

Explanatory Statement

Marine Order 503 (Certificates of survey – national law) Amendment Order 2018 (Order 2018/11)

Authority

1. The Marine Safety (Domestic Commercial Vessel) National Law, set out in Schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (the national law), provides for this Order to be made.
2. Division 5 of Part 4 of the national law provides for matters that can be prescribed in the regulations for certificates of survey for domestic commercial vessels.
3. Subsection 159(1) of the national law 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 national law.
4. Subsection 159(2) of the national law provides for regulations to be made prescribing the standards for domestic commercial vessels.
5. Subsection 159(5A) of the national law provides for regulations to be made for the conduct of the survey of vessels.
6. Subsection 163(1) of the national law provides that the National Regulator may make a Marine Order for any matter for which provision must or may be made by regulations, other than for matters mentioned in the section.
7. Section 164 of the national law allows a Marine Order to provide for any matter by applying, adopting or incorporating any matter contained in any written instrument in force or existing from time to time including the National Standard for Commercial Vessels (NSCV) and the Uniform Shipping Laws (USL Code).
8. 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.
9. This Order is a legislative instrument for the *Legislation Act 2003*.

Purpose

10. This Order amends *Marine Order 503 (Certificates of survey – national law) 2018* (Marine Order 503).

Overview

11. Marine Order 503 prescribes matters for the national law in relation to the application, issue, variation, suspension and revocation of certificates of survey for domestic commercial vessels. It prescribes the standards that apply to a domestic commercial for the issue of a certificate of survey and also prescribes the standards to be met for the survey of a domestic commercial vessel.
12. Section 7 of Marine Order 503 prescribes the standards that a domestic commercial vessel must meet for the issue of a certificate of survey under subsection 159(2) of the national law. These prescribed standards include standards set out in the NSCV and the USL dealing with arrangement, accommodation and personal safety, watertight and weathertight integrity, construction, fire safety, engineering, stability, equipment and associated systems.
13. Different construction and equipment standards are prescribed for ‘existing vessels’, ‘new vessels’, and ‘transitional vessels’, as defined in Marine Order 503. Currently, Marine Order 503 prescribes the construction and equipment standards for a new vessels being the contemporary standards in the NSCV. However, for

existing vessels, with the exception of safety equipment, the construction and equipping standards are generally those that applied to the vessel on 30 June 2013.

14. From 1 January 2019, the NSCV will require that, from 1 January 2021, the kind of emergency position indicating radio beacons (EPIRB) to be carried on most domestic commercial vessels required to comply with the NSCV is a kind that is designed to float-free and automatically activate.

15. This Order amends section 7 of Marine Order 503 to ensure that certain kinds of domestic commercial vessels that are ‘existing vessels’ are also required to comply with the contemporary communication equipment standards in the NSCV relating to the carriage of float-free and automatically activating EPIRB.

16. A number of incidents in Australia and internationally highlighted the need for domestic commercial vessels to carry float-free EPIRBs. Investigations conducted domestically and internationally found that masters and crew may not be able to manually transmit a distress signal in an emergency situation for a number of reasons including an inability to access the distress-alerting device due to the speed that the vessel capsizes or sinks and/or the location of the device. Importantly, these investigations considered the potential limitations of EPIRBs that are not designed to automatically activate and float free.

17. The added safety benefits that a float-free EPIRB can provide that a manually activated EPIRB cannot is that it signal a request for help within minutes automatically, and without human-assisted activation. This functionality may have resulted in a material difference in past situations where a manually-activated EPIRB was carried on a vessel and, for various reasons, was not activated by the master or crew on board the vessel.

Consultation

18. AMSA conducted extensive industry consultation on proposed amendments to the NSCV regarding mandating the carriage of float-free EPIRBs, including mandating the carriage on domestic commercial vessels that are ‘existing vessels’.

19. Consultation was conducted between 31 October 2017 and 2 February 2018. A copy of the proposed amendments to the NSCV was provided to AMSA’s domestic commercial vessel and fishing industry advisory committees and to members of the Maritime Agencies Forum which represents the marine safety Authorities. A copy was also released for external consultation.

20. Comments arising from this industry consultation process were received from 46 members of the public, including owners and operators of domestic commercial vessels, industry associations, accredited marine surveyors, marine safety agencies and manufacturers of float-free EPIRBs.

