercise of the power.*