

Title: Merchant Shipping (Ambulatory Reference) (Revocation of provisions relating to MARPOL Annex V provisions within the Prevention of Pollution by Garbage Regulations) DMA No: DfTDMA037 RPC Reference No: N/A Lead department or agency: Maritime & Coastguard Agency Other departments or agencies: Department for Transport	De Minimis (DMA)
	Date: 30/01/2020
	Stage: Consultation
	Source of intervention: International
	Type of measure: Secondary legislation
	Contact for enquiries: Steven Dexter, Danny Fellowes
Summary: Intervention and Options	RPC Opinion: N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2016 prices, 2017 present value)	One-In, Three-Out	Business Impact Target Status
-£0.2m	-£0.2m	<£0.1m	N/A	N/A

What is the problem under consideration? Why is government intervention necessary?

The discharge of garbage into the sea from ships creates a health hazard as well as being aesthetically unpleasing. This discharge contributes to marine pollution commonly known as marine debris. If marine pollution occurs from garbage it could result in negative impacts on the environment, human health and economic activity. Without regulation, incentives for environmental precautions are suboptimal as they do not incur the full social costs associated with such incidents.

The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 and 1997 Protocols (hereafter referred to as, MARPOL) includes regulations for the prevention of pollution by garbage from ships (MARPOL Annex V - Garbage). Government intervention is required to implement revisions to MARPOL Annex V into UK law, and ensure future revisions are implemented without unnecessary delay.

What are the policy objectives and the intended effects?

The policy objectives are:

- To reduce the amount of garbage that is discharged into the sea, and the resultant negative effects on the environment, human health and economic activity through transposing the updated MARPOL V requirements into UK law.
- Ensure consistency with international law in this area in the future and eliminate unnecessary delays to transposing the latest MARPOL annex V requirements into UK law by introducing ambulatory reference.

The intended effects of the changes to MARPOL annex V are to reduce the impact of garbage pollution from ships. The addition of Chapters 6 and 7 provide the legal link between MARPOL annex V and the International Maritime Organisation (IMO) for the implementation of the III Code and Polar Code. Ambulatory reference will remove legal uncertainty and red tape for industry by referring them always to the most up to date international legislation.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Do nothing is the baseline against which Options 1 and 2 are assessed. This is not a realistic option as the UK, as a signatory to MARPOL, has an obligation to implement any changes to MARPOL Annex V into UK law.

Option 1: Bring UK law in line with recent updates to MARPOL Annex V requirements. This would fail to recognise industry's concerns raised during the Red Tape Challenge about the delays in transposition of international requirements.

Option 2: Bring UK law in line with recent updates to MARPOL Annex V requirements and introduce ambulatory referencing to refer UK industry to the most up to date international legislation in this area. This has the support of the UK shipping industry and is the preferred option.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** See PIR Plan

Does implementation go beyond minimum EU/International requirements?	No
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Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Date:

Summary: Analysis & Evidence

Policy Option 1

Description: Update UK legislation in line with current version of MARPOL Annex V

FULL ECONOMIC ASSESSMENT

Price Base Year: 2013	PV Base Year: 2013	Time Period Years: 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.1	High: -0.3	Best Estimate: -0.2

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.1	0	0.1
High	0.3	0	0.3
Best Estimate	0.2	0	0.2

Description and scale of key monetised costs by 'main affected groups'

The key costs to business (vessel owners) are related to the following areas. The costs below present the central case (best estimate):

- Garbage Management Plans (GMP) - £106,000
- Garbage Placards - £22,000
- Familiarisation - £29,000

Other key non-monetised costs by 'main affected groups'

The new regulations mean ships will retain more garbage on-board whilst the ship is at sea and as a result discharge more garbage to Port Reception Facilities (PRF) when they come to port. There may be a cost through increased fees to vessels as a result of increased demand at PRFs.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

N/A

Other key non-monetised benefits by 'main affected groups'

The key benefit of this option is reduced garbage pollution at sea, protecting the marine environment, beaches and shorelines where garbage ends up. This has not been quantified as it would be difficult to solely attribute any impact solely to these changes, as other regulations affect this area too. The updated regulations are also simpler and clearer over what are prohibited items to dispose of into the sea, and we expect compliance to increase as a result.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
We have assumed a reasonable amount of time to create the Garbage Management Plans, placards and familiarise with the regulation. To mitigate the risk from the assumptions we have adopted sensitivity analysis to produce a range of estimates covering low, central and high scenarios in each case.		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: <0.1	Benefits: N/A	Net: <0.1	
			N/A

Summary: Analysis & Evidence

Policy Option 2

Description: Bring UK law in line with recent updates to international requirements and introduce ambulatory referencing to refer UK industry to the most up to date international legislation

FULL ECONOMIC ASSESSMENT

Price Base Year: 2013	PV Base Year: 2013	Time Period Years: 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.1	High: -0.3	Best Estimate: -0.2

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.1	1	0	0.1
High	0.3		0	0.3
Best Estimate	0.2		0	0.2

Description and scale of key monetised costs by 'main affected groups'

The key costs to business (vessel owners) are related to the following areas. The costs below present the central case (best estimate):

- Garbage Management Plans (GMP) - £106,000
- Garbage Placards - £15,000
- Familiarisation - £29,000

Other key non-monetised costs by 'main affected groups'

The new regulations mean ships will retain more garbage on-board whilst the ship is at sea and as a result discharge more garbage to Port Reception Facilities (PRF) when they come to port. There may be a cost through increased fees to vessels as a result of increased demand at PRFs. In addition, there will be cost associated with future amendments to MARPOL Annex V, which through ambulatory referencing will automatically come into force. The cost associated with future amendments cannot be monetised at this stage as there is currently no indication of what form future amendments may take, but it is anticipated that ambulatory referencing will streamline future familiarisation due to improved clarity.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

N/A

Other key non-monetised benefits by 'main affected groups'

The key benefit of this option is reduced garbage pollution at sea, protecting the marine environment, beaches and shorelines where garbage ends up. This has not been quantified as it would be difficult to solely attribute any impact solely to these changes, as other regulations affect this area too. The updated regulations are also simpler and clearer over what are prohibited items to dispose of into the sea, and we expect compliance to increase as a result. The updated regulations are also simpler and clearer over what are prohibited items to dispose of into the sea, and we expect compliance to increase as a result. The introduction of ambulatory referencing to MARPOL annex V will simplify the regulatory framework and give legal clarity for both industry and government. It will also provide a level playing field between UK and foreign operators as the automatic incorporation of amendments in legislation means that the UK can enforce amendments as soon as they come into force internationally.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
We have assumed a reasonable amount of time to create the Garbage Management Plans, placards and familiarise with the regulation. To mitigate the risk from the assumptions we have adopted sensitivity analysis to produce a range of estimates covering low, central and high scenarios in each case.		

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: <0.1	Benefits: N/A	Net: <0.1	

			N/A
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Evidence Base (for summary sheets)

1 Background

Shipping is an international industry and the regulatory framework must reflect this. The International Maritime Organization (IMO) is the United Nations' specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships. Its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and implemented.

The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the 1978 and 1997 Protocols (MARPOL) is one in a number of Conventions adopted by the IMO to fulfil its remit. The MARPOL Convention was first adopted in 1973 and updated in 1978 in response to a spate of tanker accidents in 1976-1977. The Convention includes regulations aimed at preventing and minimizing pollution from ships - both accidental pollution and that from routine operations. Flag states are responsible for ensuring that ships under their flag comply with its requirements, and certificates are issued as proof of compliance. Their ships are inspected against these requirements in foreign ports.

MARPOL is divided into 6 annexes, each addressing different subjects. MARPOL amendments are developed by a number of technical sub-committees who report to the IMO's Marine Environment Protection Committee (MEPC), which is responsible for overseeing the developments and ultimately approve and adopt amendments.

