



Australian Government
Australian Maritime Safety Authority

AMSA MO 2016/21

Marine Order 53 (Vessels in polar waters) 2016

I, Gary Prosser, Acting Chief Executive Officer of the Australian Maritime Safety Authority, make this Order under subsection 342(1) of the *Navigation Act 2012*.

8 December 2016

Gary Prosser
Acting Chief Executive Officer

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Division 1 Preliminary

1 Name of Order

This Order is *Marine Order 53 (Vessels in polar waters) 2016*.

1A Commencement

This Order commences on 1 January 2017.

2 Purpose

This Order gives effect to the Polar Code, other than Chapter 12 of Part I-A and Part II-A, in accordance with Chapter XIV of SOLAS, including:

- (a) the certification of vessels to demonstrate survey under the Polar Code; and
- (b) arrangements for the safe operation of vessels in polar waters.

Note 1 The Polar Code sets out requirements for the design, construction, equipment, operation, training, search and rescue and environmental protection matters for vessels operating in polar waters.

Note 2 The pollution prevention requirements of Part II-A of the Polar Code are implemented under the following Orders:

- *Marine Order 91 (Marine pollution prevention — oil) 2014*
- *Marine Order 93 (Marine pollution prevention — noxious liquid substances) 2014*
- *Marine Order 95 (Marine pollution prevention — garbage) 2013*
- *Marine Order 96 (Marine Pollution prevention — sewage) 2013*.

3 Power

- (1) The following provisions of the Navigation Act provide for this Order to be made:
 - (a) section 98 which provides that the regulations may provide for safety certificates;
 - (b) section 314 which provides that the regulations may provide for matters relating to certificates;
 - (c) subsection 339(2) which provides that the regulations may provide for the matters mentioned in that provision including the design and construction of vessels;
 - (d) paragraph 340(1)(a) which provides that the regulations may provide for giving effect to SOLAS;
 - (e) subsection 341(1) which provides that the regulations may provide for the imposition of penalties for a contravention of a provision of the regulations.
- (2) Subsection 339(1) of the Navigation Act provides for regulations to 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.
- (3) Subsection 342(1) of the Navigation Act provides that AMSA may make a Marine Order about matters that can be provided for by regulation.

4 Definitions

In this Order:

Cargo Ship Safety Construction Certificate means a Cargo Ship Safety Construction Certificate that is issued in accordance with Regulations 12 or 13 of Chapter I of SOLAS.

Passenger Ship Safety Certificate means a Passenger Ship Safety Certificate that is issued in accordance with Regulations 12 or 13 of Chapter I of SOLAS.

Polar Code means the *International Code for Ships Operating in Polar Waters* adopted by IMO Resolution MSC. 385(94) and MEPC. 264(68), as in force from time to time.

Polar Ship Certificate means a certificate that is:

- (a) a safety certificate mentioned in section 9 relating to vessel structure, equipment, fittings, machinery and electrical installations, fire safety, life-saving, and navigation and communication equipment and arrangements; and
- (b) in the form of the certificate set out in Appendix 1 of the Polar Code with a record of equipment attached.

Note 1 Some terms used in this Order are defined in *Marine Order 1 (Administration) 2013*, including:

- IMO
- SOLAS.

Note 2 Other terms used in this Order are defined in the Navigation Act, including:

- foreign vessel
- issuing body
- master
- owner
- regulated Australian vessel
- safety certificate.

Note 3 Information about obtaining copies of any IMO Resolution that adopts or amends a code mentioned in this Order is available on the AMSA website Marine Orders link at <http://www.amsa.gov.au>. The text of the original SOLAS convention and any amendments in force are in the Australian Treaty Series, accessible through the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>.

Note 4 For delegation of AMSA's powers under this Order — see the AMSA website at <http://www.amsa.gov.au>.

5 Interpretation

- (1) For this Order, the ***Administration*** is:
 - (a) for a regulated Australian vessel — AMSA; or
 - (b) for a foreign vessel — the government of the country whose flag the vessel is entitled to fly.
- (2) For this Order, a vessel is taken to have been constructed when:
 - (a) the keel is laid; or
 - (b) construction identifiable with the vessel starts and the lesser of at least 50 tonnes, or 1% of the estimated mass of all structural material, of the vessel is assembled.

- (3) A term that is used in this Order but is not defined for this Order, and is defined in SOLAS or the Polar Code, has the same meaning as in SOLAS or the Polar Code.

Note The term *polar waters* is defined in Chapter XIV of SOLAS.

