

Explanatory Statement

Marine Order 21 (Safety and emergency arrangements) 2016 (Order 2016/7)

Authority

1. Subsection 51(2) of the *Navigation Act 2012* (the Navigation Act) provides that the regulations may specify matters for making a determination on the minimum manning requirements for vessels.
2. Subsection 125(1) of the Navigation Act provides that the regulations may provide for musters, drills, checks of machinery and equipment and other tests.
3. Paragraph 309(2)(a) of the Navigation Act provides that the regulations may prescribe the entries to be made in an official logbook and when they must be made.
4. 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.
5. Paragraph 339(2)(c) of the Navigation Act provides that regulations may provide for operating, maintaining, checking and testing machinery and equipment.
6. Paragraph 339(2)(l) of the Navigation Act provides that regulations may provide for logbooks.
7. Paragraph 339(2)(m) of the Navigation Act provides that regulations may provide for records about compliance with the Act.
8. Paragraph 340(1)(a) of the Navigation Act provides that regulations may give effect to the International Convention for the Safety of Life at Sea, 1974 (SOLAS).
9. Subsection 341(1) of the Navigation Act provides that regulations may provide for the imposition of penalties for a contravention of a provision of the regulations.
10. 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.
11. 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.
12. This Order was made under subsection 342(1) of the Navigation Act and is a legislative instrument for the *Legislation Act 2003*.

Purpose

13. This Order provides for measures on safety of navigation, emergency procedures and atmosphere sampling and measuring. It gives effect to SOLAS regulations dealing with construction of vessels, life-saving appliances and arrangements, safety of navigation and special measures to enhance maritime safety (Regulation 21 of Chapter II-1 of SOLAS, Regulations 8, 19, 27, 29, 30 and 37 of Chapter III of SOLAS, Regulations 14, 22, 23, 25, 26 and 30 of Chapter V of SOLAS, and Regulation 7 of Chapter XI-1 of SOLAS).

Overview

14. This Order applies to regulated Australian vessels and foreign vessels. Division 2 of the Order relating to safety measures also applies domestic commercial vessels. Safety measures provided for under the Order include the requirement for safe manning of vessels and for the safe manning document to be kept on board. Other safety measures in the Order relate to navigation bridge visibility, pilot transfer arrangements, the operation and testing of steering gear and emergency steering

procedures. The Order also requires record keeping on tests, emergency steering drills and, for passenger vessels, the operational limitations of the vessel.

15. Measures on emergency procedures provided for in the Order relate to the general emergency alarm signal for an emergency station muster of the passengers and seafarers, the signal to prepare to abandon ship, the signal to abandon ship and the signal for an emergency drill. The Order also provides for emergency drill procedures to be carried out in accordance with Regulations 19 and 30 of Chapter III of SOLAS, seafarer training sessions on survival and use of survival equipment, and the practice closing of internal watertight doors on passenger vessels. Other measures on emergency procedures relate to passenger lists, emergency management plans, emergency instructions, seafarers duties in emergencies and record keeping.

16. A copy of the Order must be given to the master of the vessel and officers or other persons directly responsible to the master for a department of the vessel. The master of a vessel must ensure seafarers know their assigned emergency stations and duties, and the emergency procedures generally, and that seafarers are trained in the operation and application of all life-saving, fire fighting and other emergency appliances and equipment of the vessel. Each officer or other persons directly responsible to the master for a department of the vessel must ensure that seafarers under their control are instructed in emergency assigned duties and survival craft, fire and damage control drills.

17. The Order requires that specified types of vessels have on board the atmosphere sampling equipment mentioned in Schedule 2 for the vessel. The atmosphere sampling equipment for a regulated Australian vessel must comply with specified Australian and International Electrotechnical Commission standards.

18. The Order replaces *Marine Order 21 (Safety of Navigation and emergency procedures) 2012* (Marine Order 21) following a review of the Order. Some requirements in the previous issue of Marine Order 21 have been relocated to other Marine Orders. When the Order commences, Schedule 11 of *Marine Order 4 (Transitional modifications) 2013* will cease to have effect because that schedule modifies the previous issue of this Order.

Consultation

19. A draft of this Order was placed on AMSA's website on 23 March 2016 for public consultation with comments to be provided by 30 April 2016. Around 150 stakeholders including shipping and cargo industry bodies, maritime unions and relevant government agencies were contacted by email and invited to comment. Two responses were received and were taken into account in the preparation of the final draft.

