

Dear Sir/Madam

CONSULTATION ON THE DRAFT UK SHIP RECYCLING (REQUIREMENTS IN RELATION TO HAZARDOUS MATERIALS ON SHIPS) REGULATIONS 2017

Aim

1. This consultation seeks your views on the Government's draft UK regulations to support the EU Regulation (EU) No 1257/2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC (the EU Regulation) in so far as the EU Regulation is about requirements applicable to ships (as opposed to ship recycling facilities). In particular, the purpose of the UK regulations is to ensure that the survey regime provided for in the EU Regulation works as intended in respect of the United Kingdom and United Kingdom ships and that there are appropriate sanctions and enforcement powers in respect of ships (including non-UK ships coming into UK ports) which fail to comply with the EU Regulation.

2. The EU Regulation comes into force in stages. The provisions relating to ship recycling facilities were implemented in the UK in 2015 through *the Ship Recycling Facilities Regulations 2015 (for Great Britain)* and *the Ship Recycling Facilities Regulations (Northern Ireland) 2015*. We expect the general provisions which affect ships will come into force at the end of 2017, although some of the measures will apply at different times (see paragraph 11 below). The EU Regulation has direct application, but EU Member States must implement an effective, proportionate and dissuasive enforcement regime. The Government proposes to implement these requirements under *the Ship Recycling (Requirements in relation to Hazardous Materials on Ships) Regulations 2017*.

Deadline for response: responses are welcome from 21 July 2017 until 15 September 2017. A Response Form is attached.

Implication of the EU referendum

3. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

Background

4. The EU Regulation was published in the Official Journal on 10 December 2013. The EU Regulation is based on the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships. The purpose of the Hong Kong Convention is to address the concerns about safety, health, and environmental

damage and welfare matters in the ship recycling industry, by regulating the whole lifecycle of the vessel. Although the Convention was adopted in May 2009 it is unlikely to come into force before 2020. The EU Regulation is intended to put member States in a position to comply with the HKC before this date. Consideration was given to ratifying the HKC at the same time as implementing these UK Regulations, however due to the primary legislation required for this to happen it was deemed unrealistic.

5. Under the agreement governing the European Economic Area (EEA), the EU Regulation may be extended to Iceland, Liechtenstein and Norway. This is likely to mean that ships flagged to those countries are treated under the EU Regulation as if they are EU flagged ships. If this happens before the UK Regulations are made, the UK Regulations will reflect this.

6. Ships have a normal life span of between 25 and 40 years before they are sent for recycling. In 2009, some 200 ships flagged to EU member States, with a total volume of about two million gross tonnes, were dismantled to recycle the steel, equipment and other materials. However, most ships (especially older vessels) contain hazardous materials including asbestos, polychlorinated biphenyls (PCBs), and tributyltin – which need to be properly managed, stored and disposed of during the recycling process. Therefore vessels in European waters going for dismantling and recycling are classified as ‘hazardous waste’ under the Waste Shipment Regulations 1013/2006/EC. This bans the export of hazardous waste (including ships) to any country which is not a member of the Organisation for Economic Co-operation and Development (OECD).

7. The requirements in the Waste Shipment Regulations have proved to be ill-suited to addressing the issues raised by ship recycling, difficult for member States to enforce and have failed - with the exception of a handful of yards - to improve the safety and environmental standards of ship recycling facilities in Asia. Moreover, as 95 per cent of ship recycling takes place in Asia, there is insufficient capacity within the OECD to recycle all ships flagged to EU member States. As a consequence, many vessels circumvent the current legislation and end up on beaches where they are dismantled in conditions which offer little protection to human health or to the environment.

The EU Regulation:

8. The EU Regulation should go some way towards improving the competitiveness of UK ship recycling facilities, which already use sustainable practices. Swansea Drydocks, Abel UK and Harland & Wolff have been included on the EU List of approved ship recycling facilities. There are now some recycling facilities outside the OECD – notably in China – which are capable of recycling ships sustainably. Providing they meet the requirement in the EU Regulation, we expect some non-OECD facilities will be added to the European list of approved facilities by the end of 2017.