MARPOL Annex V Garbage came into force in December 1988. Under IMO procedure, MARPOL Annexes are subject to periodic review. In October 2006, the MEPC agreed to an intersessional correspondence group to develop a framework for a comprehensive review of MARPOL Annex V. The review took into account resolution 60/30 of the United Nations General Assembly, which had invited IMO to review MARPOL Annex V, in consultation with relevant organizations and bodies, and to assess its effectiveness in addressing sea-based sources of marine debris.

MARPOL Annex V revisions were adopted in July 2011, with new provisions coming into force on 1 January 2013 internationally. These amendments and additional amendments are addressed in this impact assessment. The main change to MARPOL Annex V is the general prohibition on the discharge of all garbage into the sea from all Ships, with limited exceptions.

MARPOL Annex V applies to all ships, which means all vessels of any type whatsoever operating in the marine environment, from merchant ships to fixed or floating platforms to non-commercial ships like pleasure crafts and yachts.

2 Problem under consideration

Garbage from ships is just as detrimental to the marine environment as other MARPOL wastes such as oil, chemicals, etc. Unfortunately, garbage from shipping doesn't seem to have the same effect on the public as oil, or chemical spills which happen very infrequently. It is believed that garbage discharged into sea will be degraded by the seas - but this process can take months or years depending on the garbage categories. The greatest danger comes from plastic, which remains in the marine environment for years breaking down into small plastic particles. Fish and marine mammals, can in some cases, mistake these plastics for food. These micro plastics then enter our food chain with yet to be determined health risks. Larger items such as, ropes, nets, bags and plastic rings used to hold cans of beer and drinks trap marine mammals and fish. Plastic has been banned from discharge ever since the introduction of MARPOL Annex V in 1988, however, it is the level of plastic in the sea which has made the issue of marine debris prominent in the media.

3 Rationale for Intervention

Since MARPOL Annex V came into force in 1988 marine debris from shipping has declined, however, it has not declined enough that the United Nations (UN) General Assembly, and the IMO believed more could be done to further protect the marine environment from ship generated waste pollution.

MARPOL Annex V seeks to reduce, with the ultimate aim of eliminating, the amount of garbage being discharged into the sea from ships. This was developed following a comprehensive review to further protect the marine environment from ship generated waste. In order to strengthen MARPOL Annex V, it was agreed that a general prohibition regulation was required on the discharge of all garbage. However, it was considered that certain categories of garbage could be discharged under set conditions and criteria depending on whether the ship was inside or outside a special area.

The shipping industry does not face the full costs of the risk of pollution from garbage. This is because the full impact of pollution isn't solely paid by the owner/operator of the vessel that pollutes. Third parties bear some of the costs, known as 'external costs'; for example, the damage caused to the marine environment. These 'external costs' can arise in the course of normal activity in the maritime transport sector, as a result of accidents, or due to illegal activity. Without regulation, incentives for the shipping industry to ensure the best possible safety precautions are suboptimal since they do not incur the full social costs associated with such incidents.

The shipping industry has been progressively regulated to reduce the risk of pollution by garbage from ships occurring. The number and severity of garbage pollution accidents are minimal to zero and the number of discharge incidents are minimal depending on the type of ship and its flag state. Pollution incidents do, of course, occur, but are now infrequent and are often on a minor scale. When incidents do take place the procedures and processes are in place to ensure the reaction is swift and any impacts minimised.

MARPOL Annex V - Garbage

MARPOL Annex V sets a general prohibition of garbage discharges. It then allows limited exceptions of certain garbage categories to be discharged into the sea with strict conditions depending on the location of the ship. The discharge regulations are enforced by documentation such as the recording of discharges in the Garbage Record Book or ships official logbook, Garbage Management Plan and the requirement for garbage placard. The MARPOL Annex V is set as:

- Chapter 1 – General (definitions, application, general prohibition of discharge, rules of discharge, exceptions, reception facilities, port state control on operational requirements, placards, garbage management plans and garbage record-keeping)
- Chapter 2 – Verification of compliance with the provisions of this Annex
- Chapter 3 – International Code for ships operating in Polar Waters

At present the transposing legislation does not reflect the latest requirements of MARPOL Annex V, there are still a number of amendments contained in 10 IMO MEPC resolutions dating back from 2011 yet to be implemented.

Regulatory approach

Current practice on implementation is to use a mixture of primary and secondary legislation with technical provisions included either in the instrument, relegated to separate government publications, or occasionally incorporated by direct reference to the international text. The choice between these options has been dictated by the available powers or by what seemed most expedient at the time. Consequently, there is an absence of any coherent regulatory framework to guide users (such as a framework mirroring the international agreements), and this, combined with a mix of international and domestic obligations in the same instrument results in a position that is confusing to both industry and regulators alike.

Using current procedures and practice to implement regular changes to international agreements can be time consuming and resource intensive. There is a need for Government intervention to provide for an alternative, simplified, approach to help speed up implementation and / or reduce the resources required.

Failure to implement UK obligations under these international agreements could result in ships being challenged during port state control checks in foreign ports, leading to delays and inconvenience for UK flagged ships trading internationally. The gap between the international agreements and UK domestic implementation also has implications for enforcement because regardless of the merits of a particular international agreement, if it has not been incorporated in domestic law there is no legal authority to require compliance. Also, the number of redundant domestic legislative provisions will inevitably increase further, confusing the regulatory picture.

4 Policy objectives

The policy objectives are divided into two distinct areas: transposition of outstanding amendments to MARPOL Annex V into UK law; and the introduction of ambulatory referencing (defined in Annex 1). The existing Regulations will be repealed and replaced.

Transposition of outstanding amendments to MARPOL Annex V into UK law

Since 2011 the IMO made amendments to MARPOL Annex V the key amendments being: A general prohibition of the discharge of all garbage into the sea, with limited exceptions for only 4 categories of garbage¹. Strict conditions have been set for the 4 categories that are allowed to be discharged with the main condition being the ship must be enroute. Garbage category definitions have been moved from Guidelines to main Annex, and the Annex has new and redefined garbage categories. Development of a classification criteria for solid bulk cargoes as harmful to the marine environment (HME) and a classification for cleaning agents and additives.

The gross tonnage requirement for applicability of ships having to carry a Garbage Management Plan (GMP) was reduced from 400gt to 100gt. Amendments were made to the Garbage Record Book (GRB), GMP and placards to account for the general prohibition and new and redefined garbage categories. A new reporting criterion for fishing vessels to report the accidental loss or discharge of fishing gear which poses a significant threat to the marine environment or navigation. Guidelines were developed to assist with the implementation and application of the revised MARPOL Annex V.

Other amendments have been made to MARPOL Annex V since 2011, such as the provisions which allows Small Developing Island States (UK is not one) to have regional arrangements for port reception facilities, moving the classification criteria for cargo residue (HME) from the Guidelines into the main Annex to make a legal link between MARPOL Annex V and the International Maritime Solid Bulk Cargoes (IMSBC) Code , the introduction of E-waste as a garbage category, and further formatting amendments to the GRB.

The other changes include the introduction of the III Code and the Polar Code.

Introduce Ambulatory Referencing and reduce legal uncertainty

It is intended that the recast Regulations to incorporate a requirement for ships to comply directly with MARPOL Annex V in its up to date form. This will ensure that in the future, from a legal perspective, the UK is always up to date with the transposition of MARPOL Annex V requirements.

Supporting documentation (e.g. Marine Guidance Note (MGN)) will be used to add legal prescription or additional guidance, as required. For example, where the Convention states that a requirement is “to the satisfaction of the administration”, the Maritime and Coastguard Agency will specify what is required to meet this obligation.

