

Explanatory Statement

Marine Order 47 (Offshore industry units) 2019 (Order 2019/4)

Authority

1. Section 98 of the *Navigation Act 2012* (Navigation Act) provides that the regulations may make provision in relation to safety certificates.
2. Section 125 of the Navigation Act provides that the regulations may make provision in relation to musters, drills, checks of machinery and equipment and other tests.
3. Section 314 of the Navigation Act provides that the regulations may provide for matters relating to certificates.
4. 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.
5. Subsection 339(2) of the Navigation Act provides that the regulations may provide for the matters mentioned in that provision for the safe operation of vessels.
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 Marine Order is a legislative instrument for the *Legislation Act 2003*.

Purpose

9. This Marine Order:

- prescribes matters for the Navigation Act in relation to the issue of safety certificates for regulated Australian vessels that are offshore industry units; and
- sets out requirements for foreign vessels including certification; and
- provides notification requirements for planned tows and other reporting matters.

Overview

10. This Marine Order provides for the survey, certification and safe operation of offshore industry units.
11. This Marine Order gives effect to SOLAS and the applicable MODU Code. It also implements the IMO *Survey Guidelines under the Harmonised System of Survey and Certification (HSSC)*, 2017.
12. This Marine Order repeals *Marine Order 47 (Mobile offshore drilling units) 2012* and *Marine Order 60 (Floating offshore facilities) 2001*. When the Marine Order commences, Schedules 25 and 36 of *Marine Order 4 (Transitional modifications) 2013* cease to have effect because those schedules modified the previous Marine Orders.

Consultation

13. A copy of the draft of this Marine Order was placed on the AMSA website for public comment on 4 June 2019 for a 4 week consultation period. Around 160 stakeholders, including offshore petroleum and gas proponents, ship operators, seafarer representative organisations, classification societies, shipping industry peak bodies and various government bodies were invited to comment. There were six submissions received on the draft Marine Order. Generally, the comments requested greater clarity concerning the operational impact of the changes and explanation in relation to the different requirements for SOLAS and non-SOLAS certification. As a consequence, minor changes were made to the text of the Order including extra information added to notes. New guidance material to support this Marine Order has also been developed in consultation with the Department of Industry, Innovation and Science and the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA).

14. 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 25133.

Documents incorporated by reference

15. This Marine Order incorporates by reference parts of the following documents:

- *Marine Order 1 (Administration) 2013*
- *Marine Order 12 (Construction — subdivision and stability, machinery and electrical installations) 2016*
- *Marine Order 15 (Construction — fire protection, fire detection and fire extinction) 2014*
- *Marine Order 18 (measures to enhance maritime safety) 2013*
- *Marine Order 21 (Safety and emergency arrangements) 2016*
- *Marine Order 25 (Equipment — lifesaving) 2014*
- *Marine Order 27 (Safety of navigation and radio equipment) 2016*
- *Marine Order 30 (Prevention of collisions) 2016*
- *Marine Order 58 (Safe management of vessels) 2015*
- *Offshore Petroleum and Greenhouse Gas Storage Act 2006*
- International Convention for the Safety of Life at Sea (SOLAS)
- *Code for the Construction and Equipment of Mobile Offshore Drilling Units (MODU Code — 1979, 1989 and 2009 version)*
- *Code of Safety for Diving Systems, 1995*
- *International Safety Management (ISM) Code*
- *Revised Guidelines on the implementation of the International Safety Management Code*
- *Survey Guidelines under the Harmonised System of Survey and Certification (HSSC), 2017*
- *Guidelines for safe ocean towing*, published in IMO Circular MSC.1/Circ.884, and as amended from time to time.

16. Due to the operation of section 10 of the *Acts Interpretation Act 1901* (as applied by paragraph 13(1)(a) of the *Legislation Act 2003*), *Marine Order 1 (Administration) 2013* is adopted as in force from time to time because it is adopted by reference to its title in this Marine Order. The *Offshore Petroleum and Greenhouse Gas Storage Act 2006* is also subject to section 10 of the *Acts Interpretation Act 1901* and is incorporated as in force from time to time. This legislation is available on the Federal Register of Legislation.

17. The manner of incorporation of SOLAS is as in force from time to time (see section 6 of *Marine Order 1 (Administration) 2013* and definition for ***Safety Convention*** in section 14 of the Navigation Act). The Convention is a treaty and available for free on the Australian Treaties Database at <http://www.info.dfat.gov.au/treaties>.

18. The 1979, 1989 and 2009 versions of the MODU Code are adopted by IMO Resolution and incorporated as amended from time to time.

19. The *Code of Safety for Diving Systems, 1995* is adopted by IMO Resolution A.831(19) and incorporated as amended from time to time.

20. The *International Safety Management (ISM) Code* is adopted by IMO Resolution and incorporated as in force from time to time.

21. The *Revised Guidelines on the implementation of the International Safety Management Code* is adopted by IMO Resolution and incorporated as amended from time to time.

22. The *Survey Guidelines under the Harmonised System of Survey and Certification (HSSC), 2017* is adopted by IMO Resolution and incorporated as amended from time to time.

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

Commencement

24. This Order commenced on 1 November 2019.

Contents of this instrument

25. Division 1 (Preliminary) contains 7 provisions that assist the operation, interpretation and administration of the Marine Order.

