

Explanatory Statement

Marine Order 57 (Helicopter operations) 2016 (Order 2016/3)

Authority

1. Subsection 112(1) of the *Navigation Act 2012* (the Navigation Act) provides that the regulations may provide for the carriage of passengers.
2. Subsection 112(4) of the Navigation Act provides that the regulations may provide for the carriage on a vessel of cargo.
3. Subsection 125(1) of the Navigation Act provides that the regulations may provide for musters, drills, checks of machinery and equipment and other tests.
4. Subsection 341(1) of the Navigation Act provides that the regulations may provide for the imposition of penalties for a contravention of a provision of the regulations.
5. Subsection 342(4) of the Navigation Act provides that a Marine Order may provide for a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other document as in force or existing at a particular time or from time to time.
6. 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.
7. Subsection 342(1) of the Navigation Act allows the Australian Maritime Safety Authority (AMSA) to make orders for any matter in the Act for or in relation to which provision may be made by regulations.
8. 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.
9. This Order was made under subsection 342(1) and is a legislative instrument for the *Legislation Act 2003*.

Purpose

10. This Order provides for safe vessel-helicopter operations, which includes the transfer of persons between a vessel and a helicopter and the loading or unloading of a vessel by helicopter.

Overview

11. This Order provides for safe vessel-helicopter operations. It permits vessel-helicopter operations only if there are in place for the vessel safety arrangements that are at least as effective as the international standard for such operations. These are critical operations that require risk control arrangements to be in place and followed to reduce potential risk of injury to persons, or damage to equipment or structures. The minimum safety arrangements are in the International Chamber of Shipping publication *Guide to Helicopter/Ship Operations*, 4th edition (the ICS Guide).
12. The ICS Guide is the recognised international standard for practice and guidance on safe and efficient vessel-helicopter operations. The ICS Guide contains the roles and responsibilities of persons involved in vessel-helicopter operations and reflects the latest International Civil Aviation Organization (ICAO) and International Maritime Organization (IMO) requirements.

13. It is accepted practice for shipping companies and helicopter operators to follow the ICS Guide and designers use parts of the ICS Guide when drawing plans of new vessels. Existing vessels on which helicopter-operations are conducted carry copies of the Guide or have procedures based upon the Guide written into their safety management systems. A number of provisions of the Order refer to the ICS Guide.

14. This Order contains requirements for owners and masters of vessels, as well as seafarers, relating to safety managements systems for vessel-helicopter operations. In particular, it provides for the instruction of seafarers in their responsibilities under safety management systems and their training in procedures, including emergency procedures, for vessel-helicopter operations.

15. The Order also provides for the determination of the size and location of the landing area or the winching area on the vessel, and the marking of any obstacles in these areas. If the determination is different from the recommendations of the ICS Guide, it must be communicated to the helicopter pilot before an operation commences.

16. The Order also contains requirements for the availability of deck surface load information and communications between a master and helicopter operators or helicopter pilots.

17. The Order replaces *Marine Order 57 (Helicopter operations) 2010* following a review of the Order. When this Order commences, schedule 33 of *Marine Order 4 (Transitional Modifications) 2013* will cease to have effect because that schedule modifies a previous issue of this Order.

Consultation

18. A copy of the draft of this Order was placed on AMSA's website on 15 January 2016 for a 4 week period of public consultation. It was also emailed to some 90 stakeholders, including ship operators, recognised organisations, shipping and cargo industry bodies, marine pilot and helicopter operators, port authorities, training organisations, seafarer representative organisations and various government agencies, including the Civil Aviation Safety Authority. One submission was received and considered.

19. The Office of Best Practice Regulation (OBPR) considers that the changes made by the Order have regulatory impacts of a minor or machinery nature and no regulation impact statement is required. The OBPR reference number is 16724.

Documents incorporated by reference

20. Parts of the *Guide to Helicopter/Ship Operations*, 4th Edition, as published by Marisec Publications, London, in 2008, on behalf of the International Chamber of Shipping (the ICS Guide) are incorporated by reference.

