

Explanatory Statement

Marine Order 72 (Engineer officers) Amendment Order 2018

(Order 2018/5)

Authority

1. This Order amends *Marine Order 72 (Engineer officers) Order 2014* (Marine Order 72). It is made under the same provisions of the *Navigation Act 2012* (the *Navigation Act*) as the Order that it affects:

- section 28 which provides that regulations may provide for seafarer certificates and give effect to the International Convention on Certification and Watchkeeping for Seafarers, 1978 (the *STCW Convention*);
- section 29 which provides for regulations to prescribe different classes of seafarer certificates, requires an individual to hold a seafarer certificate of a particular kind to undertake particular duties or functions and also provides that regulations may prescribe specified matters for seafarer certificates;
- section 314 which provides that regulations may provide for particular matters relating to certificates, including matters relating to applying for them, the criteria for their issue, variation or revocation, the information to be included in certificates, the conditions to which certificates are subject and the renewal of certificates.

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 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 72. Marine Order 72 is part of the package of Marine Orders that give effect to Australia's obligations under the STCW Convention. The amendments made by the Order clarify some requirements for seafarers that have or are intending to obtain seafarer engineer qualifications to work on regulated Australian vessels or foreign vessels. The amendments also provide more flexibility in the pathways, including sea service requirements, for certain engineering seafarer certificates.

Overview

7. The Order also addresses the findings of the evaluation conducted by the European Maritime Safety Agency (EMSA) in 2014 of Australia's implementation of the 2010 amendments of the STCW Convention and the STCW Code (the Manila amendments). It also makes a small number of other amendments necessary for the effective administration of engineer officer qualifications issued by AMSA.

8. The Order amends some requirements in Marine Order 72 relating to the pathways for engineers and those holding an electrical trade qualification to gain an Electro-technical officer certificate of competency. For example, the Order recognises Australian trade certificates and Australian Recognised Trade Certificates for the purposes of eligibility for Engineer Watchkeeper and Electro-technical officer certificates, and includes a pathway for engineers qualified under this Order to gain an Electro-technical officer certificate.

9. The Order provides for more grades of engineer officer certificates because these certificates, unlike other classes of seafarer certificates, relate specifically to duties relating to steam or motor engines. ‘Propulsion power’ has been defined for the Order, consistent with the definition in the STCW Convention, in order to clarify how propulsion power is determined. A note has also been included that states where the STCW Convention and Code can be accessed for free.

10. Some of the amendments made to Marine Order 72 by this Order are similar to those made by *Marine Order 75 (Seafarer certification amendment) 2016* to *Marine Order 71 (Masters and deck officers) 2014* and *Marine Order 73 (Ratings) 2014* to the general requirements for qualifying seagoing service and revalidation requirements. In particular, the period allowed for completion of courses required for revalidation of engineer officer certificates has also been extended to 5 years.

11. Other amendments have been made that address the findings of the evaluation conducted in 2014 by the European Maritime Safety Agency (EMSA) of Australia’s implementation of the STCW Convention and the STCW Code in relation to engineering qualifications for seafarers. They include clarification that sea service for Engineer Watchkeepers must include time spent in the engine room on watchkeeping duties under the supervision of a qualified engineer, that all Engineer Watchkeepers and Electro-technical officers must complete a Training Record Book, requirements to obtain an endorsement for Second Engineer on an Engineer Watchkeeper certificate and that Engineer Watchkeepers must complete combined workshop skills and sea service of at least 12 months.

Consultation

12. A copy of the draft of this Order was placed on AMSA’s website on 29 September 2017 for public consultation for comments to be provided by 27 October 2017. Approximately 200 stakeholders including maritime unions, shipping industry peak bodies, the Australian Maritime College and relevant government departments and agencies were contacted and invited to comment. Meetings were also held with the Australian Institute of Marine and Power Engineers (AIMPE) to discuss the changes proposed to be made by the Order to Marine Order 72. Comments were received from four stakeholders, including AIMPE, and were taken into account when the final draft was prepared.

13. 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 19584.

Documents incorporated by reference

14. This Order incorporates parts of the STCW Convention and the STCW Code into Marine Order 72. The STCW Convention and STCW Code are both incorporated as in force from time to time — see the Navigation Act definition of *STCW Convention* and the *Marine Order 1 (Administration) 2013* definition of *STCW Code* in the Order.

15. The STCW Convention and the STCW Code are of treaty status and can be found, including any amendments in force, in the Australian Treaties Series accessible from the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>. Consolidated copies of the latest edition of the STCW Code, together with the STCW Convention, are also available for purchase from the International Maritime Organization (IMO).

16. Information on obtaining copies of any IMO Resolution, IMO document or other document that is mentioned in this Order is available from the Marine Order link at <http://www.amsa.gov.au>.

17. IMO published material 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>

Commencement

18. This Order commenced on 1 April 2018.

Contents of this instrument

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

20. Section 2 provides for the commencement of the Order.

21. Section 3 provides that Marine Order 72 is amended in accordance with the schedule.

22. Item 1 of Schedule 1 replaces a note under subsection 2(1) of Marine Order 72. The note states where the STCW Convention and the STCW Code can be accessed for free and also that the latest consolidated edition can be purchased from the IMO. This note is similar to the note already included in the other seafarer certification Marine Orders. The note previously only stated where consolidated editions could be purchased.

23. Item 2 of Schedule 1 inserts into subsection 4(1) a definition of *foreign certificate*. This definition makes clear that a foreign certificate for Marine Order 72 is not a certificate issued by countries other than Australia for service on vessels engaged on near-coastal voyages. The holding of a foreign certificate is mentioned in the eligibility requirements for Engineer Class 1 and Engineer Class 2 certificates — see Schedule 2.