9. Financial returns for recycling ships at a sustainable Asian facility are likely to be higher than using an OECD based facility, although not as high as using a sub-standard Asian facility.

10. Once in place, the EU Ship Recycling Regulation would remove ships flagged in EU Member States over 500 gross tonnes from the scope of the Waste Shipment Regulations (WSR), providing a legitimate method to recycle a European flagged vessel at an 'approved' ship recycling yard, either inside or outside of the OECD. Non-EU flagged vessels will be subject to certain requirements under the new Regulation when calling at a port or anchorage of an EU member State, but will remain subject to the WSR once a decision is made to recycle the vessel.

11. The EU Regulation will apply to shipowners and ship recycling facilities when it comes into effect – either 6 months after the European list has met the minimum ship recycling capacity in Article 32 of the EU Regulation, or on 31 December 2018 – whichever is sooner. We currently expect it to apply from the end of 2017, but in any event, the Government will notify key stakeholders before the measures take effect.

12. The main requirements in the EU Regulation are that:

- Publication of a list of approved ship recycling facilities which have been inspected and meet the required standard in the EU Regulation.¹
- Once in effect, the installation of new hazardous materials on ships will be restricted or prohibited.
- Once there is sufficient capacity on the European list:
 - New European flagged ships will need to carry a certified inventory of hazardous materials;
 - All EU flagged ships must be recycled at a facility on the approved list of ship recycling facilities, according to its bespoke ship recycling plan.
- By 31 December 2020;
 - Existing EU flagged ships will also need to carry a certified inventory of hazardous materials, and
 - Non-EU flagged ships will need to carry an inventory of hazardous material and a statement of compliance, when calling at a member State port.
- EU flagged ships must get their inventory of hazardous materials certified every 5 years (and again before the ship is recycled) by the EU flag State.

The UK Regulations:

13. As the EU Regulation has direct application, the purpose of the UK Regulations being consulted on is to support the EU Regulation by assigning responsibilities in respect of the UK for functions under the EU Regulation and

¹ The European list of approved ship recycling facilities was published on 19 December 2016 see <http://ec.europa.eu/environment/waste/ships/list.htm>. The first iteration only lists facilities located in the EU, but thereafter, the list will be updated regularly and is expected to include non-EU facilities by the end of 2017.

prescribing how the requirements of the EU Regulation will be enforced in the UK. In particular, they:

- Provide that the Secretary of State is the administration for the purposes of the EU Regulation in respect of the UK (in practice that means the Secretary of State for Transport working through the Maritime and Coastguard Agency).
- Set out that where the EU Regulation refers to officers of the administration that means, in the UK, those employed by the Crown and authorised by the Secretary of State to carry out surveys (in practice that means those working for the Maritime and Coastguard Agency).
- Give those who carry out surveys under the Regulation (i.e. those working for the Maritime and Coastguard Agency and those working for a Recognised Organisation) the powers necessary to ensure they can properly carry out those surveys.
- Allow the Maritime and Coastguard Agency to charge a fee for surveys and certificates (included because a Government body does not necessarily have the power to charge a fee without that power being set out in legislation).
- Amend the Merchant Shipping (Port State Control) Regulations 2011 (S.I. 2011/2601), primarily to extend the port state control regime to include inspections for the purpose of checking compliance with the EU Regulation and make provision in connection with the detention of a ship subject to port state control in consequence of a failure to comply with the EU Regulation.
- Provide for the detention of ships where not otherwise dealt with under the port state control regime.
- Impose criminal offences for contravening the EU Regulation (and failure to comply with certain provisions of the UK Regulations themselves) – both for EU flagged vessels and in respect of third country ships and make provision about how such offences will be investigated.

Consultation

14. As part of the process of implementation, a Regulatory Triage Assessment (RTA) has assessed the cost to business of implementing the EU Regulation. These have been estimated as being low, approximately £4,800 per annum.

15. We are inviting you to comment on the draft Statutory Instrument and to establish whether, and to what extent, the system of penalties being considered is effective, proportionate and dissuasive. Consultees are invited to comment on the questions below to better inform Government prior to finalising the Statutory Instrument.

Q1. Do you agree to the proposed approach to enforce the EU Regulation on ships in UK ports?