21. This terms of this Order was not publicly consulted on because the amendments are machinery in nature, and simply gives effect to the broader outcomes of the industry consultation on the NSCV conducted between 31 October 2017 and 2 February 2018.

22. The Office of Best Practice Regulation (OBPR) has advised that based on the information provided to it, the regulatory impacts of the amendments in this Order appear to be minor and no formal Regulation Impact Statement assessed by the OBPR is required. The OBPR reference number is 23195.

Documents incorporated by reference

23. Parts of the following documents are incorporated by reference:

- NSCV Part C7A – Safety equipment;
- NSCV Part C7B – Communications equipment;
- NSCV Part F1 – Fast Craft; and
- NSCV Part F2 – Leisure Craft.

24. The manner of incorporation for the NSCV is as existing from time to time. These instruments are available for free from the AMSA website at <http://www.amsa.gov.au>.

Commencement

25. This Order commenced on 1 January 2019.

Contents of this instrument

26. Section 1 sets out the name of this Order.

27. Section 2 states that this Order commences on 1 January 2019.

28. This Order has one schedule which amends Marine Order 503. Section 3 of this Order provides that Schedule 1 amends Marine Order 503 in accordance with the amendments in that schedule.

Schedule 1 Marine Order 503 (certificates of survey – national law) 2018

29. Item 1 of Schedule 1 of this Order amends and replaces subsection 7(2) of Marine Order 503. This item prescribes the standards for arrangement, accommodation and personal safety, watertight and weathertight integrity, construction, fire safety, engineering, stability, equipment and associated systems for existing vessels. With the exception of standards for safety equipment, the standards for existing vessels are those that applied to the vessel on 30 June 2013, or the standards applied when design approval was given if the existing vessel was not in commercial operation on 30 June 2013. Existing vessels are required to meet the contemporary safety equipment standards in the NSCV.

30. This item further prescribes that the standards for safety equipment and EPIRBs are those in the NSCV that apply to the vessel. This amendment to subsection 7(2) will ensure that existing vessels are required to comply with the contemporary standards regarding EPIRB in the NSCV, consistent with the requirements for new vessels and transitional vessels. A new and revised Note has been included to clarify the respective Parts that prescribe the standards for safety equipment and EPIRBs, which vary depending on whether the vessel is a Class 1, 2 or 3 vessel, or a Class 4 or Fast Craft vessel, as defined in Marine Order 503.

31. Item 2 of Schedule 1 of this Order amends and replaces subsection 7(5) of Marine Order 503 to provide that the standards for ‘new vessels’, other than the standards for safety equipment and EPIRBs, are those that applied to the vessel when it was first issued a certificate of survey or other approval to operate unless a change mentioned in Schedule 1 of Marine Order 503 has occurred with respect to the vessel, or the vessel has not had a certificate of survey or other approval to operate in force for at least 2 years. This amendment is to ensure that new vessels already issued with a certificate of survey or other approval to operate are similarly required to comply with the latest standards for safety equipment and EPIRB requirements. Subsection 7(5) still however entitles these new vessel issued with a certificate of survey or other approval to operate can continue meet all other vessel standards that applied to the vessel when first issued the certificate or approval.

32. Items 3 and 4 of Schedule 1 of this Order amend subsection 21(1) of Marine Order 503 (Definitions and interpretations) to include a new definition for the following terms: ‘category 1 bracket’, ‘class 2 EPIRB’ and ‘EPIRB’. These definitions are included for clarity.

Statement of compatibility with human rights

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

Overview of the legislative instrument

34. This Order amends section 7 of Marine Order 503 to ensure that certain kinds of domestic commercial vessels that are ‘existing vessels’, as defined in Marine Order 503, are required to comply with the contemporary communication equipment standards in the NSCV relating to the carriage of a float-free and automatically activating EPIRB. This Order also provides definitions for technical terms used in this Order.

35. The added safety benefits that a float-free EPIRB can provide that a manually activated EPIRB cannot is that it signals a request for help within minutes automatically, and without human-assisted activation. This functionality may have resulted in a material difference in past situations where a manually-activated EPIRB was carried on a vessel and, for various reasons, was not activated by the master or crew on board the vessel.

Human rights implications

36. This instrument does not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Conclusion

37. AMSA considers that 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*.

Making the instrument

38. 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*.