21. The ICS Guide is available for purchase from the International Chamber of Shipping website publications link at <http://www.ics-shipping.org/>. To borrow a copy of the ICS Guide from a library in Australia search for the title of the book on the Australian Libraries Gateway at <https://www.nla.gov.au/libraries/>. Persons having difficulties locating a copy can contact AMSA. Copies are available at AMSA head office. Contact details for AMSA are on the AMSA website at <http://www.amsa.gov.au>.

22. Information on purchasing or obtaining access to the ICS Guide is also available from the AMSA website Marine Orders link at <http://www.amsa.gov.au>.

Commencement

23. This Order commenced on 1 May 2016.

Contents of this instrument

24. Section 1 sets out the name of the Order.

25. Section 1A provides for the commencement of the Order.

26. Section 1B provides for the repeal of *Marine Order 57 (Helicopter operations) 2010*.

27. Section 2 states the purpose of the Order, which is to provide for safe vessel-helicopter operations.

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 provides for the application of the Order to regulated Australian vessels and foreign vessels.

31. Section 6 provides that the master of a vessel may permit a vessel–helicopter operation only if there are in place for the vessel specified arrangements that must be at least as effective in ensuring safety as the arrangements recommended in the ICS Guide for the kind of vessel–helicopter operations to be conducted.

32. Section 7 provides that the owner of a vessel must ensure that the arrangements for the vessel mentioned in section 6 are included in the vessel’s safety management system.

33. Section 8 provides that the master of a vessel is responsible for the instruction of seafarers about their responsibilities for the implementation of the vessel’s safety management system, the maintenance of equipment, and seafarer training.

34. Section 9 provides that a seafarer must carry out the instructions given to the seafarer by the master of a vessel about the seafarer’s responsibilities for implementation of the vessel’s safety management system.

35. Section 10 requires the owner of a vessel to determine the location and size of a landing area or a winching area for a vessel that is, to the extent practical, in accordance with the dimensions and obstacle free zones recommended in the ICS Guide. However, in an emergency the master may make this determination. The owner must, before a vessel–helicopter operation commences, document any divergence from the relevant recommendations in the ICS Guide. Section 10 also provides that the master must ensure that any divergences from recommendations of the ICS Guide are clearly communicated to the helicopter pilot before a vessel–helicopter operation commences.

36. Section 11 provides that the master of a vessel must ensure that any obstacle within the landing or winching area is clearly marked if it does not comply with the recommendations for obstacles in the ICS Guide.

37. Subsection 12(1) provides that the owner of a vessel on which a helicopter is likely to land must ensure the availability of information about the ability of any deck surface of the vessel to withstand the static and dynamic loads of a helicopter landing on the vessel. Subsection 12(2) provides that the master is to provide the load information to persons who require it (eg pilots and other persons). Subsection 12(3) provides that the master of a vessel must not authorise the pilot of a helicopter to land on any deck surface that cannot withstand the static and dynamic loads of a helicopter landing on that surface.

38. Section 13 provides that the master of a vessel must, when preparing for and conducting a vessel-helicopter operation, communicate to the helicopter operator or helicopter pilot any information necessary for the safe conduct of the operation, including the details of the landing or winching area of the vessel.

Statement of compatibility with human rights

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

Overview of the legislative instrument

40. This Order provides for safe vessel-helicopter operations by permitting vessel-helicopter operations only if there safety arrangements in place for the vessel that are at least as effective as those in the International Chamber of Shipping's *Guide to Helicopter/Ship Operations* (the ICS Guide). The ICS Guide is the recognised international standard for practice and guidance on safe and efficient vessel-helicopter operations.

41. This Order provides for the vessel's safety management systems to include arrangements and procedures for vessel-helicopter operations. In particular, it provides for the instruction of seafarers in their responsibilities and their training in procedures, including emergency procedures, for vessel-helicopter operations.

42. The Order also provides for the determination of the size and location of landing areas or winching areas on vessels, and the marking of any obstacles. It contains requirements about making deck surface load information available to relevant persons and for communications between a master and helicopter operators or helicopter pilots.

43. The Order replaces *Marine Order 57 (Helicopter operations) 2010* following a review of the Order.

Human rights implications

44. Subsections 6(1), 7(1), 8(1), 9(1), 11(1), 12(1), 12(2) and 12(3) 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.

45. Strict liability is imposed to ensure the hazards inherent in vessel-helicopter operations are safely managed. 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 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.

Conclusion

46. 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

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