During the Red Tape Challenge industry raised its concern regarding the lengthy delay between amendments to international Conventions coming into force globally and the same amendments being transposed into UK law. These delays lead to legal uncertainty and disparity between national and international legislation, which has already been adopted by other maritime administrations.

¹ Categories: Food waste Animal Carcasses, Cargo residues Non HME, Cleaning agents & additives Non HME,

Specifically, the UK Chamber of Shipping's² response to the Red Tape Challenge was:

"The UK shipping industry was very pleased to contribute to the Government's recent Red Tape Challenge initiative and proposed a number of basic principles which might help ensure 'better regulation' into the future.

One of these involved the direct read-across through 'ambulatory references' of international conventions which have been accepted by Government into UK law without their provisions having to be rewritten in the national context.

This would in particular help with keeping the national law up to date when amendments were agreed, of course again subject to their acceptance by Government.

The international convention text would clearly remain subject to the same scrutiny as at present and could be supplemented by guidance in the UK as to interpretation as necessary.

We believe that such a practice in the UK would substantially reduce the regulatory and legal process surrounding the adoption in this country of international regulations, which are an essential part of international shipping and without which the UK merchant fleet would not be able to operate."

In response, the Department for Transport (DfT) sought regulatory reform through the Deregulatory Act 2015. The Act introduced an additional power which allows for ambulatory referencing to be made to international instruments. Ambulatory Reference means a reference in legislation to an international instrument as modified from time to time (and not simply to the version of the instrument that exists at the time the secondary legislation is made). For more information on ambulatory referencing, see Annex 1 of this document.

It is worthwhile noting that whilst the UK Chamber of Shipping advocates 'ambulatory references', this does not negate the Government's principle of consultation. Amendments to international Conventions are developed and agreed at the IMO, where in addition to Member States, industry is well represented. Industry is therefore heavily involved with policy development and in helping to shape the UK's negotiating position. Working in partnership, UK officials and industry actively contribute to negotiations on new initiatives to ensure there are appropriate and proportionate measures to improve safety.

Level Playing Field

UK ships are liable for detention in a non-UK port if they are not in compliance with the latest requirements of MARPOL Annex V. Although this is considered unlikely as most UK owners and operators comply as a matter of course with the up to date requirements of MARPOL Annex V (regardless of whether the UK has transposed them into UK legislation) to continue operating worldwide to mitigate the risk of detention. Whilst the cost of rectifying a detention to enable the ship to sail may be low, the commercial cost of the time lost to the operator can be extremely high.

Without transposition of the latest MARPOL Annex V requirements into UK law, the UK is unable to take enforcement action against non-UK flagged ships that are not compliant with the latest requirements of MARPOL Annex V. Examples of enforcement actions include the detention of a non-compliant ship at Port State Control inspections, and prosecution of the ship's owner, manager, demise charterer and master should the garbage pollution arise or to non-compliance with the latest MARPOL Annex V amendments.

5 Description of options and issues considered

Do nothing

The UK, as a signatory to the MARPOL Convention, has an obligation to implement any changes to MARPOL Annex V in UK law. Without timely implementation:

² The UK Chamber of Shipping is a trade association and considered to be voice for the UK shipping industry. It has around 150 members from across the maritime sector. Further information on the Chamber is available from: <https://www.ukchamberofshipping.com/about-us/>

- there is a lack of legal certainty for operators due to differing international and domestic requirements;
- the playing field is not level for UK operators; and
- the UK's reputation is at risk

'Do nothing' is the baseline against which Options 1 and 2 are assessed. The do nothing considers a state of the world where the revisions considered in this impact assessment were not adopted by the IMO into the MARPOL convention.

Option 1: Update UK legislation in line with current version of MARPOL Annex V

This option would address the UK's current breach of its obligation to give effect to the requirements in MARPOL Annex V.

In relation to the transposition of the outstanding MARPOL Annex V amendments, the UK will implement the international requirements in the least burdensome way for business. The majority of costs imposed on businesses have already been incurred as the majority of regulations have already been implemented internationally.

This option would fail to recognise industry's concerns raised during the Red Tape Challenge about the delays in transposition of international requirements.

Discharge of Limited Exceptions Outside and Inside Special Areas

Even though there is an overall general prohibition regulation, MARPOL Annex V does allow for the discharge of certain garbage categories with set conditions whilst the ship is enroute. The discharge of the permitted garbage categories has set conditions dependent upon whether the ship is outside a special area or inside a special area.

Outside a special area the ship is permitted to discharge the following garbage categories under set conditions: food waste, animal carcasses, cargo residues (not Harmful to the Marine Environment (non HME)), and cleaning agents or additives (non HME).

Inside special areas the discharge of garbage is further restricted to the following categories with set conditions and criteria: food waste, cleaning agents or additives (non HME). Cargo residues (non HME) can only be discharged if the port reception facilities in the port of departure and at the next port within the special area are known to be inadequate (see Annex 2).

The new regulations mean ships will have to discharge more garbage to Port Reception Facilities (PRF) and will have to retain more garbage onboard whilst the ship is at sea. The ship will then choose to store the garbage for discharge to a PRF or incinerate the garbage whilst at sea. The ship can only incinerate certain waste categories as per MARPOL Annex VI, Appendix IV³. The increase in the quantity of garbage required to be retained on-board and discharged to a PRF is likely to be compacted, baled or crushed so limiting the storage space required for the short period of time that the ship is at sea. The ship is more likely to have existing equipment on board as the previous regulations required garbage to be treated before it could be discharged into the sea.

Placards, Garbage Management Plan and Garbage record-keeping

Due to the general prohibition rule and then the allowance of limited exceptions, placards, Garbage Management Plans (GMP) and the Garbage Record Book (GRB) were revised to reflect the new discharge regulations.

The requirement for a ship to carry a GMP has been expanded to include all vessels of 100 gross tons or greater, whereas under the previous regulations GMPs were required for vessels of 400 gross tons or greater or every ship which is certified to carry 15 persons or more.

³ Type Approval and Operating Limits for Shipboard Incinerators

Fishing vessels are now required to report the accidental loss or discharge of fishing gear, which poses a significant threat to the marine environment or navigation, to their flag state and to the coastal State that the accidental loss or discharge has happened.

Reception Facilities for Small Island Development States

In March 2006, the IMO emphasized the importance of adequate reception facilities and stated that the policy of "zero tolerance of illegal discharges from ships" could only be effectively enforced when there were adequate reception facilities in ports. Therefore, the Committee urged all Parties to MARPOL, particularly port States, to fulfil their treaty obligations to provide reception facilities for wastes generated during the normal operation of ships. It was recognised that Small Island Developing States (SIDS), may encounter difficulties to provide adequate facilities for all or some of the MARPOL waste streams due to their unique circumstances, size, geographical location etc. MARPOL Annex V says that Small Island Developing States (SIDS) may satisfy the relevant requirements of reception facilities through regional arrangements and such arrangements are the only practical means to satisfy these requirements (see Annex 3 for a list of Small Island Development States).

There is no impact on cost for the UK of Reception Facilities for Small Island Development States.

The IMO Instruments Implementation Code (III Code)

The IMO assembly adopted the III Code, which provides a global standard to enable States to meet their obligations. The mandatory audit scheme is seen as a key tool for assessing Member States' performance and responsibilities as flag, port and coastal States under the relevant IMO treaties and then offering the necessary assistance, where required, for them to meet their obligations fully and effectively. This entered into force in 2016 and is, in this context, included under the MARPOL Convention.

There is no impact on cost for MO Instruments Implementation Code (III Code).