Q2. Do you agree with the defined roles given to the Secretary of State and the Maritime and Coastguard Agency? *(Regulation 3 of the draft SI designates the Secretary of State as the “administration” for the purposes of the EU Regulation. It also sets out that “officers of the administration” in Article*

8(1) of the EU Regulation are employees of the Crown authorised by the Secretary of State. In practice it is expected these will be employees of the Maritime and Coastguard Agency. Regulation 12 gives inspectors the power to detain ships under regulation 8 and also investigate whether an offence has been committed. Again, it is expected these inspectors will be employees of the Maritime and Coastguard Agency).

Q3. Do you have any concerns about how we enforce the EU Regulation in respect of UK flagged ships, ships flagged to other member States or that are part of the Red Ensign, or ships which are flagged to none of the above?

Q4. Are you content with the cost / benefit information in the RTA?

Q5. Do you have any other comments?

Please ensure that, when answering these questions, you provide supporting evidence (including, where appropriate, details of costs or benefits).

How to Respond

16. You are invited to comment on the draft Regulations and the draft RTA. A Response Form is attached to this letter.

17. The consultation will run for eight-weeks. **Please ensure that your response reaches the Maritime and Coastguard Agency on or before the closing date of 15 September 2017.** All responses should be provided in writing by post or email to:

Environmental Policy Branch
Maritime & Coastguard Agency
Bay 2/21, Spring Place
105 Commercial Road
Southampton
Hampshire SO15 1EG

Email: environment@mcga.gov.uk

About this consultation

18. This consultation document is issued by the Maritime and Coastguard Agency (MCA).

19. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004 (EIR)).

20. If you want us to treat any of the information you provide, including personal information, as confidential, please be aware that, under the FOIA, there is a

statutory Code of Practice with which public authorities must comply, and which deals, among other things, with obligations of confidence. It would be helpful if you could explain to us in your response why you regard the information as confidential. If we receive a request for disclosure of the information you have provided, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself be regarded as binding on the Department.

21. The MCA will process all personal data in accordance with the DPA and in the majority of circumstances, this will mean that personal data will not normally be disclosed to third parties.

Consultation Principles

22. This consultation is conducted in accordance with the Cabinet Office Consultation Principles Guidance.

Feedback

23. If you have any feedback about the way the consultation has been conducted, please address them to:

The Consultation Co-ordinator
Office of the Chief Executive
Maritime & Coastguard Agency
Bay 3/29, Spring Place
105 Commercial Rd
Southampton
SO15 1EG

Consultation.coordinator@mcga.gov.uk

We are continually trying to improve the way in which we conduct consultations and appreciate your views, so we would also be grateful if you would complete and return the attached feedback form. These should be returned to the consultation co-ordinator and are not affected by the deadline for this consultation.

Yours sincerely

Bjorn Emtage
Policy Adviser, Environmental Policy

Response form

What is your name?

What is your email address?

What is your job title?

When responding please state whether you are responding as an individual or representing the views of an organisation:

- I am responding as an individual
- I am responding on behalf of an organisation

(name of organisation)

Please check the box that best describes you as a respondent and the size of your organisation:

Respondent Type

- Classification Society
- Government Agency/Department
- Individual
- Legal representative
- Non-Government Organisation
- Ship Operator
- Ship Owner
- Trade Union
- Other

(please describe)

Size of Organisation

- Large business (over 250 staff)
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)

Questionnaire

1) **Do you agree to the proposed approach to enforce the EU Regulation on ships in UK ports?**

- Yes, I agree
- No, I don't agree

Comments:

2) **Do you agree with the defined roles given to the Secretary of State and the Maritime and Coastguard Agency?**

- Yes
- No

Comments:

3) **Do you have any concerns about how we enforce the EU Regulation in respect of UK flagged ships, ships flagged to other member States or that are part of the Red Ensign, or ships which are flagged to none of the above?**

- Yes
- No

Comments:

4) Are you content with the cost / benefit information in the RTA?

- Yes
- No

Comments:

5) Do you have any other comments?

- Yes
- No

Comments:

Please return completed response forms to:

Environment@mcga.gov.uk

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Hampshire, SO15 1EG