

Explanatory Statement

Marine Order 70 (Seafarer certification) Amendment Order 2018 (Order 2018/9)

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 required or permitted by the Act and necessary or convenient for carrying out or giving effect to the Act.
3. Section 29 of the Navigation Act provides for regulations to prescribe different classes of seafarer certificates and to require an individual to hold a seafarer certificate of a particular kind to undertake particular duties or functions. It also provides that regulations may prescribe various things for seafarer certificates, including competencies, proficiencies, qualifications, minimum age, health, nationality, citizenship or residence. Section 29 also provides for the instruction, training, and examination of seafarers, including the gaining of sea service or other experience; the recognition of certificates granted to seafarers under other Australian laws or certificates granted by foreign countries; and the conditions to which seafarer certificates are to be subject.
4. Section 314 of the Navigation Act also provides for various matters to be prescribed for certificates, including matters relating to applying for them, the criteria for their issue, variation or revocation, and the conditions to which certificates are subject. It further allows the regulations to provide the time certificates cease to be in force and for the renewal of certificates.
5. Paragraph 340(1)(h) of the Navigation Act permits regulations to be made giving effect to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (the STCW Convention).
6. 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.
7. 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.
8. This Order was made under subsection 342(1) of the Navigation Act and is a legislative instrument for the *Legislation Act 2003*.

Purpose

9. 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 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 for Ships Operating in Polar Waters* (the Polar Code) applies.

Overview

10. The STCW Convention and the STCW Code were amended by IMO resolutions MSC.416(97) and MSC.417(97) respectively to provide for new training requirements for masters and deck officers on vessels subject to the Polar Code. The amendments will enter into force on 1 July 2018. This Order amends Marine Order 70 to implement those amendments for Australia.

11. The Order inserts a new provision that prescribes the criteria for variation of a seafarer certificate under section 32 of the Navigation Act.
12. The Order makes a change to permit acceptance of approved New Zealand training courses required under the STCW Convention for the purpose of issue and revalidation of STCW certificates.
13. The Order changes the term “foreign” to “overseas” to distinguish between certificates issued by foreign countries which are recognised by AMSA for issuing an Australian Certificate of Recognition, and those which are not recognised.
14. The Order makes amendments to insert missing references unintentionally omitted in Marine Order 70.
15. The Order also makes some amendments that are editorial in nature for clarity.

Consultation

16. A copy of the draft of this Order was placed on AMSA’s website on 17 April 2018 for public consultation with comments to be provided by 16 May 2018. Around 130 stakeholders including maritime unions, shipping industry peak bodies, training organisations and relevant government departments and agencies were contacted and invited to comment. Comments were received from two peak bodies and were considered before finalising the draft Order.
17. The Office of Best Practice Regulation (OBPR) considers 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 23741.

Documents incorporated by reference

18. This Order incorporates by reference into Marine Order 70, parts of the Polar Code, the STCW Convention and the STCW Code as in force from time to time.
19. The IGF Code, the Polar Code, 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 latest edition of the Polar Code, the STCW Convention and the STCW Code are also available for purchase from the International Maritime Organization (IMO). IMO website: <http://www.imo.org>.
20. Information on obtaining copies of any International Maritime Organization (IMO) Resolution, IMO document or other document that is mentioned in this Order is available from the AMSA website at <http://www.amsa.gov.au>.

Commencement

21. This Order commenced on 1 July 2018.

Contents of this instrument

22. Section 1 sets out the name of the Order.
23. Section 2 provides for the commencement of the Order.
24. Section 3 provides that Schedule 1 amends Marine Order 70
25. Item 1 of Schedule 1 extends definition of *registration authority* in Section 4 to include the New Zealand Qualifications Authority. This allows for recognition of AMSA approved STCW courses completed in New Zealand to be accepted by Australia for the issue or revalidation of certificates. Consequently, the website address of the New Zealand Qualifications Authority is added to the note.