The Polar Code

The Polar Code has been developed to provide a more comprehensive set of provisions to address the increased interests and traffic in the polar regions, and the unique operational, environmental and search and rescue concerns peculiar to these areas, taking into account the consequences of any major safety or pollution incident in polar waters are likely to cause widespread harm to these pristine environments. This entered into force in 2017 and is, in this context, included under the MARPOL Convention.

There is no impact on cost for the Polar Code.

Option 2: Bring UK law in line with recent updates to international requirements and introduce ambulatory referencing to refer UK industry to the most up to date international legislation in this area

In addition to the proposals outlined under Option 1, this option will introduce ambulatory referencing to MARPOL Annex V which will directly fulfil the main request of industry from the Red Tape Challenge, which was to address the delay in transposition of international requirements.

Ambulatory Reference for MARPOL Annex V

Under ambulatory referencing, future amendments to MARPOL Annex V agreed internationally will automatically come into force. This IA explores published changes which have come into force internationally since MARPOL V Regulations were last amended.

MARPOL Annex V is long established and deals with a single issue (the prevention of pollution by garbage). The main amendments to the Convention over the years have focused on the revision of the regulations for the prevention of pollution by garbage from ships. Other areas included editorial changes with little real impact on business. There have been 7 amending Resolutions in 16 years since Annex V entered into force

in 1988 prior to the Resolutions yet to be transposed. These mostly provide further clarity, make technical changes, or redefine geographical operational areas.

There are currently no future changes planned in the IMO work programme which spans the next 2 years. It is fully expected that any further changes which do occur will be minor, as those over the last 3 years have been. Historically MARPOL Annex V has been largely stable with infrequent changes. Any future amendments will nevertheless go through scrutiny by the UK government and industry, as they progress through the IMO process. In addition, any amendments that are introduced will be reviewed again at five-yearly intervals through the Post Implementation Review (PIR) process.

All the subject matter contained in MARPOL Annex V which is subject to Ambulatory Reference is technical in nature. Subsequent technical amendments, during the international negotiation process, will continue to be subject to:

- consideration of high-level impacts against a checklist; and
- stakeholder engagement involving representatives of the UK shipping industry

The PIR undertaken will evaluate whether the policy has achieved its goal and is still valid, and also evaluate the costs and benefits of all the technical amendments enacted since the previous review (or Impact Assessment).

If any amendment is found to be undesirable, the Secretary of State will have the power to prevent such an amendment coming into force in the UK or revoke it if already in force. However, the likelihood of this is thought to be remote because the amendments will have been agreed with UK government and industry, as well as internationally, before coming into force.

By implementing ambulatory reference, we:

- provide the legal certainty sought by industry as domestic legislation will no-longer be out of step with international requirements;
- reduce the administrative burden for industry, as it can focus on the convention text in technical areas rather than also having to refer to national implementing legislation;
- meet the industry desire for copy-out text, and reduce debates on whether a provision has been “gold-plated”; and
- provide a level playing field between UK ships calling at foreign ports and foreign flagged ships calling at UK ports

This option has the support of the UK shipping industry and is therefore the preferred option.

6 Monetised and non-monetised costs and benefits of the options

6.1 Overview of analysis

In accordance with HM Treasury Green Book guidance, the policy is appraised over a 10-year appraisal period from 2019 to 2028 (inclusive) and a discount rate of 3.5% per year is used to discount all future costs and benefits to the start year that MARPOL Annex V came into force internationally, 2013. Costs and benefits are estimated in 2013 prices. All figures are presented as discounted and real unless stated otherwise.

Please note that the majority of costs identified within this IA have already been incurred and would not represent a future burden to business. However, they are included as they have been assessed against the baseline of no implementation of MARPOL Annex V.

A level of analysis was undertaken to establish the detail required when forming questions to Industry (see Annex 4) who could provide statistics and/or indicative costs for each area of impact. We have established an indicative level of cost for the areas of highest impact. Note: Unless otherwise stated, the numbers of ships quoted from this point onwards are based on the UK Ship Register (UKSR).

6.2 Summary of Monetised costs and benefits

Table 1 presents a summary of all cost and benefits that have been monetised for the preferred option, option 2. The costs and benefits are presented as positive, but costs are negative within the calculation of the Net Present Value (NPV). Note that the monetised costs under option 1 and option 2 are the same. A full description of each cost and benefit is presented in sections 6.4 and 6.5.

Table 1: Summary of all monetised costs and benefits of the preferred option

Requirement	Low	Central	High
Garbage Management Plan	£52,000	£106,000	£173,000
Garbage Placards	£10,000	£22,000	£37,000
Familiarisation Cost	£10,000	£29,000	£56,000
NPV	-£72,000	-£157,000	-£266,000

The total Equivalent Annual Net Direct Cost to Business (EANDCB) in the central scenario, our best estimate is <£0.1m combining all the costs detailed above. The total NPV is -£0.2m in the central case with -£0.1m and -£0.3m in the low and high cases.

6.3 Eligibility under the De Minimis system

Given the EANDCB of <£0.1m under the central scenario (best estimate), and <£0.1m in the high scenario, we can be confident that the costs of these changes fall within the De Minimis threshold of +/- £5m EANDCB. We do not believe the scale of the non-monetised costs and benefits would affect this assessment. An additional level of detail has been considered here than is usually proportionate under a low impact measure due to the nature of introducing ambulatory reference.

6.4 Option 1: Update UK legislation in line with current version of MARPOL Annex V

6.4.1 Monetised costs

6.4.1.1 Garbage Management Plan (GMP)

Previously every ship of 400 gross tonnage and above, and every ship which is certified to carry 15 persons or more, shall carry a garbage management plan which the crew shall follow. The requirement for a ship to carry a GMP has been expanded in these regulations to include all vessels of 100 gross tons or greater. The number of UK flagged vessels between 100GT and 400GT is approximately 1000 ships. Of these, the number which are certified to carry 15 persons, or more is approximately 75.⁴ These ships would already hold a GMP. Therefore, a further approximately 925 ships need to carry a GMP.

Gross Earnings data has been sourced from 2013 Annual Survey of Hours and Earnings (ASHE) data for Water Transport. The size and type of businesses affected due to the nature of market is subject to a large degree of variation. The 30th percentile (£9.26) is used as a low scenario, the median (£13.48) in the central, and the 70th percentile (£17.16) as the high scenario. This wide range reflects this uncertainty. The 30th and 70th percentile were used as ranges due to ranges above the 70th percentile for water transport considered unreliable by the Office for National Statistics (ONS). An uplift of 20.9% has been applied to represent non-wage labour cost to business such as national insurance and employer pension contributions.

There are no GMPs on sale but there is guidance from the IMO on the creation of one. Based on this guidance it is estimated to take 5 to 9 hours to create a GMP for each vessel. Therefore, the approximate total cost in terms of GMP creation will range from £52,000 to £173,000 and be a one-off cost, with a cost of £106,000 in the central scenario.

Table 2: The total cost of creating Garbage Management Plans

⁴ SeaWeb as of February 2018

	Low	Central	High
Time to create GMP (hours)	5	7	9
Total Hourly Labour Cost	£11.20	£16.30	£20.75
Number of Vessels	925	925	925
Total Cost	£52,000	£106,000	£173,000

As there is no specification in the regulations for the renewal of the GMP, we assume no cost in the appraisal period for updating or revising a GMP. We also have no data from vessel owners on how often (if any) this is done. For a sensitivity test we have estimated this cost but are not including it in our scenarios. We estimate a time to revise the GMPs each year throughout the appraisal period (except for 2013 where the GMPs are created) of 15, 30 and 60 minutes on average per vessel in the low, central and high scenarios respectively. Using real GDP per capita growth to forecast the hourly wages forward, there is a total cost of £21,000, £45,000 and £182,000 in the low, central and high scenarios. The inclusion of this ongoing cost would therefore not make a difference on this regulations eligibility under the De Minimis system.

