

Explanatory Statement

Marine Order 42 (Cargo, stowage and securing) 2014 (Order 2014/11)

Authority

1. Subsection 112(4) of the *Navigation Act 2012* (*Navigation Act*) provides that the regulations may provide for the carriage of cargo on a vessel
2. Subsection 339(1) of the *Navigation Act* authorises the Governor-General to make regulations necessary or convenient for carrying out or giving effect to the *Navigation Act*.
3. Paragraph 340(1)(a) of the *Navigation Act* provides that the regulations may provide for giving effect to SOLAS (the International Convention for the Safety of Life at Sea).
4. Subsection 342(1) of the *Navigation Act* allows the Australian Maritime Safety Authority (*AMSA*) to make a Marine Order about anything that may or must be made by regulation.
5. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power in an Act to make a legislative instrument includes the power to repeal or amend the instrument, subject to any conditions that apply to the initial power.
6. This Order was made under subsection 342(1) and is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

7. This Order gives effect to regulations 2 (Cargo information), 5 (Stowage and securing) and 5-2 (Blending of liquid bulk cargoes) of Chapter VI of SOLAS

Overview

8. This new issue of Marine Order 42 updates the reference to the *Code of Safe Practice for Ships Carrying Timber Deck Cargoes, 2011*, which replaces the 1991 Code mentioned in the previous issue. The scope of the Order is extended to include cargo matters covered by Chapter VI of SOLAS. References to particular positions in AMSA are removed, and the Order has been rewritten in a clearer style.

Consultation

9. A copy of the draft of this Order was placed on AMSA's website on 10 April 2014 for stakeholders to consider and provide feedback by 16 May 2014. A copy of the draft Order was also emailed to industry stakeholders for comment. Three responses were received, but none required any change to the draft.
10. The Office of Best Practice Regulation (OBPR) was consulted and considered that the Order dealt with matters of a minor or machinery nature and no regulatory impact statement was required. The OBPR reference number is 2013/15333.

Documents incorporated by reference

11. The Order incorporates the following documents by reference:
 - *Code of Safe Practice for Ships Carrying Timber Deck Cargoes, 2011*, as adopted by IMO resolution A.1048(27)
 - *Code of Safe Practice for Cargo Stowage and Securing*, as adopted by IMO resolution A.714(17)
 - International Maritime Dangerous Goods Code
 - MSC.1/Circ. 1353 *Revised Guidelines for the Preparation of Cargo Securing Manual*

- SOLAS.

12. A copy of documents issued by the International Maritime Organization (IMO) and mentioned in the Order are available on the IMO website <http://www.imo.org> or may also be purchased from:

International Maritime Organization
4 Albert Embankment, London SE1 7SR
Telephone +44(0)20 7735 7611
Fax +44(0)20 7587 3210
IMO website: <http://www.imo.org>

Commencement

13. This Order commenced on 1 August 2014.

Contents of this instrument

14. Section 1 sets out the name of the Order.
15. Section 1A provides for the commencement of the Order.
16. Section 1B repeals the previous issue of the Order.
17. Section 2 states the purpose of the Order.
18. Section 3 sets out the powers in the Navigation Act that enable the Order to be made.
19. Section 4 sets out definitions of terms used in the Order.
20. Section 5 provides for the interpretation of other terms used in the Order.
21. Section 6 sets out the activities and vessels to which the Order applies.
22. Section 7 sets out the arrangements for a person to apply for an exemption of a vessel from a requirement of the Order, the CSS Code or the 2011 TDC Code. It adopts the application process in *Marine Order 1 (Administration) 2013* and sets out criteria to ensure approval is only given if safety is assured.
23. Section 8 sets out the arrangements for a person to apply for use of an equivalent (as defined in Marine Order 1). Again, the application process for this is that set out in Marine Order 1 and criteria for the decision are provided to ensure safety if approval is given.
24. Section 9 provides for review of decisions under the Order (except under section 7 or 8, for which review is provided in Marine Order 1).
25. Section 10 gives effect to paragraphs 1 and 2.1 of regulation 2 of Chapter VI of SOLAS, which requires a shipper to give information about cargo to the master of a vessel before loading.
26. Section 11 gives effect to paragraph 3 of regulation 2 of Chapter VI of SOLAS, which requires confirmation of the gross mass of cargo units before they are loaded on a vessel.
27. Section 12 requires cargo and containers to be treated in a way that complies with regulation 5 of Chapter VI of SOLAS.
28. Section 13 restricts the mass that can be loaded in a freight container to the maximum gross mass indicated on the container's Safety Approval Plate.
29. Section 14 has requirements for carriage of an approved Cargo Security Manual, and for dealing with cargo in accordance with regulation 5 of Chapter VI of SOLAS.

30. Section 15 provides for AMSA to give notice if it considers that there is a non-compliance, or that the loading, stowage or carriage of cargo on a vessel is unsafe. AMSA may require corrective action to be taken.

31. Section 16 provides for AMSA to require additional information if it is concerned that loading or carriage of a cargo might create a danger to the vessel or a person on the vessel.

32. Section 17 restricts carriage of cargo on deck, setting out the only circumstances in which it is permitted.

33. Section 18 gives effect to Regulation 5-2 of Chapter VI of SOLAS, which restricts the blending of liquid cargoes or production processes involving cargoes on vessels.

Compatibility with human rights

34. This statement is made for subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of legislative instrument

35. This Order is made under the *Navigation Act 2014*. It gives effect to provisions of the International Convention for the Safety of Life at Sea that deal with cargo information, stowage and securing of cargo, blending of liquid bulk cargoes and production processes on voyages.

Human rights implications

36. Sections 13, 14 and 15 of the Order create offences to which strict liability applies. They also create civil penalties. Strict liability offences may engage and limit the presumption of innocence mentioned in Article 14 of the International Covenant on Civil and Political Rights (ICCPR). Civil penalty provisions may engage the criminal process provisions under Articles 14 and 15 of the ICCPR.

37. Strict liability is imposed to protect the safety of persons on vessels and the marine environment. The penalties are relatively low (50 penalty units) and are within the limitation imposed by paragraph 341(1)(a) of the *Navigation Act*. The civil penalty provisions are directed at masters and owners of vessels rather than the community at large and are regulatory in nature. The civil penalty provisions are authorised by paragraph 341(1)(b) of the *Navigation Act*. Having regard to the objectives of the civil penalty provisions (which are protective, preventative, disciplinary or regulatory in nature), and the relatively low level of penalty, the civil penalties should not be considered to be criminal matters for human rights law. It is considered any limitation on human rights as a result of the imposition of strict liability and the creation of civil penalties is reasonable, necessary and proportionate.

Conclusions

38. AMSA considers that this instrument is compatible with human rights. Apart from the matters mentioned, it does not affect any rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies.

Making the instrument

39. This instrument has been made by the Acting Chief Executive Officer of the Australian Maritime Safety Authority, in accordance with subsection 49(4) of the *Australian Maritime Authority Act 1990*.