

Explanatory Statement

Marine Order 28 (Operations standards and procedures) 2015 (Order 2015/8)

Authority

1. The following provisions of the *Navigation Act 2012* (the Navigation Act) provide for this Order to be made.
2. Section 58 provides that the regulations may provide for hours of work and hours of rest of seafarers on regulated Australian vessels.
3. Paragraph 339(2)(m) provides that the regulations may provide for records relating to compliance with the Navigation Act.
4. Paragraph 340(1)(a) provides that the regulations may give effect to the International Convention for the Safety of Life at Sea (SOLAS).
5. Paragraph 340(1)(h) provides that the regulations may give effect to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).
6. Subsection 339(1) provides that regulations may be made prescribing matters required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to the Act.
7. Subsection 341(1) provides that the regulations may provide for the imposition of penalties and civil penalties for a contravention of the regulations.
8. Subsection 342(1) allows the Australian Maritime Safety Authority (AMSA) to make orders for any matters in the Act for or in relation to which provision may be made by regulations.
9. 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.
10. This Order was made under subsection 342(1) of the Navigation Act and is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

11. This Order provides for the safe navigation and operation of vessels by giving effect to certain provisions of the STCW Convention, the STCW Code and SOLAS that relate to operations standards and procedures.

Overview

12. This Order provides for the STCW Convention and STCW Code responsibilities of owners of vessels regarding the assignment of appropriately qualified and trained seafarers to vessels and the safe manning of vessels. The Order also provides for masters of vessels and seafarers newly assigned to vessels to comply with their responsibilities under the STCW Code relating to familiarisation of seafarers with shipboard equipment, operating procedures and other arrangements for the performance of their duties.
13. The Order also provides for the observance on vessels of the STCW Convention requirements for vessel watchkeeping arrangements and the related STCW Code watchkeeping standards. The Order provides for the display of watch schedules on vessels, specifies minimum hours of rest for seafarers and provides for the keeping of records of seafarers' hours of rest.

14. The Order also gives effect to SOLAS in relation to the safe navigation and operation of vessels by providing for appropriate manning and effective communication on board vessels.

15. This Order replaces *Marine Order 28 (Operations standards and procedures) 2012* following a review of the Order as part of AMSA's ongoing review of instruments. Current legislative drafting style has been applied. When the Order commences Schedule 14 of *Marine Order 4 (Transitional modifications) 2013* will cease to have effect because that schedule modifies the previous issue of the Order.

16. This Order, unlike the Order that it replaces, does not require an officer in charge of an engineering watch for vessels that are over 750 kW in propulsion power and in port. The STCW Code only requires this for vessels over 3000 kW in power and allows the master of a vessel the discretion to determine the composition of the watch below this level.

Consultation

17. A copy of the draft of this Order was placed on the AMSA website on 10 July 2015 for public comment by 14 August 2015. Over 190 stakeholders including industry representative organisations, seafarer representative organisations, classification societies, maritime training institutions and state and commonwealth government departments were invited to comment and 2 responses were received from Austral Fisheries and the Australian Institute of Marine and Power Engineers. These comments were taken into account when preparing the final instrument.

18. The Office of Best Practice Regulation (OBPR) was also consulted and considered that the Order will have minor impacts and no regulatory impact statement was required. The OBPR reference number is 19083.

Documents incorporated by reference

19. Paragraph 8(2)(b) incorporates by reference the safe manning document issued to a vessel under Chapter V, Regulation 14 paragraph 2 of SOLAS. Specified provisions of the STCW Convention and the STCW Code are also incorporated by reference.

20. The definitions of SOLAS and the STCW Convention that are used in the Order make clear that these documents are as amended and in force from time to time. The definition of the STCW Code makes clear it is as adopted by resolution STCW/CONF.2/34 (dated 3 August 2010) of the 2010 Conference of Parties to the STCW Convention.

21. IMO documents including the STCW Convention, the STCW Code and SOLAS may 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>

22. A 2011 edition of the STCW Convention and the STCW Code is available for from the IMO that includes the 2010 Manila amendments made by the 2010 Conference of the Parties to the STCW Convention.

Commencement

23. This Order commenced on 1 January 2016.

Contents of this instrument

Division 1 Preliminary

24. Section 1 states the name of the Order.
25. Section 1A provides for the commencement of the Order.
26. Section 1B repeals the previous issue of the Order.
27. Section 2 states the purpose of the Order, which is to provide for the safe navigation and operation of vessels by giving effect to specified provisions of the STCW Convention, the STCW Code and SOLAS.
28. Section 3 sets out the powers in the Navigation Act that enable the Order to be made.
29. Section 4 sets out definitions of terms used in the Order.
30. Section 5 describes the vessels to which the Order applies, its geographical application to foreign vessels and the provisions of the Order that do not apply to foreign vessels.
31. Section 6 allows a person to apply to AMSA for an exemption from a requirement of section 12 about minimum hours of rest for a seafarer on a regulated Australian vessel. An exemption may only be given if it is in accordance with Section A -VIII/1 of the STCW Code, which provides that an exception from the required hours of rest may be allowed if the rest period is not less than 70 hours in any 7 day period.