6.4.1.2 Garbage Placards

Placards are required to notify crew and passengers in ships of 12m or more of discharge requirements in accordance with the regulations in MARPOL Annex V. New placards need to be created to also include the regulations in section 5.2 of part II-A of the Polar Code. We have an estimate of 1792 vessels that are affected. This is the number of UK flagged vessel of over 16m in length and is sourced from IHS fleet data. Due to data limitations we do not know the number of vessels between 12m and 16m in length. Note based on current evidence of how vessels comply, vessels create their own placards rather than purchasing them from elsewhere. This usually takes the form of laminated paper printed and displayed in the relevant areas. We have assumed the average amount of time per vessel to produce and install a placard is 30, 45 and 60 minutes in the low, central and high scenarios. Gross Earnings data has been sourced from 2013 Annual Survey of Hours and Earnings (ASHE) data for Water Transport. There is a total one-off cost of £22,000 in the central scenario, with £10,000 and £37,000 in the low and high scenarios, respectively. The cost of materials to create the placards (a sheet of office paper, laminated) are likely to be negligible and would not be proportional to quantify.

Table 3: The total cost of Placards

	Low	Central	High
Time to create Placard (hours)	0.5	0.75	1
Total Hourly Labour Cost	£11.20	£16.30	£20.75
Number of Vessels affected	1792	1792	1792
Total Cost	£10,000	£22,000	£37,000

6.4.1.3 Familiarisation cost

Familiarisation costs relate to the obligation of the master of each vessel to familiarise themselves with the latest provision of the regulations. Based on the fact MARPOL Annex V latest text is 9 pages (plus appendices), we have estimated it would take the master between 30 to 90 minutes to do this as a one-off exercise. Gross Earnings data has been sourced from 2013 Annual Survey of Hours and Earnings (ASHE) data for Water Transport. The familiarisation time is applied to 1792 vessels. This is the number of UK flagged vessel of 100GT and above and is sourced from IHS fleet data. Using this we have estimated a total familiarisation cost of £29,000 in the central scenario, and £10,000 and £56,000 in the low and high scenarios, respectively.

Table 4: The total cost of familiarisation

	Low	Central	High
Time to familiarise (hours)	0.5	1.0	1.5
Total Hourly Labour Cost	£11.20	£16.30	£20.75
Number of Vessels affected	1792	1792	1792
Total Cost	£10,000	£29,000	£56,000

6.4.2 Non-Monetised Costs

6.4.2.1 The General Prohibition on the discharge of garbage into the sea

Regulations 3, 4 and 6 of MARPOL Annex V provides rules on the general prohibition on discharge of garbage into the sea, discharge of garbage outside special areas and discharge within special areas. With the introduction of a general prohibition on the discharge of all garbage into the sea, with limited exceptions, the main impact on cost is the discharging of the prohibited garbage to PRF and licensed waste contractors for treatment and final disposal.

MARPOL Annex V sets a clear requirement on the UK to provide adequate waste facilities so that the garbage categories which are prohibited from discharge into the sea can be discharged ashore for appropriate treatment and disposal. UK ports and terminals are required by law⁵ to provide adequate PRFs to ships which use their reception facilities. The fee taken for MARPOL Annex V garbage normally forms part of the Port dues. The mandatory waste fee covers all costs related to providing waste facilities, treatment and final disposal.

The impact of this measure is the effect of the increase in garbage discharged at ports that no longer can be discharged into the sea on total fees that vessels pay. We do not think that the scale of additional garbage would affect the number of times a vessel has to use the PRF.

In order to obtain data on how much more ships visiting UK ports and terminals will have to pay due to the increase of discharging more garbage to UK PRF. The MCA wrote to the two main ports associations⁶ (see Annex 4). We also wrote to the UK Chamber of Shipping members to obtain data as to any addition of cost incurred due to the implementation of MARPOL Annex V. The following questions were asked:

- “Did you increase your mandatory waste fee as a result of the amendments to MARPOL Annex V?”
- “If yes how much was the increase in fees for receiving MARPOL Annex V waste?”

And for Chamber of Shipping members:

- “What was the increase in the port reception facilities (Annex V) fee as a result of the international regulations which came into effect in 1st January 2013. proportional fee for
 - (a) UK Ports
 - (b) EU Ports
 - (c) International Ports”
- “Please indicate any other costs you may have incurred in relation to MARPOL Annex V amendments coming into effect.”

We received 8 replies from industry. The general response was that there has been no increase in fees for receiving MARPOL Annex V waste due to the changes to the general prohibition/rules of discharge of garbage into the sea inside and outside special area. There is also an opportunity cost to holding additional garbage on on-board vessels before disposing at port reception facilities, as well as vessels using more fuel due to being heavier as a result of holding garbage they previously would have disposed of in the sea. None of the respondents to our survey indicated these costs. As part of a wider consultation exercise, we will

⁵ The Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulation 2003, as amended.

⁶ UK Major Ports Group and British Ports Association

consult industry on these areas and will revise this DMA to monetise any significant additional cost that is found.

6.4.2.2 *Garbage Record Book (GRB)*

Every ship of 400 gross tonnage and above and every ship which is certified to carry 15 persons or more engaged in voyages to ports or offshore terminals under the jurisdiction of other Parties to the Convention and every fixed or floating platform engaged in exploration and exploitation of the sea bed shall be provided with a Garbage Record Book. The GRB will now also include the regulations in section 5.2 of part II-A of the Polar Code. Although there is an annual cost of purchasing GRBs for vessels and time spent filling them in each time they offload garbage at a PRF, maintaining GRBs are a requirement under existing regulations, and the price of a GRB will not change. Therefore the only additional cost incurred against the counterfactual would be the overall familiarisation cost covered in section 6.4.1.3 to understand the changes to the GRB.

6.4.3 Monetised Benefits

We have not been able to monetise any benefits to MARPOL annex V.

6.4.4 Non-Monetised Benefits

The key benefit of this option is reduced garbage pollution at sea, protecting the marine environment, beaches and shorelines where garbage ends up. A big source of garbage pollution is made up of plastic from discharged fishing gear.

It's difficult to ascertain how much garbage currently disposed of at sea comes from UK flagged vessels, and how much the changes in MARPOL annex V have affected this. Due to other regulations having impacts in this area making it difficult to solely attribute changes to MARPOL annex V. One such regulation is the control reg (Council Regulation (EC) 1224/2009) which specifies EU fishing vessel obligations when it comes to reporting of lost gear. It is not proportionate to carry out extensive and complex analysis to calculate these benefits as it would be difficult to separate out the impacts from multiple policy interventions/directives.

With the reduction in garbage there comes a reduction in indirect costs to organisations that organise beach clean-up operations such as WWF, the Marine Conservation Society etc.

The new regulations will also be simpler and clearer over what are prohibited items to dispose of into the sea. This avoids confusion and the risk that vessel owners are accidentally not complying.

The changes under this option will allow UK vessels to continue to operate in compliance with the international regulatory framework.

6.5 Option 2: Bring UK law in line with recent updates to international navigational requirements and introduce ambulatory referencing to refer UK industry to the most up to date international legislation in this area

6.5.1 Monetised Costs

Please refer to section 6.4.1 for the monetised costs of this option. We have not monetised any additional costs.

6.5.2 Non-Monetised Costs

In addition to the non-monetised costs presented in section 6.4.2, there will be cost associated with future amendments to MARPOL Annex V, which through ambulatory referencing will automatically come into force. The cost associated with future amendments cannot be monetised at this stage as there is currently no indication of what form future amendments may take. Nevertheless, we expect that future familiarisation will be streamlined: the introduction of an ambulatory reference to MARPOL Annex V means that ship operators can focus on the convention text in technical areas rather than also having to refer to national implementing legislation, which would minimise these costs.