26. Item 2 of Schedule 1 inserts new definitions for the *Polar Code* and *Polar Waters* in section 4.
27. Item 3 of Schedule 1 amends the definition of *primary certificate* by substituting the word *foreign* with the word *overseas* in paragraph (a) to make clear the distinction between certificates issued by foreign countries which are recognised by AMSA for the issue of certificates of recognition, and those which are not recognised.
28. Item 4 of Schedule 1 amends the word *Regulations* to *regulations* in paragraph (a) in the definition of *vessel endorsement* in section 4 for drafting reason.
29. Item 5 of Schedule 1 amends the word *Regulation* to *regulation* in paragraph (b) in the definition of *vessel endorsement* in section 4 for drafting reason.
30. Item 6 of Schedule 1 substitutes paragraph (f) of the *vessel endorsement* definition in section 4 to distinguish between basic and advanced training endorsements for vessels to which the IGF Code applies.
31. Item 7 of Schedule 1 substitutes paragraph (g) with paragraphs (g), (h), (i) and (j) of the *vessel endorsement* definition in section 4. Paragraph (g) mentions advanced training for vessels to which the IGF Code applies and paragraphs (h) and (i) are inserted to provide endorsements for basic and advanced training respectively for vessels to which the Polar Code applies. Endorsement for tanker familiarisation is now provided in paragraph (j).
32. Item 8 of Schedule 1 amends the note under subsection 7(3) to include the certificate of safety training as a certificate that may be endorsed to permit the performance of duties and functions.
33. Item 9 of Schedule 1 amends subsection 15(3) to include a GMDSS radio operator certificate, the term of which may be extended by AMSA.
34. Item 10 of Schedule 1 inserts two new sections after section 15 that clarify the application process and prescribe the criteria for variation of a certificate under section 32 of the Navigation Act.
35. Item 11 of Schedule 1 substitutes the words *sea service* with the words *seagoing service* in paragraph 17(3)(a) for consistency with the STCW Convention
36. Item 12 of Schedule 1 substitutes the word *foreign* with *overseas* in the definition of *foreign certificate* in section 26 and the defined term becomes *overseas certificate*. The substitution of the word *foreign* with *overseas* makes clear the distinction between certificates issued by foreign countries which are recognised by AMSA for the issue of certificates of recognition, and those which are not recognised.
37. Item 13 of Schedule 1 amends the note under the definition of *radio operator certificate* in section 26 by substituting the word *foreign* with *overseas* to make clear the distinction between certificates issued by foreign countries which are recognised by AMSA for the issue of certificates of recognition, and those which are not recognised.
38. Item 14 of Schedule 1 substitutes subsection 27(1) to make clear the distinction between certificates issued by foreign countries which are recognised by AMSA for the issue of certificates of recognition, and those which are not recognised.
39. Item 15 of Schedule 1 amends paragraph 27(2)(b), substituting the words *a foreign* with *an overseas* to make clear the distinction between certificates issued by

foreign countries which are recognised by AMSA for the issue of certificates of recognition, and those which are not recognised.