6 Application

- (1) This Order applies to:
- a regulated Australian vessel to which Chapter XIV of SOLAS applies; and
 - other than Divisions 2 and 4 — a foreign vessel to which Chapter XIV of SOLAS applies that:
 - commences a voyage from a port in Australia or ends a voyage in a port in Australia; and
 - as part of that voyage is present in polar waters.

Note Regulation 2 of Chapter XIV of SOLAS specifies the ships operating in polar waters to which Chapter XIV applies.

- (2) However, a vessel constructed before 1 January 2017 need not comply with this Order until the following survey is completed after 1 January 2018:
- for a vessel with a Cargo Ship Safety Construction Certificate — its intermediate or renewal survey, whichever occurs first; and
 - for a vessel with Passenger Ship Safety Certificate — its renewal survey.
- (3) This Order also applies to a vessel that is owned or operated by the Commonwealth and used, for the time being, on government non-commercial service in polar waters.

7 Alternative design or arrangement

- (1) For Regulation 4 of Chapter XIV of SOLAS, the owner of a regulated Australian vessel may apply to AMSA for approval of a design or arrangement as an alternative to complying with a requirement mentioned in Chapters 3, 6, 7 or 8 of the Polar Code concerning structure, machinery, electrical installations, fire safety, and life-saving appliances and arrangements.
- (2) AMSA may approve the alternative design or arrangement in accordance with Regulation 4 of Chapter XIV of SOLAS.

Note Regulation 4 of Chapter XIV of SOLAS provides that:

- an adequate engineering analysis must be undertaken; and
 - the goal and functional requirements of the Polar Code that apply to the requirement for which the design or arrangement is an alternative must be met; and
 - use or implementation of the design or arrangement must be at least as effective as compliance with the requirement for which the design or arrangement is an alternative.
- (3) For subsection (1), the application for approval must be made in accordance with *Marine Order 1 (Administration) 2013*.

8 Approvals

An issuing body may, in writing, approve for a vessel its material, equipment, appendages or arrangement in accordance with Chapters 3, 6 and 7 of the Polar Code if:

- for material, equipment or appendages — it is satisfied that its use is safe; and

(b) for an arrangement — it is satisfied that the arrangement is safe.

Note AMSA has an agreement with each of the recognised organisations mentioned in Schedule 1 of *Marine Order 1 (Administration) 2013* for the provision of survey and certification services for vessels registered in Australia. These bodies are authorised to make approvals on behalf of AMSA in accordance with that agreement.

Division 2 Polar Ship Certificate issued under the Navigation Act

9 Certificate required

For subsection 98(3) of the Navigation Act (which enables the regulations to provide that specified kinds of vessels are required to have specified safety certificates), a regulated Australian vessel that operates in polar waters must have a Polar Ship Certificate.

10 Applying for certificate

- (1) For subsection 99(1) of the Navigation Act (which enables a person to apply to an issuing body for a safety certificate specified in the regulations), a Polar Ship Certificate is specified.
- (2) For subsection 99(2) of the Navigation Act, Division 3 of *Marine Order 1 (Administration) 2013*, other than section 17, applies to an application to AMSA for a certificate mentioned in subsection (1).

Note 1 An issuing body may issue a safety certificate under section 100 of the Navigation Act.

Note 2 Division 3 of *Marine Order 1 (Administration) 2013* prescribes some general rules about the making and determination of various kinds of applications. Section 17 of that Order provides for internal review of decisions about applications. That section does not apply to decisions about safety certificates because those decisions are reviewable by the Administrative Appeals Tribunal — see subsection 313(1) of the Navigation Act.

11 Criteria for issue of certificate

For paragraph 100(1)(b) of the Navigation Act, the criteria for the issue of a Polar Ship Certificate are that:

- (a) a polar service temperature for the vessel has been determined by the owner in accordance with paragraph 1.4.2 of the Polar Code; and
- (b) an assessment of operational limitations of the vessel and its equipment has been undertaken by the owner in accordance with paragraph 1.5 of the Polar Code; and
- (c) the vessel has been surveyed in accordance with paragraph 1.3 of the Polar Code; and
- (d) the vessel complies with the requirements mentioned in the Polar Code for structure, equipment, fittings, machinery and electrical installations, fire safety, life-saving, and navigation and communication equipment and arrangements.