24. Item 3 inserts into subsection 4(1) a definition of what is meant by *propulsion power* for a vessel. The definition is the same as that in the STCW Convention and was added to explain how propulsion power is calculated.

25. Item 4 replaces the definition of *qualification that is not workshop skills equivalent* to include an Australian degree in mechanical engineering and to remove the reference to trade certificates that are not mentioned in the definition of *workshop skills equivalent qualification*. This definition is used in the trainee engineer program pathway for Engineer Watchkeeper certificates of competency.

26. Item 5 replaces the definition of *workshop skills equivalent qualification* in subsection 4(1). The new definition makes clear that only Australian trade certificates are trade certificates for this definition. It also updates some of the names of the certificate III courses for the definition.

27. Item 6 amends section 8 to make clear that electro-technical officer grades of engineer officer certificates do not need to include the kind of propulsion power to which the certificate applies.
28. Item 7 replaces section 10 to clarify that the general requirements for qualifying seagoing service set out in Schedule 3 apply to the qualifying seagoing service eligibility requirements and revalidation requirements set out in Schedules 2 and 4 respectively and are not themselves the qualifying seagoing service requirements for certificates or their revalidation.
29. Item 8 replaces section 11 to clarify that the kinds of seafarer certificates or certificates of recognition that may be revalidated under subsection 11 of this Order are engineer officer certificates or certificates of recognition of those kinds of certificates.
30. Item 9 replaces section 12 to clarify that previously issued certificates of competency as engineer officer that are in force on 31 March 2018 expire on the day AMSA determined for their expiry.
31. Items 10 to 12 amend the names of the engineer officer certificates of competency (other than Electro-technical officer certificates) to make clear that there are different grades of engineer officer certificates, each relating to different kinds of propulsion types; for example, Engineer Watchkeeper (Motor), Engineer Watchkeeper (Steam) and Engineer Watchkeeper (Steam and Motor).
32. Item 13 replaces Schedule 2. Schedule 2 sets out eligibility requirements for engineer officer certificates. A number of changes have been made to the eligibility requirements for each engineer officer certificate. The key changes made for eligibility for an Electro-technical officer certificate are that persons holding an Australian electrical trade certificate may now become an electro-technical officer if they can satisfy the requirements of one of two pathways.
33. The key changes made for eligibility for an Engineer Watchkeeper certificate are to specify that combined workshop skills and sea service should be of at least 12 months duration and the Second Engineer and Chief Engineer (near coastal) endorsements must comply with STCW Reg. III/3. The key changes made for eligibility for an Engineer Class 2 certificate are that sea service may be combined where the applicant holds both an Engineer Watchkeeper and Engineer Class 3 NC certificate and clarification that AMSA may accept a foreign STCW certificate as being equivalent to an Engineer Watchkeeper certificate as a prerequisite to qualify for an Engineer Class 2 certificate.
34. The key changes made to the eligibility requirements for an Engineer Class 1 certificate are that sea service may be combined where the applicant holds an Engineer Class 2 and Engineer Class 3 NC certificate, and clarification that AMSA may accept a foreign STCW certificate as being equivalent to an Engineer Class 2 certificate as a prerequisite to qualify for an Engineer Class 2 certificate.
35. Item 14 inserts a new title for Schedule 3 that it is consistent with the title of Schedule 3 in the other seafarer certification Marine Orders.
36. Item 15 replaces clause 3.1 of Schedule 3 to provide general requirements for qualifying seagoing service as an electro-technical officer.
37. Item 16 substitutes the heading to Schedule 4 and the schedule reference so that the reference refers only to paragraph 11(b).
38. Item 17 amends paragraphs 4.1(b) and (d) so that courses required for revalidation of certificates may be completed within the 5 years before the date of applying for revalidation of a certificate, instead of within the 12 months before.

This aligns the timeframe for completion of courses necessary for revalidation of engineer officer certificates with that for masters and deck officer certificates.

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 is made under the *Navigation Act 2012*. It amends *Marine Order 72 (Engineer officers) 2014* that is part of the seafarer certification package of Marine Orders. The Order makes amendments:

- to introduce new pathways for eligibility for the electro-technical officer grade of engineer officer certificate and makes some changes to the eligibility requirements for other grades of engineer officer certificates;
- to address the findings of an STCW evaluation conducted by the European Maritime Safety Agency in late 2014 to verify that Australia complies with and has implemented the 2010 amendments of the STCW Convention and the STCW Code (the Manila amendments);
- to clarify that engineer officer certificates, unlike other classes of seafarer certificates, relate specifically to duties relating to steam or motor engines and to introduce a definition of ‘propulsion power’ consistent with the definition in the STCW Convention, in order to explain how propulsion power is calculated;
- to clarify how the general requirements for qualifying seagoing service and revalidation of engineer officer certificates operate, including extending the period allowed for completion of courses required for revalidation of certificates to 5 years, consistent with the arrangements already in place for other classes of seafarer certificates.

Human rights implications

41. Any amendments made by this Order to the standards of competency, training and other requirements for certificates of competency for seafarers that have or intend to obtain further engineer qualifications, or for the revalidation of those certificates, may place limits on the promotion and advancement of these seafarers. However, those limitations are required to implement Australia’s international obligations under the IMO’s STCW Convention and are necessary to ensure the safety of vessels and persons on board vessels by ensuring that only appropriately qualified seafarers work on vessels.

Conclusion

42. The 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

43. 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*.