



Memorandum to the Transport Select Committee

Post Legislative Assessment of the Merchant Shipping (Pollution) Act 2006

Presented to Parliament by the
Secretary of State for Transport,
by Command of Her Majesty
July 2011

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ISBN: 978 0 10 181432 4

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 2442597 07/11 13913 19585

Printed on paper containing 75% recycled fibre content minimum.

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Introduction

1. This memorandum provides a post legislative assessment of the Merchant Shipping (Pollution) Act 2006 (c.8) (“the Act”) and has been prepared by the Department for Transport for the Transport Select Committee. It will be published as part of the process set out in the document *Post Legislative Scrutiny – The Government’s Approach* (Cm 7320).

Objectives of the Merchant Shipping (Pollution) Act 2006

2. Chapters III and IV of Part VI of the Merchant Shipping Act 1995 implement the International Convention on Civil Liability for Oil Pollution Damage 1992 (“the Liability Convention”) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 (“the Fund Convention”) which are international arrangements relating to compensation for oil pollution from ships.

3. In May 2003 a Protocol to the Fund Convention was adopted at the International Maritime Organization. The purpose of the Supplementary Fund Protocol is to supplement the compensation available for oil pollution damage under the 1992 Civil Liability and Fund Conventions with an additional third tier of compensation.

4. Section 1 of the Act provides a power to give effect to the Supplementary Fund Protocol 2003 and to future revisions of the Liability Convention, the Fund Convention and the Supplementary Fund Protocol.

5. Section 2 of the Act provides for the United Kingdom to implement internationally agreed measures to reduce emissions of air pollution from ships.

6. Annex VI was introduced into the International Convention on the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 relating thereto (the MARPOL Convention) by the Protocol of 1997. The object of Annex VI and the Technical Code on Control of Emission of Nitrogen Oxides from Marine Diesel Engines (NOx Technical Code) referred to in Annex VI is to control, on an international basis, emissions to the atmosphere from ships and offshore installations.

7. Annex VI provides for all relevant ships to be certified, maintained and operated in accordance with Annex VI and the NOx Technical Code. It limits the sulphur content of fuel used on board ships in a Sulphur Oxides Emission Control Area.

8. The MARPOL Convention is a treaty which was negotiated and adopted in the forum of the International Maritime Organization. The United Kingdom acceded to the Protocol of 1997 on 5 August 2004 and Annex VI entered into international force in May 2005.

Implementation

9. Section 1 of the Act contains a power to give effect to the Supplementary Fund Protocol and modifications to the Liability Convention and the Fund Convention by Order in Council.

10. Section 2 of the Act inserted, in section 128 of the *Merchant Shipping Act 1995*, a power to implement Annex VI of the MARPOL Convention by means of an Order in Council.

Secondary legislation etc.

11 The power under section 1 was exercised in the *Merchant Shipping (Oil Pollution)(Supplementary Fund Protocol) Order 2006*, S.I.2006 No.1265 which amended the *Merchant Shipping Act 1995* and the *Senior Courts Act 1981* to give effect to the Supplementary Fund Protocol.

12. Section 2 of the Act was given effect by means of the following pieces of secondary legislation:

- *Merchant Shipping (Prevention of Air Pollution from Ships) Order 2006*, SI 2006 No.1248;
- *Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008*, SI 2008 No.2924, which was made – inter alia – under the *Merchant Shipping (Prevention of Air Pollution from Ships) Order 2006*; and
- *Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2010*, SI 2010 No.895, which was also made – inter alia – under the *Merchant Shipping (Prevention of Air Pollution from Ships) Order 2006*. This second set of Regulations implemented provisions concerning the sulphur content of marine fuels contained in Directive 1999/32/EC as amended by Regulation (EC) No 1882/2003 and Directive 2005/33/EC in the main, but there was also some amendment of the provisions implementing Annex VI of the MARPOL Convention.

Legal issues

13. There have been no legal issues or litigation stemming from the Act and associated secondary legislation to date.

Other reviews

14. We are not aware of any other reviews of the Act.

Post legislative assessment of the Act

15. Section 1 of the Act has satisfactorily provided a power for the implementation of the Supplementary Fund Protocol and the amendments to the Liability Convention and the Fund Convention. There have been no pollution incidents which have involved the Supplementary Fund Protocol.

16. Section 2 of the Act has satisfactorily provided a power for the implementation of Annex VI of the MARPOL Convention in national law, and that power has been exercised through appropriate secondary legislation.

**Department for Transport
July 2011**



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ISBN 978-0-10-181432-4



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