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

27. Section 1A provides for the commencement of the Marine Order.

28. Section 1B provides that *Marine Order 47 Mobile offshore drilling units) 2012* and *Marine Order 60 (Floating offshore facilities) 2001* are repealed.

29. Section 2 states the purpose of the Marine Order.

30. Section 3 sets out the powers in the Navigation Act that enable the Marine Order to be made.

31. Section 4 sets out definitions of terms used in the Marine Order.

32. Section 5 provides interpretation assistance for certain expressions used in the Marine Order. The *Survey Guidelines under the Harmonised System of Survey and Certification* are required to be applied as if the Guidelines were mandatory and not an instrument with advisory or guidance effect. The Guidelines deal with the frequency, scope and manner of survey and inspection with the objective of survey and inspection being to ensure a vessel is fit for the service intended. A regulated

Australian vessel must comply with the Guidelines if the vessel has a SOLAS certificate or non-SOLAS certificate.

33. Section 5 also provides that mention of a Marine Order in Schedules 1 to 2 means the requirements in that Marine Order taking into account that some of those requirements may have been disapplied by an exemption or replaced by an equivalent. If part or whole of a requirement has been disapplied or replaced, compliance is required with aspects of the requirement still applying, that is, compliance with the requirement *to the extent it has not been disapplied or replaced*. It may be the case that conditions are imposed on any exemption or equivalent so a vessel is also required to comply with those conditions.

34. Section 6 states the application of the Marine Order.

35. Section 7 provides for equivalent arrangements. AMSA may give an approval for use of an equivalent if satisfied of specified matters. The decision by AMSA to approve the use of an equivalent is subject to internal and external merits review under sections 17 and 18 of *Marine Order 1 (Administration) 2013* as the decision is made under section 15 of that Order.

36. Division 2 (Certificates issued under the Navigation Act) contains 19 provisions.

37. Section 8 sets out the requirement for an Australian regulated vessel to have a safety certificate. Offences and civil penalties relating to taking a regulated Australian vessel to sea without a safety certificate are set out in Division 4 of Part 2 of Chapter 3 of the Navigation Act.

38. Section 9 specifies the kinds of safety certificate for which a person may apply.

39. Section 10 prescribes the criteria for the issue of a MODU safety certificate.

40. Section 11 prescribes the conditions that apply to a MODU safety certificate.

41. Section 12 provides that an issuing body may endorse of a MODU safety certificate.

42. Section 13 sets out the duration of a MODU safety certificate.

43. Section 14 prescribes the criteria for the variation of a MODU safety certificate.

44. Section 15 prescribes the criteria for the issue of a SOLAS certificate.

45. Section 16 sets out the conditions that apply to a SOLAS certificate.

46. Section 17 provides that an issuing body may endorse of a SOLAS certificate.

47. Section 18 sets out the duration of a SOLAS certificate.

48. Section 19 prescribes the criteria for variation of a SOLAS certificate.

49. Section 20 prescribes the criteria for revocation of a SOLAS certificate.

50. Section 21 prescribes the criteria for the issue of a non-SOLAS certificate.

51. Section 22 prescribes the conditions applicable for the issue of a non-SOLAS certificate.

52. Section 23 provides that an issuing body may endorse a non-SOLAS certificate.

53. Section 24 provides for the duration of a non-SOLAS certificate.

54. Section 25 prescribes the criteria for variation of a non-SOLAS certificate.

55. Section 26 prescribes the criteria for revocation of a non-SOLAS certificate.
56. Division 3 (Requirements for foreign vessels) contains 1 provision.
57. Section 27 sets out the certification requirements for foreign vessels.
58. Division 4 (Notification and reporting matters) contains 3 provisions.
59. Section 28 provides for the notification of planned tows.
60. Section 29 provides for the notification of alterations, major renewals or repairs on vessels.
61. Section 30 provides for the reporting of defects on a regulated Australian vessel.
62. Division 5 (Approval matters) contains 1 provision.
63. Section 31 provides for the approval of an in-water inspection. The decision by AMSA to approve an in-water inspection is subject to internal and external merits review under sections 17 and 18 of *Marine Order 1 (Administration) 2013* as the decision is made under section 15 of that Order.
64. Schedule 1 contains 5 clauses and details the criteria for issue and the conditions that attach to SOLAS certificates, including for Passenger Ship Safety Certificates, Cargo Ship Safety Construction Certificates, Cargo Ship Safety Equipment Certificates, Cargo Ship Safety Radio Certificates and Cargo Ship Safety Certificates.
65. Schedule 2 contains 2 clauses and details the criteria for issue and conditions that attach to non-SOLAS certificates being a Certificate of Survey for a Passenger Vessel and a Certificate of Survey for a Cargo Vessel.

Statement of compatibility with human rights

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

Overview of the legislative instrument

67. The purpose of this Marine Order is to prescribe certification matters for vessels that are offshore industry units. The Marine Order gives effect to SOLAS and the applicable MODU Code in relation to the survey and certification of vessels.
68. This Marine Order repeals and replaces *Marine Order 47 (Mobile offshore drilling units) 2012* and *Marine Order 60 (Floating offshore facilities) 2001*.

Human rights implications

69. This Marine Order does not engage any of the applicable rights or freedoms.

Conclusion

70. AMSA considers that this Marine Order is compatible with human rights as it does not raise any human rights issues. It does not affect any rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies.

Making the instrument

71. This Marine Order 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*.