Note for paragraph (c) For a Category C cargo ship, paragraph 1.3.3 of the Polar Code provides that:

- no survey is required if the vessel has documented verification demonstrating that no additional equipment or structural modification is required to comply with the Polar Code; and
- survey of the vessel will be required at the next scheduled survey.

12 Conditions of certificate

For paragraph 100(2)(a) of the Navigation Act, a Polar Ship Certificate is subject to the following conditions:

- (a) annual and intermediate surveys must be completed in accordance with paragraph 1.3 of the Polar Code and endorsed on the certificate;
- (b) the vessel must comply with the requirements of the Polar Code;
- (c) after survey has been completed, any change to the structure, equipment, systems, fittings, arrangement or material covered by survey, other than the direct replacement of equipment or fittings, must be approved by AMSA.

Note An issuing body may impose other conditions on a safety certificate — see paragraph 100(2)(b) of the Navigation Act.

13 Duration of certificate

- (1) A Polar Ship Certificate comes into force on the day on which it is issued.

Note For a cargo vessel constructed before 1 January 2017 that undertakes voyages in polar waters, the commencement of the Polar Ship Certificate must coincide with the renewal of its Cargo Ship Safety Construction Certificate, or completion of the intermediate survey, whichever occurs first. For a passenger vessel constructed before 1 January 2017 that undertakes voyages in polar waters, the commencement of the Polar Ship Certificate must coincide with the commencement of the Passenger Ship Safety Certificate. See section 6 for the application of this Order.

- (2) A Polar Ship Certificate remains in force until the date specified in the certificate for expiry unless earlier revoked.

Note 1 Paragraph 1.3.6 of the Polar Code provides that validity and survey dates for the Polar Ship Certificate must be harmonised with the SOLAS certificates in accordance with regulation 14 of Chapter 1 of SOLAS.

Note 2 Section 15 sets out the circumstances in which the duration of a Polar Ship Certificate may be varied.

14 Endorsement of certificate

For paragraph 12(a), an endorsement on a Polar Ship Certificate must be made by an issuing body.

15 Variation of certificate

For section 101 of the Navigation Act, the criteria for variation of a Polar Ship Certificate are that:

- (a) the vessel has been surveyed in accordance with the Polar Code; and
- (b) if the variation relates to matters mentioned in paragraphs (c), (d), (e), (f) and (h) of Regulation 14 of Chapter I of SOLAS — the variation is in accordance with those provisions.

Note 1 A variation may be in the form of an endorsement on an existing certificate allowing the certificate to be in force for a period beyond the date specified in the certificate for expiry.

Note 2 Paragraph 1.3.6 of the Polar Code provides that validity, survey dates and endorsements must be harmonised with the relevant SOLAS certificates in accordance with Regulation 14 of Chapter I of SOLAS.

16 Revocation of certificate

For section 102 of the Navigation Act, the criteria for revocation of Polar Ship Certificate are that:

- (a) the certificate contains incorrect information; or

- (b) the owner of the vessel asks in writing that the vessel's certificate be revoked; or
- (c) a condition of the certificate has been, or is likely to be, breached; or
- (d) the vessel to which the certificate applies ceases to be registered in Australia.

Division 3 Requirements for foreign vessels

17 Certificate required for foreign vessels

A vessel that is a foreign vessel must have a certificate that is issued in accordance with the Polar Code.

Note It is an offence under sections 106 and 107 of the Navigation Act if a vessel is taken to sea without a certificate of a specified kind in force for the vessel.

18 Requirements for foreign vessels

A foreign vessel must comply with the requirements of Chapter XIV of SOLAS and the Polar Code that apply to the vessel.

Division 4 Other matters

19 Polar water operational manual

- (1) The master or owner of a regulated Australian vessel must not take a vessel to sea if a polar water operational manual, that meets the requirements mentioned in Chapter 2 of the Polar Code, is not on board.

Penalty: 50 penalty units.

- (2) An offence against subsection (1) is a strict liability offence.
- (3) The master or owner is liable to a civil penalty if subsection (1) is contravened.

Civil penalty: 50 penalty units.

20 Voyage planning requirements

- (1) The master of a regulated Australian vessel must have in place a voyage plan for any voyage in polar waters in accordance with Chapter 11 of the Polar Code.
- (2) An offence against subsection (1) is a strict liability offence.
- (3) The master is liable to a civil penalty if subsection (1) is contravened.

Civil penalty: 50 penalty units.

Note

- 1. All legislative instruments and compilations of legislative instruments are registered on the Federal Register of Legislation under the *Legislation Act 2003*. See <https://www.legislation.gov.au>.