20. The Office of Best Practice Regulation (OBPR) was also consulted and considered that changes made by the Order have regulatory impacts of a minor or machinery nature and no regulation impact statement was required. The OBPR reference number is 20369.

Documents incorporated by reference

21. This Order incorporates the following documents by reference:

- Regulations 19, 30 and 37 of Chapter III of SOLAS (Life-saving appliances and arrangements)
- Regulations 14, 22, 23, 26 and 30 of Chapter V of SOLAS (Safety of navigation)
- Part C1 of the NSCV (the National Standard for Commercial Vessels)

- IMO Resolution A.1047 (27) *Principles of minimum safe manning*
- ISO 799:2004 *Ships and marine technology – Pilot ladders*
- AS/NZS 60079.29.1:2008 —*Explosive atmospheres —Gas detectors – Performance requirements of detectors for flammable gases*
- AS/NZS60079.29.2:2008 *Gas detectors — selection, installation, use and maintenance of detectors for flammable gases and oxygen*
- IEC 60079-29-1 Ed. 1.0 *Gas detectors — Performance requirements of detectors for flammable gasses*
- IEC 60079-29-2 Ed 1.0 *Gas detectors — selection, installation, use and maintenance of detectors for flammable gases and oxygen*

22. SOLAS is of treaty status and is incorporated “as amended and in force from time to time for Australia” (see definition of SOLAS in *Marine Order 1 (Administration) 2013*, and definition of Safety Convention in section 14 of the Navigation Act.). The original convention and any amendments in force can be found in the Australian Treaties Series accessible from the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>.

23. Information on obtaining access to IMO Resolution A.1047 (27) is available on the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>, where AMSA provides information on how to navigate the IMO website to download documents. IMO documents may also be purchased from the IMO — see the IMO website at <http://www.imo.org/publications>.

24. Part C1 of the NSCV is available through the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>. The NSCV is incorporated as in force from time to time — see section 6 of Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the national law) for the meaning of National Standard for Commercial Vessels.

25. International Organization for Standardization (ISO) standards and Australian and New Zealand standards mentioned in the Order are available for purchase from the SAI Global website at <https://www.saiglobal.com>. International Electrotechnical Commission (IEC) standards mentioned in the Order are available for purchase from the IEC website at <https://webstore.iec.ch/home>. Persons having difficulty obtaining a copy of any standard mentioned in this Order can contact AMSA. Contact details for AMSA are on the AMSA website at <http://www.amsa.gov.au>.