40. Item 16 of Schedule 1 substitutes the word *sea service* with the words *seagoing service* in subparagraph 27(2)(a)(vi) for consistency with the STCW Convention.
41. Item 17 of Schedule 1 amends subsection 29(4), substituting the word *foreign* with *overseas* to make clear the distinction between certificates issued by foreign countries which are recognised by AMSA for the issue of certificates of recognition, and those which are not recognised.
42. Item 18 of Schedule 1 amends item 8 of the table in section 37 to provide for terms of endorsement for basic and advanced training for vessels to which the Polar Code applies.
43. Item 19 of Schedule 1 amend the word *Regulation* to *regulation* in section 45 for drafting reason.
44. Item 20 of Schedule 1 inserts a new section after section 62 providing for recognition of sea service in polar waters or equivalent sea service. This gives effect to the amendments to the STCW Convention in accordance with IMO resolution MSC.416(97).
45. Item 21 of Schedule 1 substitutes each mention of *sea service* with *seagoing service* in Table 2.1 of Schedule 2 for consistency with the STCW Convention.
46. Item 22 of Schedule 1 updates references to particular paragraphs of the STCW Code in Schedule 2, Table 2.1, item 2, paragraph (a) of Marine Order 70.
47. Item 23 of Schedule 1 updates references to particular paragraphs of the STCW Code in Schedule 2, Table 2.1, item 2, paragraph (b) of Marine Order 70.
48. Item 24 of Schedule 1 amends item 6 of table 2.1 of Schedule 2 of Marine Order 70 to remove the requirement of approved assessment as the assessment is not required to be approved.
49. Item 25 of Schedule 1 amends item 9 of Table 2.1 of Schedule 2 of Marine Order 70 to insert eligibility requirements for the issue of vessel endorsements for basic and advanced training for vessels to which the Polar Code applies. The amendment also clarifies that the training course required to be completed for tanker familiarisation endorsements must be an approved course.
50. Item 26 of Schedule 1 substitutes each mention of sea service with seagoing service in Table 2.3 of Schedule 2 for consistency with the STCW Convention.
51. Item 27 of Schedule 1 inserts a new paragraph (aa) in item 1 of Table 2.3 of Schedule 2 to provide requirement which was unintentionally omitted in Marine Order 70.
52. Item 28 of Schedule 1 substitutes each mention of the words *course of training* in item 1 of Table 2.3 of Schedule 2 of Marine Order 70 with the words *seafarer training course* for clarity.
53. Item 29 of Schedule 1 inserts two new items in Table 2.3 of Schedule 2 of Marine Order 70 to provide requirements for revalidation of endorsements for basic and advanced training for vessels to which the Polar Code applies.
54. Item 30 of Schedule 1 amends Marine Order 70 to substitute the words:
 - *a course of training* with *an approved seafarer training course* in paragraph (c), item 1, Table 2.1, Schedule 2;

- *approved training with an approved seafarers training course* in items 2 and 6, Table 2.1, Schedule 2;
- *approved high speed craft training with an approved seafarer training course in the operation of high speed craft* in paragraph (a), item 3, Table 2.1, Schedule 2;
- *course of training with seafarer training course* in paragraph (a), item 7, Table 2.3, Schedule 2.

The above amendments provide clarity and consistency with words used in the STCW Convention and the STCW Code.

Statement of compatibility with human rights

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

Overview of the legislative instrument

56. This Order is made under the *Navigation Act 2012*. It amends *Marine Order 70 (Seafarer certification) 2014*. The Order makes the following amendments:

- To ensure that seafarers working on vessels to which the Polar Code applies are competent to perform their duties;
- to provide criteria for the variation of seafarer certificates under section 32 of the *Navigation Act 2012*;
- to provide for AMSA to approve and accept New Zealand training courses required under the STCW Convention for the purpose of issue and revalidation of STCW certificates;
- to distinguish between certificates issued by foreign countries which are recognised by AMSA for issuing a certificate of recognition, and those which are not recognised;
- to provide missing references unintentionally omitted in previous Marine Order 70 instruments.

Human rights implications

57. This Order engages Article 6 of the International Covenant on Economic, Social and Cultural Rights (the ICESCR) concerning the right to work by imposing qualifications and restrictions for particular duties performed on vessels subject to the Polar 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.

58. 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 seafarer certificates, or for the revalidation of those certificates, may place limits on the promotion and advancement of those seafarers. However, those limitations are required to implement Australia's international obligations under the International Maritime Organization's *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended* and are necessary to ensure the safety of vessels and persons on board, and to the environment, by ensuring that only appropriately qualified seafarers work on vessels.

Conclusion

59. 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 it may limit human rights, those limitations are reasonable, necessary and proportionate.

Making the instrument

60. 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*.