We propose to undertake regular Post Implementation Reviews (PIRs) to evaluate whether the use of ambulatory reference to MARPOL Annex V has achieved its goal and is still valid, and also to estimate the costs and benefits of all the technical amendments enacted since this economic assessment.

6.5.3 Monetised Benefits

We have not been able to monetise any additional benefits to ambulatory referencing.

6.5.4 Non-Monetised Benefits

Non-monetised benefits from option 1 will also be felt in option 2 (please see section 6.4.4 for more), additional benefits found in option 2 are detailed below:

At present ship operators need to be sure that where provisions of international conventions have been framed differently in UK law, it is given the same interpretation that it has internationally (in the convention).

The introduction of ambulatory referencing to MARPOL Annex V into the replacement Regulations will:

- **Simplify the regulatory framework for both industry and regulatory users** – currently a mixture of primary and secondary legislation is used to implement international maritime conventions;
- **Give legal clarity to operators** – there will no longer be disparity between national and international requirements;
- **Provide a level playing field between UK and foreign operators calling at UK ports** – the automatic incorporation of amendments in legislation means that the UK will be able to enforce amendments as soon as they come into force internationally. Therefore, foreign ships visiting the UK that are not compliant with the latest international requirements could be detained; and
- **Ensure the UK's reputation and influence** - This would be threatened should the UK be identified during a future IMO audit for failing to meet its obligation to give effect to MARPOL, which was a finding of the previous audit. This could have implications for the level of UK influence at the IMO.

7 Proportionality

The proposed repeal and replacement garbage section of the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from ships) Regulations to reflect the outstanding MARPOL Annex V amendments and the incorporation of ambulatory referencing direct to MARPOL Annex V is fully supported by industry. Industry has been fully engaged throughout the process of policy development at the IMO and contributing towards the UK negotiating position at the IMO. Industry voiced its concern regarding the perceived lengthy delay for the transposition of international requirements into domestic law and championed ambulatory referencing as the solution. Despite legal uncertainty arising from the discrepancy between domestic and international requirements, industry complies with international requirements to avoid commercial disruption caused by non-compliance delays at Port State Control (PSC) when operating worldwide.

Figures relating to the number of ships affected by the amendments are taken directly from the UK Ship Register, SeaWeb and IHS fleet data which is correct as at February 2018. Details for PSC records are taken from both the Ship Inspection and Surveys (SIAS) and THETIS databases. Authorised officials from 27 countries (including EU Member States) upload details from PSC inspections onto THETIS.

The level of analysis undertaken is in line with the depth of available information. Further quantification of costs and benefits would be a costly and complex exercise to complete and is not proportional given there is low risk of breaching the threshold under the De Minimis system.

8 Risks

Risks of doing nothing

Risk of doing nothing is damaging to the UK's reputation as a world leader in the maritime industry. This would have a negative effect on the UK's influence at the IMO and in the EU forum on maritime issues. Furthermore, the UK would not be able to detain and/or prosecute any substandard non-UK ships operating in UK waters, especially if an incident occurred, as is currently the case.

Risks of only bringing UK law in line with recent updates to international navigational requirements

Whilst the recent updates will be implemented into UK law, this option only brings temporary relief to the backlog of international legislation to be implemented into UK law. This option will not address industry's key demand during the Red Tape Challenge (RTC) for the use of ambulatory referencing to expedite the implementation of amendments to international conventions.

Risks of implementing all the options

There are no risks involved in implementing the outstanding MARPOL Annex V measures; industry is fully aware of the changes and are complying in order to continue trading internationally without hindrance.

9 Wider Impacts

The wider social, environmental and economic impacts of the proposed policy options have been considered, together with possible unintended consequences. Where we have identified potential impacts, they are described in the following paragraphs:

9.1 Small and Micro Business Assessment

Based on an analysis of the companies owning UK registered vessels (as at January 2018) it is concluded that the majority of these companies affected by the MARPOL Annex V amendments are large, multinational or subsidiaries of multinationals and would therefore fall outside of the scope of the small and micro business assessment.

The following business size definitions were used to categorise companies which own ships on the UKSR:

- Micro firm: 0 - 9 employees
- Small firm: 0 - 49 employees (includes micro)
- Medium firm: 50 - 249 employees
- Large firm: over 250 employees

The following assumptions have been made when analysing companies owning UK registered ships:

- Multinational / Multidisciplinary companies are unlikely to be smaller than a medium sized firm – otherwise they will not be able to conduct their operations
- Companies operating 6 small cargo/ 5 small passenger ships or more are unlikely to be smaller than a medium sized firm – otherwise it would not be able to comply with safe manning requirements and provide the shore-based personnel infrastructure to deliver business needs. For example, based on a sample of the minimum number of crew required to comply with safe manning requirements for ships less than 50,000GT, it was found that on average:

Table 5: Minimum number of crew on cargo and passenger ships by ship size

Ship Size	Min. no. of crew on Cargo Ship	Min. no. of crew of Passenger ship
150GT - 499GT	5	6
500GT - 2,999GT	10	10
3,000GT - 19,999GT	14	16
20,000GT - 49,999GT	17	31

9.2 Justice Impact Assessment

We anticipate that the majority of vessels are already compliant with the current provisions of MARPOL V, and therefore there will be minimal additional cost on the justice system. A Justice Impact Test has been completed and cleared with the Ministry of Justice.

9.3 Competition assessment

The new measures apply equally to all ships calling at UK ports. Issues would not arise in respect of competition as MARPOL applies equally to all international ships.

9.4 Environmental & Carbon Impact

None of the options would have any adverse environmental or carbon impact. In fact, the amendments to MARPOL V would have an effect of providing a positive impact on the environment as they will enhance ship safety in terms of new and improved preventative rules for the discharge of garbage from vessels.

9.5 Equalities Impact Assessment

All options have been assessed for relevance, but the measures proposed are not going to have any variation in impact on different groups; an Equalities Impact assessment is therefore not required. It is considered that there are no significant impacts on families.

9.6 Enforcement

There are no new penalties being introduced by these new measures as the existing offences and penalties are sufficiently broad to cover all requirements which fall under MARPOL Annex V. In fact, it may be possible to reduce the number of offences as offences which can be linked to the possession of a valid certificate may be incorporated with the offence of sailing without such a certificate. Upon introduction of the recast Regulations, the MCA enforcement team could then prosecute those ships that do not comply.

10 Summary of preferred option

Under the preferred option, the UK will fulfil its obligation to give effect to MARPOL and retain its reputation as a leading maritime nation and influence at the IMO. Transposition of the MARPOL Annex V amendments will create a level playing field and allow the UK to take enforcement action against any substandard ships in UK waters. The inclusion of ambulatory reference to MARPOL Annex V will provide legal certainty for industry and address their concern regarding delays in transposition raised during the Red Tape Challenge.

11 Post-implementation Review Plan

Review status: Please classify with an 'x' and provide any explanations below									
<input type="checkbox"/>	Sunset clause	<input checked="" type="checkbox"/>	Other review clause	<input type="checkbox"/>	Political commitment	<input type="checkbox"/>	Other reason	<input type="checkbox"/>	No plan to review
Rationale for PIR approach Any future amendments to MARPOL annex V that are introduced through ambulatory referencing will be reviewed at five-yearly intervals through the Post Implementation Review (PIR) process. We propose to undertake regular PIRs to evaluate whether the use of ambulatory reference to MARPOL Annex V has achieved its goal and is still valid, and also to estimate the costs and benefits of all the technical amendments enacted since this economic assessment. We currently do not know when future amendments to MARPOL annex V will be made at the International Maritime Organisation (IMO), and will review them 5 years from when they come into force internationally.									
Will the level of evidence and resourcing be low, medium or high? (See Guidance for conducting PIRs)									

The level of evidence and resourcing for this review will be low. The Regulations implement MARPOL Annex V, and where applicable aspects of a number of EU Directives which echo the requirements of MARPOL V.

