

Explanatory Statement

Marine Order 70 (Seafarer certification) Amendment 2016 (No. 1)

(Order 2016/15)

Authority

1. The *Navigation Act 2012* (the Navigation Act) provides for this Order to be made.
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. 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 must or may be made by regulations.
4. 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.
5. This Order was made under subsection 342(1) and is a legislative instrument for the *Legislation Act 2003*.

Purpose

6. This Order amends *Marine Order 70 (Seafarer certification) 2014* (Marine Order 70) so that Australia continues to give effect to training and certification requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (the STCW Convention) and its code known as the STCW Code. This Order amends Marine Order 70 to implement STCW Convention and STCW Code requirements that relate to seafarers working on vessels to which the *International Code of Safety for Ships using Gases or other Low-flashpoint Fuels* (the IGF Code) applies.

Overview

7. The STCW Code was amended by IMO Resolution MSC.397(95) to provide for special training requirements for personnel on vessels subject to the IGF Code. The amendments entered into force on 1 January 2017. This Order amends Marine Order 70 to implements those amendments for Australia.
8. The Order also amends paragraph 7(2)(b) of Marine Order 70 to insert a missing cross-reference.

Consultation

9. A copy of the draft of this Order was placed on AMSA's website on 13 September 2016 for public consultation with comments to be provided by 15 October 2016. Around 130 stakeholders including maritime unions, shipping and cargo industry bodies and relevant government agencies were contacted and invited to comment. Two comments were received that did not relate to the proposed amendment.
10. 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

11. This Order incorporates by reference the IGF Code and the STCW Code. The STCW Code, like the STCW Convention, is incorporated as amended and in force for Australia from time to time — see definition of *STCW Code* in *Marine Order 1 (Administration) 2013*. The IGF Code is incorporated as in force from time to time — see definition of *IGF Code* to be inserted by the Order into Marine Order 70.
12. Information on obtaining access to these codes is available on the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>. This page provides detailed information on how to navigate the IMO website to download these codes for free. A note under section 2 of Marine Order 70 makes clear that the STCW Code including any amendments in force are, like the STCW Convention, in the Australian Treaties Series accessible from the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>.
13. A consolidated STCW Convention and STCW Code hardcopy publication can be purchased from the IMO by visiting the IMO publications webpage link at <https://www.imo.org>. It is anticipated that a hardcopy published version of the IGF Code will also be available for purchase from the IMO when the IGF Code comes into force internationally on 1 January 2017. Information on obtaining copies of IMO documents mentioned in the Order is also available from AMSA by emailing international.relations@amsa.gov.au.

Commencement

14. This Order commenced on 1 January 2017.

Contents of this instrument

15. Section 1 sets out the name of the Order.
16. Section 2 provides for the commencement of the Order.
17. Section 3 provides that Schedule 1 amends Marine Order 70.
18. Item 1 of Schedule 1 inserts a new definition for the *IGF Code* in section 4 of Marine Order 70.
19. Item 2 of Schedule 1 amends the definition of *vessel endorsement* in section 4 of Marine Order 70 to provide for endorsements for training for service on vessels subject to the IGF Code. For section 8 of Marine Order 70, the holder of a seafarer certificate that is endorsed is permitted to perform the duties stated.
20. Item 3 of Schedule 1 adds an additional cross-reference to a paragraph mentioned in paragraph 7(1) to paragraph 7(2)(b) of Marine Order 70 which was an inadvertent omission from changes made to the Order as a consequence of *Marine Order 52 (Yachts and training vessels) 2016*. This clarifies that an individual may apply to AMSA for the issue of a certificate of recognition of a certificate of competency as master or deck officer for a yacht.
21. Item 4 of Schedule 1 amends the table at the end of subsection 37(2) of Marine Order 70 to specify the term of two new vessel endorsements for duties on vessels to which the IGF Code applies, namely, basic training and advanced training.
22. Item 5 of Schedule 1 amends table 2.1 of Schedule 2 of Marine Order 70 to set out the eligibility requirements for the two new vessel endorsements for duties on vessels to which the IGF Code applies. For each endorsement, the criteria include the option of completing a course of training that complies with section 3 of

Chapter V of Part A of the STCW Code. Under paragraph 36(2)(b) of Marine Order 70, AMSA may endorse a seafarer certificate if satisfied the eligibility requirements are met.

23. Item 6 of Schedule 1 amends table 2.3 of Schedule 2 of Marine Order 70 to set out the eligibility criteria for the revalidation of the two new vessel endorsements for duties on vessels to which the IGF Code applies. For each endorsement, the criteria include the option of completing a course of training that complies with section 3 of Chapter V of Part A of the STCW Code. Under subsection 38(3) of Marine Order 70, AMSA may revalidate an endorsement if the person satisfies the requirements for revalidation.

Statement of compatibility with human rights

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

Overview of the legislative instrument

25. This Order makes changes to Marine Order 70 to ensure that seafarers working on vessels to which the IGF Code applies are competent to perform their duties.

26. This Order engages Article 6 of the International Covenant on Economic, Social and Cultural Rights (the ICESCR) concerning the right to work by imposing qualification restrictions for particular duties performed on vessels subject to the IGF Code. However, it is considered that any limitation on this right to work is necessary to ensure a worker's right to a safe workplace as set out in Article 7 of the ICESCR. Any limitation is also balanced by the public policy reason of protecting the environment from ship sourced pollution.

Human rights implications

27. Seafarers work in an environment requiring high skill levels for the operation of complex vessel systems, machinery and equipment. These skills are acquired through training and experience. Workplace accidents at sea can result in injury, death, cargo loss, vessel loss and environmental pollution. The seriousness of such accidents is exacerbated by workplaces being isolated from medical and emergency assistance.

28. This Order introduces qualification requirements for seafarers working on vessels to which the *International Code of Safety for Ships using Gases or other Low-flashpoint Fuels* (the IGF Code) applies in order to reduce the likelihood of accidents. These vessels use low flashpoint fuels associated with a higher risk of fire and explosion. In addition to injury and death, accidents pose a serious threat to the marine environment due to the harmful nature of substances carried on vessels including fuels, oils, lubricants and certain cargo.

29. For safety and environment protection reasons, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 requires seafarers on Australian flagged vessels that are subject to the IGF Code to have qualifications demonstrating relevant training and experience.

Conclusion

30. AMSA considers that this instrument is compatible with human rights because it promotes the right to a safe working environment and protection of the environment. To the extent that there is any limitation on the right to work, that limitation is reasonable, necessary and proportionate.

Making the instrument

31. 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 Safety Authority Act 1990*.