Commencement

26. This Order commenced on 1 July 2016.

Contents of this instrument

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

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

29. Section 1B repeals the previous issue of the Order.

30. Section 2 states the purpose of the Order.

31. Section 3 sets out the powers in the Navigation Act that enable the Order to be made.

32. Section 4 sets out definitions of terms used in the Order.

33. Section 5 provides that where SOLAS refers to the Administration, this means AMSA.

34. Section 6 describes the application of the Order to regulated Australian vessels and foreign vessels. Division 2 of the Order, dealing with safety measures, also applies to domestic commercial vessels.
35. Section 7 provides a process for applications for an exemption of a regulated Australian vessel from a requirement of the Order. An exemption may only be given if AMSA is satisfied that compliance with the requirement would be unnecessary or unreasonable and giving the exemption would not contravene SOLAS.
36. Section 8 provides for applications for approval to use an equivalent to a requirement of the Order. Approval may only be given if AMSA is satisfied that use of the equivalent would be at least as effective as compliance with the requirement to which the equivalent is an alternative.
37. Division 2 is about safety measures.
38. Section 9 prescribes matters for section 51 of the Navigation Act which is about the minimum complement of seafarers for a vessel. Section 9 requires AMSA to have regard to IMO Resolution A.1047 (27) *Principles of minimum safe manning*. It also provides that the owner of a vessel to which Regulation 14 of Chapter V of SOLAS applies must ensure that the safe manning document for the vessel is kept on board the vessel and is available for inspection. A copy of the safe manning document must be placed on board the vessel in a location where it is available for perusal, without the need for a seafarer to ask for access to it. The owner of a vessel to which Regulation 14 of Chapter V of SOLAS applies must determine the working language of the vessel and ensure that paragraph 3 of Regulation 14 of Chapter V of SOLAS is complied with.
39. Section 10 provides that AMSA may determine in writing that a regulated Australian vessel, that is engaged on a near coastal voyage and is less than 3000 GT, must carry a master and crew that hold the specified national law certificates mentioned in the section. In making this determination, AMSA must have regard to the requirements of IMO Resolution A.1047 (27) *Principles of minimum safe manning* that are relevant to near coastal voyages.
40. Section 11 adopts for vessels SOLAS and NSCV requirements for navigation bridge visibility.
41. Section 12 provides requirements for pilot transfer arrangements when a vessel uses a pilot, including the requirement that these arrangements be in accordance with Regulation 23 of Chapter V of SOLAS. It also provides that an inspector may prohibit further use of a pilot boarding arrangement if he or she thinks that the means of access are defective or do not comply with this Order.
42. Section 13 provides that the master of a vessel that has 2 or more steering gear power units capable of simultaneous operation must ensure that at least 2 units are operating when the vessel is entering an area where navigation requires special caution.
43. Section 14 provides for the checking and testing of a vessel's steering gear in accordance with paragraphs 1 and 2 of Regulation 26 of Chapter V of SOLAS, within 12 hours before the vessel's departure from a port, and for emergency steering drills, to test emergency steering procedures at least once every 3 months. If an exemption is given by AMSA for a vessel that regularly travels on short voyages, checks and tests must be carried out at least once every week. The section requires the recording of information on the checks, tests and emergency steering drills in the vessel's official log book. It also provides for the display of clear operating instructions on remote steering gear control systems and steering gear power units. The master of a

vessel must ensure that officers operating or maintaining steering gear on a vessel are familiar with the operation of the steering systems and the change-over procedures.

44. Section 15 provides that the owner of a passenger vessel must ensure that the operational limitations of the vessel are documented in accordance with Regulation 30 of Chapter V of SOLAS.

45. Division 3 is about emergency procedures.

46. Section 16 provides for requirements on the general emergency alarm signal for an emergency station muster of the passengers and seafarers on a vessel.

47. Section 17 provides requirements for the signal to abandon ship. The signal must be decided by the master of the vessel. The section sets out what must happen if the master decides to abandon ship and the processes that are then to be followed, including making inoperative any machinery or appliance whose operation could impede the safe abandonment of the vessel, and warning seafarers working below deck in sufficient time.

48. Section 18 provides that the master of a vessel must decide the abandon ship signal and state it in the emergency instructions and muster list. It also provides that when abandoning ship, the master of the vessel or senior surviving officer must give the abandon ship signal in the most effective manner possible and authorise those in charge of survival craft to launch the survival craft as soon as ready.

49. Section 19 requires the master of the vessel to ensure that a signal for an emergency drill and instruction that an emergency drill is taking place are given, but allows for alternatives to the emergency signal if the emergency signal is a nuisance outside the vessel. The master of the vessel must ensure that passengers and crew are warned about any emergency drills and, for a passenger vessel, all passengers are told of what actions to take. The master must also ensure that emergency drill procedures mentioned in Schedule 1 are carried out in accordance with Regulations 19 and 30 of Chapter III of SOLAS and that seafarer training sessions on survival and use of survival equipment are carried out at suitable intervals. Seafarers on a passenger vessel must carry out a weekly practice of the closure of internal watertight doors.

50. Section 20 provides that the master of a passenger vessel must ensure that before the vessel leaves port all persons on board are counted and a passenger list containing information about the passengers is prepared and kept ashore and made available to search and rescue services if requested.

51. Section 21 provides that a decision support system for emergency management be kept on the navigation bridge of a passenger vessel and include at least one emergency management plan. It also sets out requirements for emergency management plans including their form.

52. Section 22 provides that the master of a vessel must ensure that clear instructions about what to do in an emergency are given to every person on the vessel and are displayed in specified areas of the vessel. The master of a vessel carrying passengers must assign each passenger to a muster station, record information about the assignment and ensure that procedures are in place to locate and rescue passengers trapped in cabins. The owner of a vessel carrying passengers must also ensure that the muster stations for passengers are indicated by painted or other signs readily visible by day or night.