Division 2 Responsibilities of owners and seafarers

32. Section 7 provides for the general responsibilities of owners of vessels and seafarers. It requires them to ensure the obligations set out in Section A-I/14 of the STCW Code relating to the safe operation of vessels are given effect. Under these obligations seafarers are to become familiar with any equipment and procedures needed for the performance of their duties and receive any necessary training before being assigned the duties.
33. Note that under the definition of *owner* in subsection 14(1) of the Navigation Act, the owner includes the person with overall general control and management of the operation of the vessel (commonly known as the operator).
34. Section 8 sets out the responsibilities of owners of vessels in relation to the assignment of seafarers. Under section 8 it is an offence for an owner not to ensure each seafarer assigned to the vessel holds the appropriate seafarer qualification and the vessel complies with its safe manning document issued under SOLAS. Breach of these obligations may result in a criminal or civil penalty under the Order. Under subsection 8(8) owners of regulated Australian vessel must also provide introductory familiarisation programs and training for newly employed seafarers as required by paragraph 1 of Section B-I/14 of the STCW Code.
35. Section 9 requires the master of a vessel to comply with paragraph 3 of Section B-I/14 of the STCW Code (which deals with inducting seafarers new to a ship).
36. Section 10 requires seafarers newly assigned to a vessel to comply with paragraphs 4 and 5 of Section B-I/14 of the STCW Code (which deals with responsibilities of seafarers new to a ship).

Division 3 Standards for watchkeeping

37. Section 11 requires the owners of vessels to ensure that the arrangements for watchkeeping regarding fitness for duty that are set out in sections 12 to 17, if

applicable to the vessel under section 5, are complied with in relation to seafarers assigned to the vessel. These arrangements implement the standards for watchkeeping set out in Chapter VIII of the STCW Code. Breach of this obligation may result in a criminal or civil penalty under the Order.

38. Section 12 sets out minimum hours of rest for seafarers.

39. Section 13 allows for the master of a vessel to suspend a watch schedule or request seafarers to perform any necessary hours of work in specified circumstances such as an emergency or when the vessel is assisting other vessels or persons in distress at sea.

40. Section 14 requires the display of watch schedules in easily accessible areas on a vessel in the working language of the vessel and, if the working language is not English, in English.

41. Section 15 provides for the keeping of records of hours of rest by each seafarer on, and the owner of, a regulated Australian vessel. The records must be able to be endorsed by each seafarer. The owner of a vessel must if requested by a seafarer during the retention period, give the seafarer a copy of the endorsed records that relate to the seafarer. The section ensures that the records be available for inspection by an AMSA inspector during the specified retention period. *Marine Order 11 (Living and working conditions on vessels) 2015* also provides for the recording of hours of rest and includes a related offence.

42. Section 16 provides for the keeping of records of hours of rest on foreign vessels and their availability for inspection by an AMSA inspector. Because this section relates to foreign vessels this is done by reference to the equivalent SOLAS requirement because the government of the country whose flag each foreign vessel is entitled to fly must provide for the implementation of these SOLAS requirements under its own legislation.

43. Section 17 provides for the observance of the STCW Code watchkeeping standards by the master, chief engineer and other seafarers involved in watchkeeping on vessels. The watchkeeping standards relate to matters such as certification of officers who have duties related to watchkeeping, the advance planning of voyages and keeping a proper lookout. They include general watchkeeping principles. Masters must ensure the vessel's watchkeeping arrangements comply with paragraph 2 of Regulation VIII/2 of the STCW Convention.

Statement of compatibility with human rights

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

Overview of the legislative instrument

45. This Order is made under the *Navigation Act 2012* (the Navigation Act). It provides for the safe navigation and operation of vessels by giving effect to parts of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW Convention), the STCW Code and the International Convention for the Safety of Life at Sea (SOLAS). The Order deals with vessel operations standards and procedures including watchkeeping arrangements.

46. The Order implements for Australia the STCW responsibilities of owners and seafarers of vessels in relation to the initial assignment of seafarers to vessels (such as ensuring their familiarity with equipment and procedures relating to their duties). The Order sets out vessel owner's responsibilities for the safe manning of vessels and for watchkeeping. The owner's watchkeeping responsibilities include ensuring

seafarers have the prescribed minimum hours of rest, that their hours of work and rest are recorded, that watch schedules are displayed and that the STCW watchkeeping standards set out in the STCW Code are observed. The Order also sets out the responsibilities of the master of regulated Australian vessels in relation to familiarization of new seafarers with equipment and procedures relating to their duties.

47. The Order also gives effect to SOLAS in relation to the safety navigation and operation of vessels by providing for effective communication on board vessels and their compliance with safe manning documentation.

Human rights implications

48. The subject matter of this Order promotes safety at sea. It engages the right to work and rights in work by promoting safe and healthy working conditions of seafarers. It ensures vessels have an appropriate number of qualified seafarers who are adequately trained and rested. It ensures the watchkeeping standards of the STCW Code are followed on board regulated Australian vessels and by foreign vessels in Australian ports and waters.

49. Sections 8 and 11 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.

50. Strict liability is imposed to protect life at sea. 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 seafarers and owners of vessels rather than the community at large and are regulatory in nature.

51. 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.

Conclusion

52. AMSA considers that this instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Making the instrument

53. 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*.