What forms of monitoring data will be collected?

The review will include analysing data contained on the Ship Inspection and Surveys (SIAS) and THETIS databases to identify non-compliances with the requirements of MARPOL Annex V established through Port State Control inspections.

What evaluation approaches will be used? (e.g. impact, process, economic)

Aspects of impact, process and economic evaluation processes will be used. The review will engage with industry and classification societies to better understand the actual costs experienced. The Maritime & Coastguard Agency (MCA) will check whether the shipping industry is complying with the new Regulations and, where possible, also whether they are having the desired effect on improving safety.

How will stakeholder views be collected? (e.g. feedback mechanisms, consultations, research)

Officials from the MCA regularly host and/or attend meetings with stakeholders – their feedback on whether measures have had the desired effect or problems encountered is sought as part of ongoing stakeholder engagement.

Annex 1 – Ambulatory References

Definition of ambulatory reference

An ambulatory reference for the purposes of this Impact Assessment is a reference in domestic legislation to an international instrument which is interpreted as a reference to the international instrument as modified from time to time (and not simply the version of the instrument that exists at the time the domestic legislation is made).

What does an ambulatory reference achieve?

Once an ambulatory reference to an international Convention, or part of an international Convention, is introduced into a Statutory Instrument (SI), new amendments to the Convention (or the referenced part of the Convention, if only part of it is referenced) will automatically become UK law. No additional SIs/ amendments to existing SIs will be required to bring such amendments into force.

Enabling Power to make Ambulatory Reference

On 26 March 2015, the Deregulation Act 2015 received Royal Assent. The Act introduced a new power to make ambulatory references to international instruments under a new section 306A of the Merchant Shipping Act 1995 (MSA 95). This power will only be used for “technical”, and therefore non-controversial, aspects of the Convention.

What assurances are in place to prevent undesirable amendments to international Conventions automatically coming into force?

1. A new SI must be created to introduce an ambulatory reference provision in relation to an international Convention. The suitability of the international Convention will be assessed (taking into consideration the nature of amendments and the likelihood of whether they will be controversial) prior to the use of the power being approved.
2. A Ministerial Statement will be made to Parliament in advance of any amendment to UK law being made by ambulatory reference.
3. Where the UK does not agree with a proposed amendment to an international Convention, the Secretary of State (SoS) may object to it in order to prevent it coming into force with respect to the UK. This facility will be available for exceptional circumstances; however, this “opt-out” it is not expected to be used frequently, if at all, because:
 - a. any UK arguments deemed necessary to shape the amendments will have been argued in the international negotiation stage;
 - b. the amendments, being of a technical nature, are not expected to be politically controversial;
 - c. the amendments, once agreed, will in any case be binding on the international community and therefore it will be necessary for UK ships wishing to operate internationally without hindrance to comply anyway.

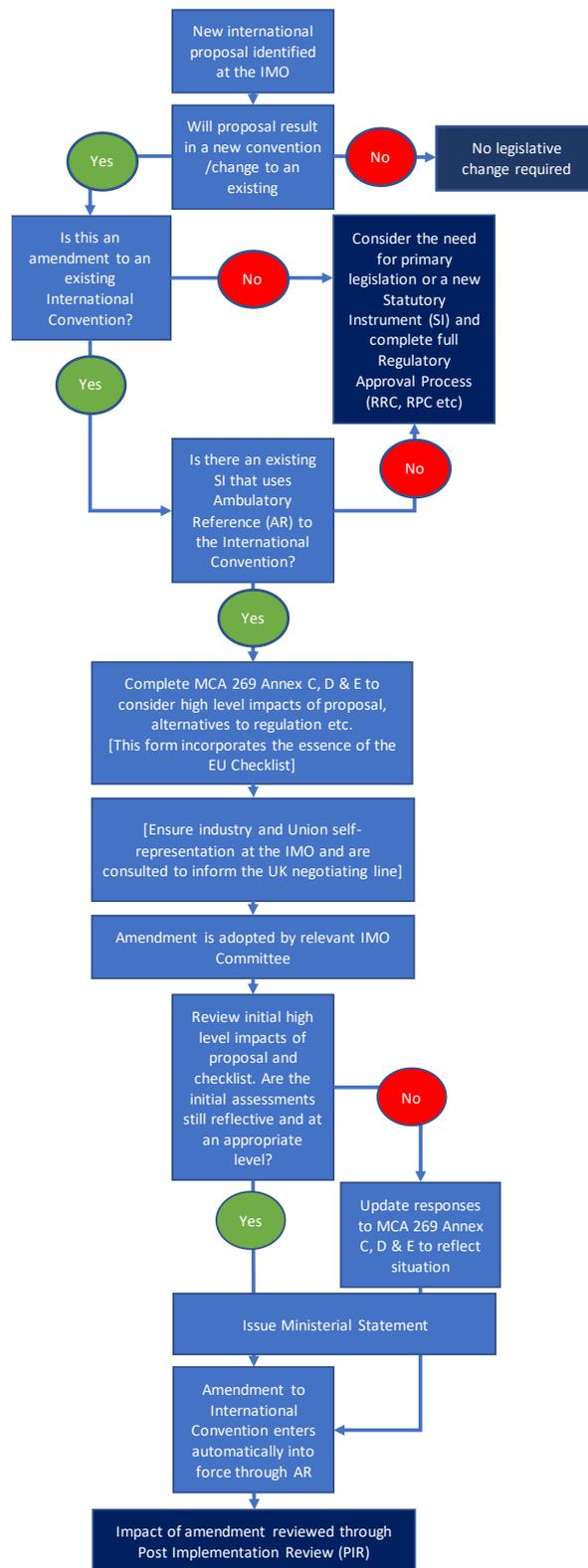
Regulatory process supported by the Better Regulation Executive for Ambulatory Reference measures

A flow diagram of the agreed scrutiny process is depicted overleaf, in essence the process will require:

- an ambulatory reference provision to be included in secondary legislation which will follow the full Parliamentary and Regulatory processes;
- subsequent technical amendments during the international negotiation process, will continue to be subject to:
 - consideration of high-level impacts
 - stakeholder engagement
- full Post Implementation Review to be undertaken to evaluate whether the policy has achieved its goal and is still valid, and also evaluate the costs and benefits of all the technical amendments enacted since the previous review (or impact assessment).

The proposed approach streamlines the traditional regulatory process and directs it where the greatest influence can be achieved, at negotiation stage. The principles of Better Regulation are still captured:

- **Alternatives to Regulation** – prior to work commencing on any proposal at the IMO, a case for action must be demonstrated against the following criteria: practicality, feasibility and proportionality; costs and benefits to industry, including legislative and administrative burdens; and alternatives to regulation.
- **Consultation** – industry is represented at the IMO through non-governmental organisations, which are heavily involved in early stage policy development, contributing to working and drafting groups where policy is designed, as well as participating in plenary where policy is examined. Industry representatives are invited to meetings hosted by the MCA prior to IMO sessions to assist with the development of the UK's negotiating position.
- **Assessment of Impact** – a high level consideration of impact is undertaken at proposal stage to inform the UK's negotiation position. Post Implementation Reviews will be used to assess the robustness of the original assessment and will be timed to ensure they can feed into negotiations for future rounds of amendments.



How does Ambulatory Reference support Economic Growth?