53. Section 23 provides that the master of a vessel must ensure that seafarers, on joining the vessel, are assigned to an emergency station and survival craft. Lifeboats on a passenger vessel must be assigned a specified minimum number of persons who hold survival proficiency certificates. The master must also assign to seafarers duties if emergencies occur, and provide instructions to seafarers on those duties. The

section provides for the recording of these assignments in the muster list and for their display on the vessel.

54. Section 24 provides that the owner must give a copy of this Order to the master of the vessel and, for a passenger vessel, each officer or other person who is directly responsible to the master for a department of the vessel. This section also provides that the master has responsibilities for ensuring seafarers know their assigned emergency stations and duties, and emergency procedures, and responsibilities relating to seafarer training and record keeping. Officers and other persons directly responsible to the master for a department of the vessel must be familiar with the requirements of the Order for emergency instructions and emergency duties. They must also ensure that seafarers under their control are instructed on assigned duties, survival craft, fire and damage control drills.

55. Division 4 is about atmosphere sampling and measuring.

56. Section 25 provides that an owner of a type of vessel mentioned in the section (eg oil, chemical and gas tankers) must ensure the vessel has on board the atmosphere sampling equipment mentioned in Schedule 2 for the vessel. It also provides that the atmosphere sampling equipment for a regulated Australian vessel must comply with the standards mentioned in the section.

57. Division 5 is about transitional arrangements.

58. Section 26 provides that an exemption given or continued under section 24 of the previous issue of the Order is taken to be in force under this Order.

59. Schedule 1 deals with emergency drill procedures and is mentioned in subsection 19(5).

60. Schedule 2 deals with atmosphere sampling equipment, measuring equipment and related procedures and is mentioned in section 25.

Statement of compatibility with human rights

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

Overview of the legislative instrument

62. This Order applies to regulated Australian vessels and foreign vessels. Division 2 of the Order relating to safety measures also applies to domestic commercial vessels. The Order is made under the *Navigation Act 2012* and gives effect to regulations in the Safety of Life at Sea Convention, 1974 (SOLAS) relating to construction of vessels, life-saving appliances and arrangements, safety of navigation and special measures to enhance maritime safety.

63. Safety measures provided for under the Order include the requirement for a safe manning document to be kept on board vessels, and the requirement for certain regulated Australian vessels to carry master and crew holding specified certificates of competency or seafarer certificates. Other safety measures in the Order relate to navigation bridge visibility, pilot transfer arrangements, the operation and testing of steering gear and emergency steering procedures, and record keeping on tests, emergency steering drills and, for passenger vessels, the operational limitations of the vessel.

64. Measures on emergency procedures provided for in the Order relate to the general emergency alarm signal for an emergency station muster of passengers and seafarers, the signal to prepare to abandon ship, the signal to abandon ship and the signal for an emergency drill. The Order also provides for emergency drill procedures to be carried out in accordance with SOLAS regulations, seafarer training sessions on survival and

use of survival equipment and the practice closing of internal watertight doors on passenger vessels. Other measures on emergency procedures relate to passenger lists, emergency management plans, emergency instructions, seafarers duties in emergencies, record keeping, and the giving of copies of this Order to the master of the vessel and officers or other persons directly responsible to the master for a department of the vessel.

65. The master of a vessel must ensure seafarers know their assigned emergency stations and duties, and the emergency procedures generally, and that seafarers are trained in the operation and application of all life-saving, fire fighting and other emergency appliances and equipment of the vessel. Each officer or other person directly responsible to the master for a department of the vessel must ensure that seafarers under their control are instructed in emergency assigned duties, survival craft, fire and damage control drills, and are familiar with the emergency instructions and their emergency duties.

66. The Order requires that specified types of vessels have on board specified atmosphere sampling equipment and requires that equipment for a regulated Australian vessel must be in accordance with specified Australian Standards and International Electrotechnical Commission standards.

Human rights implications

67. Sections 9, 11, 12, 14, 22, 24 and 25 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.

68. Strict liability is imposed to protect life at sea by ensuring specified requirements that relate to safety of navigation, emergency procedures and atmosphere sampling and measuring are followed. The offences ensure compliance with requirements implementing SOLAS regulations on construction, life-saving appliances and arrangements, safety of navigation and special measures to enhance maritime safety.

69. The penalties for these offences 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 owners of vessels and seafarers 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.

Conclusion

70. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate for ensuring maritime safety.

Making the instrument

71. 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*.