The UK's ability to implement international agreements efficiently and effectively is important to the commercial shipping sector for a number of reasons:

- timely implementation means that UK ships plying internationally can properly be issued with certificates that confirm compliance with relevant international rules. Recent experience with the Maritime Labour Convention has highlighted a risk that current implementation practice could result in the UK delaying ratification of major agreements, potentially restricting the participation of UK shipping in international trade;

- the uniform implementation of international rules in all contracting states is vital in order to achieve a level playing field for UK ships that trade internationally. The UK must be capable of certifying its own ships to the relevant standards; failure to do so makes it much more likely that a UK ship will be detained in a non-UK port for non-compliance. We must also be able to enforce those same standards against non-UK ships in UK ports, to ensure that compliant UK ships are not disadvantaged;
- current implementation practice has created a complicated and disjointed regulatory regime that diverges significantly from the international structure. This creates administrative burden for industry, because of the needless duplication of effort needed to ascertain the domestic legal position, and because of the unnecessary complexity of the domestic regime;
- a transparent, accessible and up-to-date legal regime is a vital component of a quality flag. Improving the way we implement international law will reflect the UK's ambition to make its flag a more attractive place to do business, as well as protecting our reputation as a world-class maritime administration, both with industry and the international institutions (such as the EU and the IMO) with responsibility for maritime policy;
- when discussing technical matters with overseas clients or shipyards and designers, it helps to have a common source of reference. Those working within the UK regime will be familiar with the UK's implementation, but those in other states will have no knowledge of it;
- when an owner wishes to change flag to the UK, the ship will have been constructed to the international requirements. Differences in UK law (occasionally deliberate gold-plating, but mostly differences in legislative drafting styles and delays in implementing amendments) make assessing a ship's compliance unnecessarily complicated and may create additional hurdles capable of discouraging owners from transferring to the UK.

Annex 2 – Cost / Statistics survey

Garbage Type ¹	All ships except platforms		Regulation 5 Offshore platforms located more than 12nm from nearest land and ships when alongside or within 500m of such platforms ⁴
	Regulation 4 Outside Special Areas and Arctic waters (Distances are from the nearest land)	Regulation 6 Inside Special Areas and Arctic waters (Distances are from nearest land, nearest ice-shelf or nearest fast ice)	
Food waste comminuted or ground ²	≥ 3nm, en route and as far as practicable	≥ 12nm, en route and as far as practicable ³	Discharge permitted
Food waste not comminuted or ground	≥ 12nm, en route and as far as practicable	Discharge prohibited	Discharge prohibited
Cargo residues ^{5,6} not contained in washwater	≥ 12nm, en route and as far as practicable	Discharge prohibited	Discharge prohibited
Cargo residues ^{5,6} contained in washwater		≥ 12nm, en route and as far as practicable (subject to conditions in regulation 6.1.2 and paragraph 5.2.1.5 of part II-A of the Polar Code)	
Cleaning agents and additives ⁶ contained in cargo hold washwater	Discharge permitted	≥ 12nm, en route and as far as practicable (subject to conditions in regulation 6.1.2 and paragraph 5.2.1.5 of part II-A of the Polar Code)	Discharge prohibited
Cleaning agents and additives ⁶ in deck and external surfaces washwater		Discharge permitted	
Animal carcasses (should be split or otherwise treated to ensure the carcasses will sink immediately)	Must be en route and as far from the nearest land as possible. Should be >100nm and maximum water depth	Discharge prohibited	Discharge prohibited
All other garbage including plastics, synthetic ropes, fishing gear, plastic garbage bags, incinerator ashes, clinkers, cooking oil, floating dunnage, lining and packing materials, paper, rags, glass, metal, bottles, crockery and similar refuse	Discharge prohibited	Discharge prohibited	Discharge prohibited

¹ When garbage is mixed with or contaminated by other harmful substances prohibited from discharge or having different discharge requirements, the more stringent requirements shall apply.

² Comminuted or ground food wastes must be able to pass through a screen with mesh no larger than 25 mm.

³ The discharge of introduced avian products in the Antarctic area is not permitted unless incinerated, autoclaved or otherwise treated to be made sterile. In polar waters, discharge shall be made as far as practicable from areas of ice concentration exceeding 1/10; in any case food wastes shall not be discharged onto the ice.

⁴ Offshore platforms located 12 nautical miles from nearest land and associated ships include all fixed or floating platforms engaged in exploration or exploitation or associated processing of seabed mineral resources, and all ships alongside or within 500 m of such platforms.

⁵ Cargo residues means only those cargo residues that cannot be recovered using commonly available methods for unloading.

⁶ These substances must not be harmful to the marine environment.

Annex 3

Small Island Developing States

UN MEMBERS (37)

Atlantic, Indian Ocean, Mediterranean and South China Sea (AIMS) (8)

 Cabo Verde	 Comoros	 Guinea-Bissau
 Maldives	 Mauritius	 Sao Tomé and Príncipe
 Seychelles	 Singapore	

Caribbean (16)

 Antigua and Barbuda	 Bahamas	 Barbados
 Belize	 Cuba	 Dominica
 Dominican Republic	 Grenada	 Guyana
 Haiti	 Jamaica	 Saint Kitts and Nevis
 Saint Lucia	 Saint Vincent and the Grenadines	 Suriname
 Trinidad and Tobago		

Pacific (13)

 Fiji	 Kiribati	 Marshall Islands
 Micronesia (Federated States of)	 Nauru	 Palau
 Papua New Guinea	 Samoa	 Solomon Islands
 Timor-Leste	 Tonga	 Tuvalu
 Vanuatu		

NON-UN MEMBERS/ASSOCIATE MEMBERS OF REGIONAL COMMISSIONS (20)

 American Samoa	 Anguilla	 Aruba
 Bermuda	 British Virgin Islands	 Cayman Islands
 Commonwealth of Northern Marianas	 Cook Islands	 Curacao
 Guam	 French Polynesia	 Guadeloupe
 New Caledonia	 Martinique	 Montserrat
 Sint Maarten	 Niue	 Puerto Rico
	 Turks and Caicos Islands	 U.S. Virgin Islands

Annex 4 – Pre-Consultation communication with Industry



UKMPG Member/BPA Member
By e-mail or address

Steven Dexter

Maritime & Coastguard Agency
Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 0203 8172378

Website: www.gov.uk/mca

1st November 2017

Draft Impact Assessment for MARPOL Annex V – Information request

Dear <Insert Name>

I am writing to you about a request for valuable information regarding the cost of fees for the discharge of garbage waste in ports which will help our work for MARPOL Annex V (garbage).

Background

The UK are currently in the process of transposing the International regulations for MARPOL Annex V (garbage) into UK law. These came into force internationally on the 1st January 2013. The regulations bring into effect the key amendment on the prohibition of discharge of garbage into the sea with limited exceptions.

It is also intended that the new UK Regulations incorporate ambulatory reference in order for ships to comply directly with MARPOL Annex V in its up to date form. An ambulatory reference is a reference in domestic legislation to an international instrument which is interpreted as a reference to the international instrument as modified from time to time. This means any future international amendments of a technical nature can be referred directly to the convention.

Request

The UK procedure requires us to develop an Impact Assessment which we are currently undertaking analysis of available evidence and information. We have identified the need for the collation of costs/fees for the discharge of garbage waste in ports, however, we have been unable to gather a full set of publicly available

information to determine the impact on cost as a result of the amendments¹ We would be most grateful if you could provide answers to the following questions:

Q1. Did you increase your mandatory waste fee as a result of the amendments to MARPOL Annex V (see footnote 1)?

Q2. If yes how much was the increase in fees for receiving MARPOL Annex V waste?

Your input is extremely valuable particularly at this early stage as your response will help shape our approach to these changes. Therefore, we really appreciate your views and welcome your answers/comments.

If at all possible a reply by 1st December 2017 would be most appreciated.

Kindest Regards.

Yours Sincerely,

